



COMMONWEALTH OF VIRGINIA

Commission on Youth



Overview of Guardianship, Entrustment, and Kinship Arrangements in Virginia

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Virginia's Landscape



- A look at what currently exists in Virginia to support children in need of care outside of the home.
- Certain terms that might be relevant to today's discussion may have different meanings in different contexts.



- Standby guardianship
- Guardianship of incapacitated persons and minors
- Power of attorney to delegate parental or legal custodial powers
- Temporary entrustment
- Kinship guardianship
- Formal and informal kinship care
- Legal custody

Standby Guardianship



- "Standby guardian" means a person who, in accordance with this article, **is designated in writing or approved by the Juvenile and Domestic Relations District Court to temporarily assume the duties of guardian of the person or guardian of the property**, or both, of a minor child on behalf of or in conjunction with a qualified parent upon the occurrence of a triggering event.
- Standby Guardianship was added to the *Code of Virginia* in 1998 and can be found at §§ 16.1-349 thru. 355 of the *Code of Virginia*.
- Allows a parent who is seriously ill to designate a standby guardian.

Guardianship of Incapacitated Persons



Incapacitated persons:

- "Guardian" means a person appointed by the court who is responsible for the personal affairs of an incapacitated person.
- "Conservator" means a person appointed by the court who is responsible for managing the estate and financial affairs of an incapacitated person.
- According to § 64.2-2001, "a petition for the appointment of a guardian or conservator shall be filed with the circuit court of the county or city in which the respondent is a resident or is located or in which the respondent resided immediately prior to becoming a patient, voluntarily or involuntarily, in a hospital."
- The Governor signed SB 1072 (Mason, 2020), which prohibits, except for good cause shown, the court from appointing as guardian or conservator for the respondent an attorney who has been engaged by the petitioner to represent the petitioner.



Minors:

- According to § 64.2-1701, a parent may by will appoint a guardian of the person of his minor child and a guardian for the estate. This person is known as the testamentary guardian.
- A guardian of a minor may also be appointed by the circuit court, or clerk, and a minor of at least 14 years old may nominate his own guardian.
- Until a guardian appointed by the circuit court or clerk has given his bond, or while there is no guardian, the court or clerk may appoint a temporary guardian. (§ 64.2-1706)

Power of Attorney to Delegate Parental or Legal Custodial Powers



- “A parent or legal custodian of a child, by a properly executed power of attorney, may delegate to another person, for a period not to exceed 180 days, any of the powers regarding the custody, care, and property of the child.”
- The power of attorney to delegate parental or legal custodial powers was added to the *Code of Virginia* in 2019 and can be found at §§ 20-166 thru. 167 of the *Code of Virginia*.
- It is required that a licensed child-placing agency that assists parents and legal guardians with the process of delegating parental and legal custodial powers of their children be a signatory to the power of attorney.

Temporary Entrustment



Temporary Entrustment:

- A parent or guardian may voluntarily request that a local department take custody of the child for a temporary period of up to 180 days.
- Court approval is needed for placements longer than 90 days. (§§ 63.2-903 and 16.1-277.01)
- Temporary entrustments may be terminated by the parent at any time.
- Not all local departments use temporary entrustments.



Types of kinship care:

- Kinship Guardianship (KinGAP)
- Formal and informal kinship care

Kinship care:

- The full-time care, nurturing, and protection of children by relatives (§ 63.2-100)

Fictive kin:

- Means persons who are not related to a child by blood or adoption but have an established a relationship with the child or his or her family (§ 63.2-100)

Kinship Guardianship (KinGAP)



- KinGAP is an option for children already in foster care. A KinGAP provider must be a licensed foster care family.
- The purpose of KinGAP is to **facilitate placements with kin caregivers** and ensure permanency for a child for whom adoption or being returned home are not appropriate permanency options.
- § 63.2-1305 outlines the eligibility requirements, which include that the child demonstrates a strong attachment to the prospective kinship guardian, and that the child has been consulted regarding the kinship guardianship if the child is 14 years of age or older.
- The Governor signed SB 178 (Favola, 2020), which expands eligibility for KinGAP by allowing payments to be made to fictive kin who receive custody of a child of whom they had been the foster parent.

Formal and Informal Kinship Care



Informal Kinship Care	Approved Kinship Care (Formal)
<p>Child must reside in household, custody not required</p> <p>Informal arrangement</p> <p>“Child Only” TANF grant for relative caregivers (not fictive kin)</p> <p>Child welfare involvement is irrelevant and does not always occur</p> <p><u>SB 776</u> (Barker, 2016) <u>Public schools: residency of children in kinship care</u>. Allows a child receiving kinship care from an adult relative to enroll in the school division where the kinship care provider resides.</p>	<p>Child in Custody of Local Department of Social Services (LDSS)</p> <p>Kinship caregivers are eligible to become approved as foster parents</p> <p>Monthly maintenance, same as approved foster families</p> <p><u>Approval Requirements</u></p> <p>Same requirements as approved foster families</p> <p>Temporary waivers for pre-service training offered to relatives only</p> <p>Approval/License renewed every 3 years</p>



- "Legal custody" means (i) a legal status created by court order which vests in a custodian the right to have physical custody of the child, to determine and redetermine where and with whom he shall live, the right and duty to protect, train and discipline him and to provide him with food, shelter, education and ordinary medical care, all subject to any residual parental rights and responsibilities or (ii) the legal status created by court order of joint custody as defined in § 20-107.2. (§ 16.1-228)
- The *Code of Virginia* also includes provisions for the petition (§ 16.1-277.02) and relief of custody (§ 16.1-278.3), as well as custody generally (§ 16.1-278.15).



Presentation available at:

<http://vcoy.virginia.gov>

(Under meetings tab)