



COMMONWEALTH OF VIRGINIA

Commission on Youth

# Definition of Kinship Caregivers

October 17, 2012

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# Study Mandate



- At its May 14, 2012 meeting, the Commission adopted a study plan to clarify the definition of kinship caregivers and to provide for an advisory group of representatives from impacted agencies and stakeholder organizations.
- The Advisory Group is to formulate recommendations to be shared with the Commission on Youth prior to the 2013 General Assembly Session.



## Advisory Group Membership

- Area Agencies on Aging
- Catholic Charities of Eastern Virginia
- Commission on Youth Members
- Comprehensive Services Act Coordinators
- CASA Representatives
- FACES of Virginia Families
- The Family Foundation
- General Assembly Members
- Guardians ad Litem
- Juvenile and Domestic Relations Court Judges
- Local Departments of Social Services
- Office of Comprehensive Services
- Special Advisor to the Governor
- Supreme Court of Virginia
- United Methodist Family Services
- Virginia Department for the Aging
- Virginia Department of Social Services
- Virginia Family Law Coalition
- Virginia Poverty Law Center
- Voices for Virginia's Children



## Advisory Group Meeting Dates

August 20, 2012

September 17, 2012

# Background



- Kinship care, as set forth in § 63.2-100 of the *Code of Virginia*, is defined as the full-time care, nurturing, and protection of a child by relatives.
- The term “kin” is often used interchangeably with “relative”.
- The way states define “relative” for purposes of kinship care is important because it influences placement, access to information, and eligibility for program benefits.
- In Virginia, the definition of “relative” varies from program to program.

# Background (cont.)



- Kinship care is the least restrictive and most family-like setting for children requiring out-of-home placement.
- Research has shown that children living with relatives in kinship care placements generally have a greater likelihood of being successful and not experiencing negative outcomes (e.g., dropping out of school or being incarcerated).
- Virginia has increasingly turned to kinship care as a viable placement option for children when the family is in crisis.

# Background (cont.)



- Kinship care is either informal or formal. In Virginia, informal is the more common of the two types.
  - Unlike formal kinship care (which typically refers to relative foster placements), informal kinship care allows parents to make temporary arrangements with a family member when they are unable to care for their child during a serious family hardship and/or absence, but do not want to relinquish their parental rights.
- With informal kinship care, there is minimal child welfare involvement by a local departments of social services and caregivers do not go through the custody process.
- Informal kinship care has become a placement preference and a significant number of children entering Virginia's child welfare system are "diverted" from foster care into a kinship care arrangement.

# Background (cont.)



- In 2009, the Virginia Department of Social Services (VDSS) conducted a study to measure the number of children diverted from foster care and placed with kinship caregivers.
  - 49 local departments of social services participated
  - Statistically significant sample of referrals used
  - 86.9% of the sampled cases responded (361 total)
- VDSS calculated that the percent of children diverted to relatives ranges from 8.3% - 11.6%.
- Applying this percentage to the total population of referrals over one year, it is estimated that local departments are diverting between 2,148 and 3,012 children from foster care via informal kinship placements.



# Background (cont.)



- The important role of informal kinship care is already recognized by Virginia's child welfare system.
- Both nationally and in Virginia, there has been increasing emphasis on seeking and supporting kinship placements in order to provide children with familiarity and continuity, and to mitigate the traumatic impact of abuse and/or neglect.
- Both state law and best practice emphasize placing children with families.
- Determining who constitutes family is critical component for local departments of social services.



# Identified Issues

# Definition of Relative



- While § 63.2-100 of the *Code of Virginia* defines kinship care as “the full-time care, nurturing, and protection of a child by relatives,” in Virginia, the definition of “relative” varies by program.
- For purposes of diverting children from foster care, including situations when the parents agree to a kinship placement as an alternative to foster care, a broad definition of relative may be helpful to allow for case-by-case determinations.
  - A broad definition includes persons who are not related to the child but have an established relationship with the child versus a narrow definition that includes only blood relatives or those related by marriage or adoption.

# Definition of Relative (cont.)



- Federal law allows states to define relative for purposes of a Title IV-E Guardian Assistance Program (GAP) and will accept a reasonable interpretation of a relative. This may include limiting the term to include biological and legal familial ties including tribal kin, extended family and friends, or other “fictive kin”.
- A broad definition would allow flexibility for different circumstances.
  - A definition similar to Minnesota’s, which states that a relative includes an individual with whom the child has resided or has had significant contact, may be helpful in ensuring the placement is best for the child.
- However, there must be different definitions for different situations. A broad definition may not be appropriate for certain circumstances such as termination of parental rights and custody determinations.

# Categories of Kinship Care



- In Virginia, the majority of kinship care arrangements are “informal”. However, there is no discussion of informal kinship care in statute or policy.
  - In Maryland, "informal kinship care" is defined as a living arrangement in which a relative of a child, who is not in the care, custody, or guardianship of the local department of social services, provides for the care and custody of the child due to a serious family hardship.
- Statewide, there is inadequate documentation and no uniform method for tracking youth diverted to kinship care to support appropriate accountability measures.

# Lack of Guidance on Diversion



- Kinship diversion occurs when local departments facilitate the kinship arrangement of a child with a relative to prevent a foster care placement.
- Local social service workers are responsible for evaluating potential kinship caregivers. Federal law, regulations, and guidance provide states with some flexibility in their approaches to kinship care. However, there is no guidance specifying when to conduct an assessment and which diversion cases require them.
- Some local workers may conduct a preliminary check and then follow up with a federal background check. Others may place the child with a relative before conducting any checks.

# Lack of Guidance on Diversion (cont.)



- Local departments may use safety plans to outline the service recommendations for the parent. However, there is confusion about the legality of the safety plan.
- Additionally, when parents agree to an informal kinship arrangement, there is no defined procedure to ensure that the child returns home or achieves permanency.
- Kinship policies should be flexible regarding non-safety requirements. However, guidance regarding assessment and case management would be helpful to inform case decisions.

# Relative Notification Provisions



- The *Fostering Connections Act* requires that, within 30 days after the removal of a child from the custody of his parent(s), the state shall identify and provide notice to all adult grandparents and other adult relatives of the child (including any other adult relatives suggested by the parents), subject to exceptions due to family or domestic violence.
- The *Code of Virginia* § § 63.2-104 and 63.2-105 provide the statutory framework for collecting and maintaining information gathered during a child protective services (CPS) investigation, and for the release of such information and to whom it may be released.
  - Persons identified in the *Code* who may receive information in the course of a CPS investigation are a parent, grandparent, or any other person when such parent, grandparent, or any other person would be considered by the local department as a potential caretaker of the child in the event the local department has to remove the child from the custodian.



# Relative Notification Provisions (cont.)



- There is uncertainty on the discretionary release of confidential information regarding the requirement to notify “all” relatives.
- It may be that not all adult relatives are notified regarding the child’s removal from their home. Frequently, the relatives who are not notified are the most stable placement option for the child.
- In Virginia, juvenile court judges are including instructions in their foster care prevention assessment orders that direct the parents to list all family members on both the mother’s and father’s side of the family. This has been an effective mechanism to identify all family members and potential placement options.

# Legal Rights of Kinship Caregivers



- Many relatives do not want to subject themselves to the process of becoming a foster parent or the continued monitoring as foster parents. They just want to be family, not foster parents.
- When children are placed with a relative as an alternative to foster care, the only process available to the relative to gain legal authority over the child is to pursue legal custody.
- However, this may not be a viable option as it may be cost prohibitive to hire an attorney for representation in a custody proceeding. Additionally, it may be undesirable for the relative to testify that it is not in the best interest of the child to remain with the parent, thus pitting the parent against the relative.

# Legal Rights of Kinship Caregivers (cont.)



- In general, guardianship is a formal legal arrangement granted by a court that gives another person the legal right to act on behalf of a child whose parents are dead, missing, or otherwise not able to care for the child.
- Guardianship is being used by other states because it allows kinship caregivers to provide permanency and stability without termination of parental rights. Protection of a child using guardianship may be particularly appropriate when the parent(s) will be temporarily absent from the child's life and unable to provide care.
- Virginia has a standby guardianship law in which a parent may transfer guardianship of his or her child to a specific person under certain conditions.\*
- This law originated to address the needs of parents living with HIV/AIDS, a disabling condition, or a terminal illnesses who wish to plan a legally secure future for their children.
- A standby guardianship enables the parent to retain much of his or her authority over the child. However, the court must determine that the parent is a qualified parent.
  - “Qualified parent” means a parent who has been diagnosed, as evidenced in writing, by a licensed physician to be afflicted with a progressive or chronic condition caused by injury, disease or illness from which, to a reasonable degree of medical probability, the patient cannot recover.

\* VA. ANN. CODE § § 16.1-349 - 354

# Legal Rights of Kinship Caregivers (cont.)



- In Michigan there are three types of guardianships: temporary guardianship (until a hearing can be held), limited guardianship, and full guardianship.
  - Temporary guardianship is appointed when immediate decisions affecting the child’s health or welfare are required or when the child’s placement must be secured pending a full hearing on guardianship petition. The temporary guardian has all of the powers/duties of a limited guardian except the appointment expires after six months.
  - Limited guardianship is created when parents willingly suspend their parental rights for a specific period of time. In a limited guardianship, the custodial parent is required to file for the guardianship. It typically occurs when a parent consents to his or her child living with a relative or another person. It allows for financial support to be provided to the limited guardian by the parent, for the safety and stability of the child, for visitation by the parent, a reunification plan, and grants legal authority to the limited guardian.
  - Full guardianship does not require parental consent and may be petitioned by a third party (nonparent) interested in the welfare of the child. The court must decide that both parent(s) are unwilling or unable to care for the child to award full guardianship. The court may order the minor’s parents to pay reasonable support and order reasonable visitation.



# Recommendations

# Definition of Relative



1. Amend § 63.2-100 of the *Code of Virginia* to specify:
  - a. A relative may include anyone related to the child by blood, marriage, adoption or anyone with a significant existing relationship with the child; **OR**
  - b. A kinship caregiver may include anyone related to the child by blood, marriage, adoption or anyone with a significant existing relationship with the child.
2. Take no action.

# Categories of Kinship Care



No action taken at the September 17 Advisory Group meeting.

# Lack of Guidance on Diversion



1. Support the Virginia Department of Social Services (VDSS) in the creation of foster care diversion in early prevention guidelines that provide guidance to local department of social service (LDSS) workers on the role of the agency in diversion practice, safety considerations, relative notification, and the use of criminal and child protective services (CPS) checks.
2. Support VDSS in the development of an assessment tools for the informal diversion of youth from foster care into family placements and request that VDSS report on the progress on the implementation of the assessment tool to the Commission on Youth prior to the 2014 General Assembly Session.
3. Take no action.



# Relative Notification Provisions



The issues outlined regarding relative notification can be addressed by supporting VDSS' foster care diversion in early prevention guidelines.

# Legal Rights of Kinship Caregivers



No action taken at the September 17 Advisory Group meeting.