

VIRGINIA ACTS OF ASSEMBLY -- 2024 SESSION

CHAPTER 662

An Act to amend and reenact § 63.2-900.1 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 15 of Title 63.2 an article numbered 7, consisting of sections numbered 63.2-1531 through 63.2-1536, relating to kinship foster care; alternative living arrangements; Parental Child Safety Placement Program established.

[S 39]

Approved April 8, 2024

Be it enacted by the General Assembly of Virginia:

1. That § 63.2-900.1 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Chapter 15 of Title 63.2 an article numbered 7, consisting of sections numbered 63.2-1531 through 63.2-1536, as follows:

§ 63.2-900.1. Kinship foster care.

A. When placing a child, the local board shall first consider placement with a kinship foster parent.

B. The local board shall, in accordance with regulations adopted by the Board, determine whether the child has any relative who may be eligible to become a kinship foster parent. Searches for relatives eligible to serve as kinship foster parents shall be conducted at the time the child enters foster care, at least annually thereafter, and prior to any subsequent changes to the child's placement setting. The local board shall take all reasonable steps to provide notice to such relatives of their potential eligibility to become kinship foster parents and explain any opportunities such relatives may have to participate in the placement and care of the child, including opportunities available through kinship foster care or kinship guardianship.

If a relative requests to become the child's kinship foster parent, the local board shall provide the relative with any forms or materials that must be submitted in order to become a kinship foster parent within no more than 15 days of such request. If the relative's request to become a kinship foster parent is denied, the local board shall provide to the relative (i) a clear and specific explanation of the reasons for such denial, (ii) a statement that such denial is appealable pursuant to § 63.2-915, and (iii) information regarding the procedure for filing such appeal.

~~B.~~ C. If a local board does not place a child with an approved kinship foster parent, the local board shall file an exception report with the Commissioner within 72 hours of placement. For the purposes of this section, an exception report is defined as a report that has been approved by a director of a local department prior to placing a child in a non-kinship foster care placement and documents all known relatives and fictive kin of the child, all efforts of the local board to locate relatives and fictive kin of the child, and the reasons why the child was not placed with relatives.

D. Kinship foster care placements pursuant to this section shall be subject to all requirements of, and shall be eligible for all services related to, foster care placement contained in this chapter. Subject to approval by the Commissioner, a local board may grant a waiver of the Board's standards for foster home approval, set forth in regulations, that are not related to safety. Training requirements may be waived for purposes of initial approval; however, such training requirements shall be completed within six months of the initial approval. If a local board determines that training requirements are a barrier to placement with a kinship foster parent and that placement with such kinship foster parent is in the child's best interest, the local board shall submit a waiver request to the Commissioner. Waivers granted pursuant to this subsection shall be considered and, if appropriate, granted on a case-by-case basis and shall include consideration of the unique needs of each child to be placed. Upon request by a local board, the Commissioner shall review the local board's decision and reasoning to grant a waiver and shall verify that the foster home approval standard being waived is not related to safety. If the Commissioner grants the waiver and allows approval of the home in accordance with Board regulations, the child may be placed in the home immediately. The approval or disapproval by the Commissioner of the local board's waiver shall not be considered a case decision as defined in § 2.2-4001.

~~C.~~ E. The kinship foster parent shall be eligible to receive payment at the full foster care rate for the care of the child.

~~D.~~ F. During the process of determining whether a person should be approved as a kinship foster parent, a local board shall not require that the child be removed from the physical custody of the kinship foster parent who is the subject of such approval process, provided the placement remains in the child's best interest.

~~E.~~ G. A child placed in kinship foster care pursuant to this section shall not be removed from the physical custody of the kinship foster parent, provided that the child has been living with the kinship foster parent for six consecutive months and the placement continues to meet approval standards for foster care, unless (i) the kinship foster parent consents to the removal; (ii) removal is agreed upon at a

family partnership meeting as defined by the Department; (iii) removal is ordered by a court of competent jurisdiction; or (iv) removal is warranted pursuant to § 63.2-1517.

F. H. For purposes of this section, "relative" means an adult who is (i) related to the child by blood, marriage, or adoption or (ii) fictive kin of the child.

Article 7.

Parental Child Safety Placement Program.

§ 63.2-1531. Definitions.

For the purposes of this article, unless the context requires a different meaning:

"Alternative living arrangement" means an arrangement whereby custody of a child is temporarily transferred to a caregiver in conjunction with an alternative living arrangement service plan.

"Alternative living arrangement service plan" means a plan developed by the local department and the family that describes the services identified to meet the safety needs of the child and to address the issues identified by the local department that necessitated the parental child safety placement arrangement and any subsequent court-approved removal of the child from his home.

"Caregiver" means a relative of the child as defined in subsection H of § 63.2-900.1 other than the child's parent, guardian, or legal custodian.

"In-Home Services" means services that (i) address child safety and risk factors; (ii) preserve families by maintaining the child's safety at home or in the home of a caregiver; (iii) prevent further abuse or neglect of the child; (iv) reduce or eliminate re-traumatization of the child or family; (v) maintain the child's current living arrangement and community culture; or (vi) otherwise promote the child's well-being, safety, and permanence.

"Parental child safety placement arrangement" means a temporary out-of-home placement of a child with a caregiver that is arranged by the child's parent, guardian, or legal custodian in accordance with a written agreement approved by the local department that ensures the safety of the child.

"Program" means the Parental Child Safety Placement Program established pursuant to § 63.2-1532.

§ 63.2-1532. Parental Child Safety Placement Program; established.

The Parental Child Safety Placement Program is established to prevent unnecessary entry into foster care by promoting and supporting placements with relatives and fictive kin and requiring accountability for pre-court placements of children. A local department may facilitate a parental child safety placement arrangement in accordance with the provisions of this article if (i) a family assessment or investigation has been initiated in response to a valid complaint alleging that the child has been abused or neglected; (ii) the safety assessment conducted by the local department indicates that a child cannot remain safely in the home; and (iii) the child's parent, guardian, or legal custodian is in agreement with the parental child safety placement arrangement.

§ 63.2-1533. Parental child safety placement agreement; terms.

A. A parental child safety placement agreement shall include provisions describing the following:

1. The facts and circumstances that provide the basis for the safety assessment indicating that the child cannot remain safely in the home;

2. The responsibilities of the child's parent, guardian, or legal custodian and the caregiver, including a plan for how the caregiver will access necessary medical treatment, mental health services, and appropriate educational services for the child;

3. Visitation arrangements for the child's parent, guardian, or legal custodian, including supervised visitation as necessary, and other methods by which the child's parent, guardian, or legal custodian may contact the child;

4. The responsibilities of the local department, including (i) any services to be provided to the child, the child's parent, guardian, or legal custodian, and the caregiver and (ii) a requirement that the local department visits the caregiver's home (a) within two weeks of the placement and (b) thereafter in accordance with Board regulations;

5. The date on which the agreement will terminate unless terminated sooner or extended to a subsequent date as provided in this article; and

6. Any other terms the local department determines necessary for the safety and welfare of the child.

B. A parental child safety placement agreement shall contain the following:

1. A statement that the child's parent, guardian, or legal custodian voluntarily consents to the parental child safety placement arrangement and that such consent is not an admission of child abuse or neglect on such person's part;

2. A statement that the agreement may be terminated by any party, at any time, and for any reason and a statement that, upon such termination, the local department may take actions to protect the child, including the removal of the child pursuant to the provisions of this title;

3. A statement that the child's parent, guardian, or legal custodian and the caregiver may seek legal counsel prior to entering into the agreement;

4. A statement that the child's parent, guardian, or legal custodian and the caregiver have the right to refuse to enter into the agreement; and

5. A statement that the local department has notified the child's parent, guardian, or legal custodian and the caregiver of the alternative option for the child to enter foster care and the potential for the

caregiver to become an approved kinship foster parent.

C. Prior to signing the parental child safety placement agreement, the local department shall notify the caregiver of any financial assistance available to the caregiver through the Program for the period of time that the agreement is in place.

D. A parental child safety placement agreement shall be in writing and signed by the child's parent, guardian, or legal custodian, the caregiver, and the local department.

E. The local department shall provide a written copy of the parental child safety placement agreement to the child's parent, guardian, or legal custodian and the caregiver.

F. The local department shall include a scanned copy of the parental child safety placement agreement in the case record.

G. The term of the parental child safety placement agreement shall be no more than 90 days from the date the agreement is signed, which shall, as applicable, run concurrently with the time necessary to complete the child protective services investigation or family assessment. A parental child safety placement agreement may be extended, but such extension shall not exceed one additional 90-day period and the reason for such extension shall be documented in the case record. Prior to any extension, the local department shall conduct a facilitated meeting and perform a safety assessment to determine whether (i) the child should be returned home, (ii) the agreement should be extended, or (iii) the local department should seek a child protective order or other court action.

H. The In-Home Services case shall remain open for the duration of the parental child safety placement agreement.

§ 63.2-1534. Caregiver assessment.

A. The local department shall assess the proposed caregiver and determine whether the proposed caregiver (i) is willing and qualified to receive and care for the child; (ii) is willing to have a positive, continuous relationship with the child; and (iii) is willing and has the ability to protect the child from abuse and neglect. Such assessment shall include requirements for (a) inquiry into the criminal and child protective services history of each adult in the proposed caregiver's household and (b) an assessment of the caregiver's home environment in accordance with Board regulations.

B. The local department shall document the results of the assessment of the proposed caregiver and his home environment in the case record.

C. If, after conducting the assessment of the proposed caregiver, the local department determines that it is not in the child's best interests to be placed with the proposed caregiver, the local department shall notify the child's parent, guardian, or legal custodian and the proposed caregiver of the reasons for the local department's determination but may not disclose the results of any criminal or child protective services history unless the proposed caregiver consents to such disclosure.

§ 63.2-1535. Termination of the parental child safety placement agreement and the alternative living arrangement.

A. Prior to the conclusion of a parental child safety placement agreement, the local department shall reassess the safety of the child if the child were to be returned home.

B. If it is determined that the child can be safely returned home prior to or at the conclusion of the parental child safety placement agreement, the local department shall develop a safety plan with the child's parent, guardian, or legal custodian and the caregiver for the safe return of the child to the child's parent, guardian, or legal custodian or to another legal custodian. The local department may take the following actions if it is determined that continued services are required for the child to safely return home:

1. Maintain an open In-Home Services case for continued services with the agreement of the child's parent, guardian, or legal custodian; or

2. Seek a child protective order or other court action to order continued services if the child's parent, guardian, or legal custodian does not agree to the In-Home Services case remaining open for continued services.

C. If it is determined that the child cannot be safely returned home at the conclusion of the parental child safety placement agreement, the local department shall seek removal of the child from the child's parent, guardian, or legal custodian, upon a petition alleging abuse or neglect pursuant to § 16.1-251 or 16.1-252.

1. Prior to the first court hearing, the local department shall make reasonable efforts to convene a facilitated meeting that includes the child's parent, guardian, or legal custodian, the caregiver, and the child, if 12 years of age or older, to collaboratively develop an alternate living arrangement service plan. During such meeting, the local department shall notify the child's parent, guardian, or legal custodian and the caregiver of all possible options for the care of the child, to include foster care, kinship foster care, and the transfer of temporary custody to the caregiver.

2. If the court orders temporary custody of the child to the caregiver, the local department may continue to provide services to the caregiver and child through an In-Home Services case, consistent with the alternate living arrangement service plan. At the dispositional hearing of the local department's petition, if the child cannot be safely returned to the child's parent, guardian, or legal custodian, the local department shall either:

a. If reunification of the child with the child's parent, guardian, or legal custodian remains the plan, request that the court continue temporary custody of the child with the caregiver, if appropriate, and enter such terms and conditions that would promote the child's interest and welfare, provide ongoing services to the family, and provide for further court review of the child's placement in accordance with the court's authority in subdivision A 1 of § 16.1-278.2; or

b. If reunification of the child with the child's parent, guardian, or legal custodian is no longer the plan, request the court to enter a final order of custody to the caregiver. If further services are necessary to ensure the child's safety and welfare with the caregiver, the local department may keep the case open as an In-Home Services case until stability for the child is achieved.

3. If the court denies the removal of the child, the local department shall seek a child protective order to provide continued services for the child and the child's parent, guardian, or legal custodian to ensure the child's safety and welfare. If the child protective order is granted, the case shall remain open as an In-Home Services case.

4. The alternate living arrangement service plan shall include provisions describing the following:

a. The facts and circumstances that provide the basis for the safety assessment indicating that the child cannot remain safely in the home;

b. The responsibilities of the child's parent, guardian, or legal custodian and the caregiver;

c. Visitation arrangements for the child's parent, guardian, or legal custodian and conditions under which and methods by which the child's parent, guardian, or legal custodian may contact the child;

d. The responsibilities of the local department, including any services to be provided to the child, the child's parent, guardian, or legal custodian, and the caregiver; and

e. Any other term the local department determines necessary for the safety and welfare of the child.

§ 63.2-1536. General provisions.

A. Nothing herein shall be deemed to prohibit the local department from seeking any other appropriate court action at any time to protect the health and welfare of the child.

B. Nothing herein shall be deemed to prohibit a caregiver or other person with a legitimate interest from petitioning the court for custody of the child. If the caregiver petitions for custody, the local department shall make reasonable efforts to conduct a facilitated meeting to discuss the continuation of services for the child and family.

2. That the provisions requiring a local board to file an exception report, established pursuant to § 63.2-900.1 of the Code of Virginia, as amended by this act, shall become effective on January 1, 2025.

3. That the State Board of Social Services (the Board) shall promulgate regulations to implement the provisions of this act by January 1, 2025. Such regulations shall include provisions regarding the manner in which Parental Child Safety Placement Program payments are prioritized based on available funding. The Board's initial adoption of such regulations and any other regulations necessary to implement the provisions of this act shall be exempt from the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia), except that the Board shall provide an opportunity for public comment on such regulations prior to adoption.