Report to the Justice for Children Task Force

SUBSIDIZED PERMANENT GUARDIANSHIP SUBCOMMITTEE

December 2009

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Introduction and Charge to Sub-Committee

In June of 2009, the Justice for Children Task Force charged a sub-committee to look into the advisability of taking advantage of the federal funding for subsidized guardianships available under the provisions of the Fostering Connections to Success and Increasing Adoptions Act of 2008. Kathryn Piper agreed to chair the sub-committee. Ms. Piper selected members who had expertise and experience on this issue, from all three branches of state government, as well as the private sector.

Membership and Work of the Subcommittee

Kathryn Piper, Chair -- Juvenile Defender in Caledonia and Essex Counties
George Belcher -- Washington County Probate Court Judge
Sue Buckholz -- parents' attorney
Diane Dexter –DCF Adoption Chief
Lynn Granger – Director, Vermont Kin as Parents
Representative Ann Pugh -- Vermont House of Representatives
Sheila Reed -- Voices for Vermont Children Legislative Advocate
Brian Southworth -- Casey Family Services
Bob Sheil -- Juvenile Defender
Cindy Walcott -- Deputy Commissioner, Family Services, Department for Children and Families

The subcommittee met four times- July 17, August 11, September 9 and December 8, 2009 and reviewed literature on subsidized guardianships published by the Children's Defense Fund and the ABA Center on Children and the Law.

The subcommittee also met with Beth Davis-Pratt from the Children's Defense Fund on October 7, 2009. Ms. Davis-Pratt was a speaker on the Fostering Connections Act at the conference of the Vermont Kin as Parents held in West Lebanon on October 8, 2009. Robin Lunge, legislative counsel, attended the December 8th meeting of the subcommittee to discuss proposed legislation.

Overview of the Kinship Guardianship Assistance Program

The Fostering Connections to Success and Increasing Adoptions Act of 2008 created an opportunity for states to establish a Kinship Guardianship Assistance Program. Now, states have the option to use federal Title IV-E funds for kinship guardianship payments for children who have a strong attachment to and are cared for by prospective relative guardians who are committed to caring for these children permanently when they leave foster care**.** These are often called "subsidized guardianships."[1]

Eligibility for this program is restricted to the following situations:

- Children must be eligible for federal foster care maintenance payments (i.e. Title IV-E eligible).
- They must have been living in the home of a relative for at least six consecutive months in licensed foster care.
- The state agency must have determined that return home and adoption are not appropriate permanency options for the children.

Children eligible for these payments are also automatically eligible for Medicaid, as are children in foster care and those who receive post-adoption assistance payments. The act also states that children who leave foster care at age 16 or older for kinship guardianship are eligible under the John H. Chafee Foster Care Independence Program to receive independent living services and educational and training vouchers.

[1] A subsidized guardianship is one in which the caretaker receives state/federal support payments similar to foster care payments. In addition to "subsidized guardianships" there are similar terms which can be confusing. "Foster care" is where the Commissioner of DCF has legal custody of the child but the child is living with a foster parent selected by the DCF social worker. "Legal Guardianship" is where a legal guardian is appointed by the probate court, usually with custodial and decision-making authority, privately (without DCF involvement).(14 VSA Sec. 2645). In CHINS proceedings, legal custody may be transferred to a person by the family court at the temporary care hearing (33 V.S.A. Sec. 5308(3) & (4)) or as a disposition option. (33 VSA Sec. 5318(2) & (3)). When a legal guardianship is created or custody is transferred to a person, parental rights are not terminated and the obligation of child support by the non-custodial parents continues. Finally, Vermont law allows the family court to create a "permanent guardianship" which is a guardianship which is intended to be a permanent option for custody when the minor is not likely to return home or be adopted (33 VSA Sec. 5318(a)(6) and 14 VSA Sec. 2664).

Subsidized permanent guardianships could create a meaningful alternate tool to provide permanency for children in DCF custody who cannot be reunified with their parents and cannot be adopted. Currently the provision in Vermont law allowing for permanent guardianship (14 V.S.A. Article 1A) is underutilized, presumably due to the lack of such funding. TANF "child-only" grants are now the primary source of income support available to kinship caregivers outside of the foster care system. These TANF payments are generally considerably lower than foster care payments and benefits. [i]

What are Other States Doing?

Vermont is one of only 12 states that do not offer some form of a subsidized guardianship program.[ii] Prior to the enactment of the Fostering Connections Act, state subsidized guardianship programs were funded through TANF grants, Title IV-E waivers and/or state funding.[iii] Most of the programs match the guardianship subsidy to the foster care payment.[iv]

Costs and Benefits of Implementation

About one-half of children in DCF custody are IV-E eligible. 90% of children who are adopted out of DCF custody are IV-E eligible, because they were IV-E eligible in foster care, or because they are SSI eligible. The federal government would require a 40% state general fund match for the subsidized guardianships for IV-E eligible children. Vermont would be required to pick up 100% of the cost of subsidized guardianships for non-IV-E eligible children. Because Vermont's TANF block grant is totally expended, we can't use that money to fund subsidized guardianships for non-IV-E eligible children. [v] However, it is important to remember that eligibility for subsidized guardianships **under the federal law** would be limited to those children who have been in DCF custody and placed with the proposed guardian **as a foster parent** for six months and where reunification and adoption have been determined not to be appropriate permanency options. In other words, it is likely that these children would otherwise remain in foster care until they age out of the system. In the case of non-IV-E eligible children, these are children for whom Vermont is already picking up 100% of the cost of maintaining them in foster care. So, at the very least, creating these subsidized guardianships would be cost neutral.

On top of that, there are potential savings in that there would no longer be the need for an assigned DCF case worker, case management, case plan reviews and annual permanency planning hearings, resulting in substantial administrative cost savings for DCF, the family court and public defender system. By moving these children into permanent guardianships, the state is spared the costs of providing ongoing case work and family court oversight for the child.

The Congressional Budget Office estimates that the Kinship Guardianship Assistance Program will save the federal government $791 million over 10 years. Since the federal

dollars saved require a state match, there should be a corresponding savings of state dollars as well. [vi] The challenge is to realize these cost savings without creating serious disadvantages to the kin caregiver and child. These are often children with greater special needs.

Subsidized Guardianships vs. Foster Care

Child's Point of View

Family Autonomy: There are strong arguments to be made for allowing extended family to care for their children without undue interference and control by the state as long as these children are safe. DCF does not make the best parent. From the perspective of the child, being in state custody means that a DCF case worker, who may be hard to reach and does not know the child well, has the authority to make decisions about the child's life that are usually made by a child's parents. Older children, especially, may resent continuing state supervision and intervention into their lives. At the same time these children may wish to remain with a relative caregiver but have no interest in pursuing adoption or ending the relationship with their parents. [vii]

Benefits and Services: Children in a subsidized guardianship would be entitled to many of the benefits that adopted children receive under post-adoption assistance. Their kin caregivers would continue to receive payments similar to foster care payments. The children would continue to receive Medicaid.

Beyond that, there are no guaranteed benefits. Theoretically, a special needs child would be eligible for services similar to those funded under the service portion of the post-adoption assistance program, such as case management and crisis intervention. However, the reality is that funding for post-adoption services has not kept pace with the growing caseload. With the state's current fiscal reality, it is unlikely that funding for these services will be expanded.[viii] Similarly, federal funding for transitional supports for children aging out of foster care are not sufficient to provide case management supports for children aging out of foster care, much less additional children who may be in subsidized guardianships. Congress was trying to make kinship guardianship assistance similar to adoption assistance. [ix]However, the problem is that there has been no increase in Chaffee funds.

The act also provides that the amount of the payment may be adjusted periodically, in consultation with the relative guardians, based on the needs of the child as well as the circumstances of the relative. [x]

Placement Stability: Preliminary data from the nation's two largest programs, the Illinois Subsidized Guardianship Waiver Demonstration and the California Kin-GAP

program suggest that subsidized guardianship arrangements have extremely low dissolution rates.

Moreover, children's perceptions of permanence in subsidized guardianships do not differ significantly from adoption. As one commentator put it: "Children in subsidized guardianship arrangements ... reported high rates of stability and permanence....In fact, the study found that the kinship bond, not the legal designation, tended to be the strongest predictor of relationship stability....The psychological permanence of subsidized guardianship is also reinforced in the kinship care context by the child's understanding of and connections with his or her family roots." [xi] Research from Illinois demonstrates that children in guardianship do not differ from children who have been adopted when compared with the four qualities of permanency: 1) intent of child to stay with caregiver; 2) continuity and commitment; 3) sense of belonging; and 4) respected social status.[xii]

However, especially in the case of special needs children, placement stability can be adversely affected by a lack of services. Studies have shown that an important component of successful subsidized guardianships is the availability of supplemental services in addition to the subsidy. As Brenda Shum noted, "Families need ongoing support even *after* permanency has been established. Children often have needs that are not immediately recognized or evolve over time. Relative providers may have the added stress of managing difficult family relationships and expectations, especially if birth parents continue to be involved in a child's life. Offering intervention and support, even after guardianship has been established, will only increase family stability and decrease the chances of disruption."[xiii] For this reason, "accurate comparisons of permanency outcomes for children among reunification, adoption and subsidized guardianship placement options must address the adequacy of the post-permanency services provided." [xiv]

Parent's Point of View

While adoption terminates all the legal rights of the birth parents, legal guardianship leaves the birth parents with certain "residual" rights and responsibilities, such as the right to visitation with the child and the responsibility to pay child support.

In addition, the parent does not have to have the painful experience of a TPR hearing, the sole purpose of which is to establish the parents' unfitness to parent, now or in the reasonable future.

Relative Caregiver's Point of View:

Other than the financial and resource considerations, a permanent guardianship would have the obvious advantage of giving decision-making authority to the kin/caregiver and removing the threat of the parent's seeking a return of the child which can be a constant

disruption. The kin would have full decision-making authority but would lose the support of DCF in negotiating parent child contact and accessing services for the child.

As discussed above, the downside to subsidized guardianship is that the kin caregiver and child would not continue to have the same entitlement to services once that child left DCF custody.

Proposed guardians need to be fully informed of the consequences of accepting a permanent guardianship. What are the guardian's rights with respect to a birth parent's demands for visitation? Must the parent be clean and sober and how will this be determined? Can the subsidy be increased with a change in circumstances? What services will still be available to the family and child? The subcommittee recommends that DCF and the various stakeholders collaborate in developing a statement of best practices around helping kin caregivers make informed decisions about the consequences of the various legal options, including clear written materials.

Federal subsidized guardianships have portability across state lines but there are other issues having to do with residual parental rights to parent/child contact that would come into play. The kinship guardianship agreement remains in effect without regard to the state residency of the relative guardian. The state that entered the agreement will remain financially responsible for meeting the terms of the agreement. [xv]

How Many Children Might Benefit?

For the quarter ending 3/31/09, of the 117 children in DCF custody placed with kin, 78 have a goal of reunification so the remaining 39 would be potentially eligible for a subsidized guardianship. In how many of these cases does DCF need to continue to be involved?

In order to gain a better understanding of how many children might benefit from a subsidized guardianship option, DCF surveyed its districts in August of 2009. The results were that about 1/3 of the 115 children now living with relatives in foster care were potential candidates. The common denominator for many of these cases is substance abuse and a strong parent/child bond. As Ruth Houtte, District Director of the St. Johnsbury DCF office put it: "I think it speaks to the issue of substance abuse recovery, how long it takes and what a rocky road it is...but is it really to anyone's benefit for these parents to lose all rights to and responsibility for their children?" We are finding that even in many of the post-TPR cases, these children still need help developing a healthy and positive relationship with their birth parents. Often, years down the road, these parents are more mature and have come to learn to address their issues. For older children we need a range of options to meet their permanency needs.

Vermont's Permanent Guardianship Statute

In 1999, Vermont created an option for permanent guardianship (Article 1A, Title 14 V.S.A. Sec. 2661 et seq.) to provide another permanency option for children placed with kin. Since then, very few permanent guardianships have been created.[xvi] One reason is undoubtedly the lack of funding for such guardianships. Another could be that the criteria for the creation of these guardianships are too restrictive. Under current law, a Permanent Guardianship cannot be created in Vermont unless "[n]either returning the child to the parents nor adoption of the child is reasonably likely **during the remainder of the child's minority"**. This is a higher standard than is required for termination of parental rights and would be virtually impossible to prove in the context of a contested hearing involving a young child. No expert has the prognostic ability to make predictions that far into the future. This "rule-out" language goes much further than what the Fostering Connections Act requires for "rule-out" (which requires that reunification and adoption are "not appropriate permanency options") and differs from Vermont's Best Interests criteria in Section 5114 used in TPR cases ("the likelihood that the parent will be able to resume or assume parental duties **within a reasonable period of time**".)

The subcommittee agrees that Article 1A is the appropriate legal procedure to utilize in creating subsidized permanent guardianships. However, subcommittee members recommend that the criteria for permanent guardianships in Title 1A should be amended to bring them more into line with the requirements of the Fostering Connections Act and the "best interests" criteria found in T. 33 V.S.A. § 5114. Beth Davis-Pratt of the Children's Defense Fund recommended this as well. Therefore, the subcommittee recommends that Section 2664(a)(2) of Title 14 be amended from "Neither returning the child to the parents nor adoption is reasonably likely during the remainder of the child's minority" to "Neither returning the child to the parents nor adoption of the child is likely within a reasonable period of time". The subcommittee also recommends the addition of two other criterion: (3) A permanent guardianship is in the child's best interests in accordance with the criteria established in section 5114 of Title 33; and (4) The child has lived in the home of the proposed permanent guardian for at least six months prior to the creation of the permanent guardianship. The addition of the latter criterion was suggested by counsel for DCF in order to ensure the placement stability of the child prior to the creation of a permanent guardianship and is similar to what is required before a child can be adopted.

Permanence Defined in Federal and State Law

Reunification and adoption are the preferred permanency options under the federal Adoption and Safe Families Act (ASFA). However, ASFA also allows for the transfer of legal guardianship as an acceptable permanency option after reunification and adoption have been ruled out. How "permanent" must a permanent guardianship be to satisfy ASFA? ASFA specifically defines "legal guardianship" as a "judicially created

relationship between child and caregiver which is intended to be permanent and self-sustaining." (42 U.S.C. 675).

Under the federal Fostering Connections Act, a subsidized guardianship may be modified or reviewed. Under Article 1A of Title 14 V.S.A., Section 2666, a permanent guardianship in Vermont is subject to modification but not upon a motion by the parent. If the guardianship is terminated, custody of the child reverts back to DCF. The Fostering Connections Act does not require such a provision in order for the guardianship to be subsidized.

Some members of the subcommittee felt that children need to be protected from the emotional turmoil and family dysfunction that get stirred up every time a parent files (or even threatens to file) a motion to modify a disposition order granting custody/guardianship to a relative. On the other hand, other members felt that it is no different than what children of separated/divorced parents experience and that we ought not to be saying to parents: "There is no way the issue is going to be revisited, no matter how successful you are in getting your act together down the road." One member suggested that we could instead limit the reasons or the number of times a parent can go back to court.

The criteria of Vermont's Permanent Guardianship law [Article 1A] that appear to be similar to the requirements in the Fostering Connections Act are:

1) neither reunification nor adoption is reasonably likely during the period of the child's minority;
2) the relative has expressly committed to remain the guardian for the duration of the child's minority; and
3) the proposed permanent guardian is a relative with whom the child has a relationship.

Article 1A requires the court to make these findings by clear and convincing evidence before a permanent guardianship can be created.

The language of the Fostering Connections Act differs slightly from this. The federal Act requires that the state agency (DCF) must determine that:

1) return home or adoption are not appropriate permanency options;
2) the child demonstrates a strong attachment to the prospective relative guardian; and
3) the relative guardian has a strong commitment to caring permanently for the child.

These determinations are not judicial findings but rather determinations to be made by DCF. Further, the Act requires that in order to be eligible for IV-E funding for a subsidized guardianship, the DCF case plan must describe:

1) how the child meets the eligibility requirements in that the child must have been:

a) removed from his or her home pursuant to a voluntary placement agreement or as a result of a judicial determination that continuation in the home would be contrary to the welfare of the child; and
b) eligible for IV-E foster care payments during at least a six month period during which the child resided in the home of the prospective relative guardian who was licensed or approved as a foster home;

2) the steps the agency has taken to determine that return to the home or adoption is not appropriate;
3) the efforts the agency has made to discuss adoption with the child's relative guardian and the reasons why adoption is not an option;
4) the efforts the agency has made to discuss kinship guardianship with the child's parent/s or the reasons why efforts were not made;
5) the reason why a permanent placement with a prospective guardian and receipt of a kinship guardian assistance payment is in the child's best interests; and
6) the reasons for any separation of siblings during placement.

A guardianship would not have to be a **"permanent guardianship"** under Article 1A of Title 14. V.S.A. in order to meet the criteria for a subsidy under the Fostering Connections Act.

Several states with subsidized guardianships, in fact, allow for modification upon motion by the parent. However, many commentators have expressed concern that these legal guardianships make it easier for the child's caregiver to disavow legal responsibility for the child in the future by dissolving the guardianship arrangement, especially as the child experiences the challenges of adolescence. Others express concerns, similar to those voiced by JCTF subcommittee members, that these guardianships do not offer a child true permanence. In response to such concerns, some states have proposed an amendment to their existing guardianship statutes to make it more difficult to modify these guardianships[xvii] and/or to insure the re-involvement of the child protection agency should these guardianships be terminated in order to minimize the risk that abusive or neglectful parents might regain inappropriate control over their children after the creation of a legal guardianship. [xviii] "A third alternative would restrict subsidized guardianship as a permanency option based on the degree of the child's maltreatment; that is, subsidized guardianship might be an available option in cases of less severe neglect, but not in a case where a child was sexually abused" [xix] or severely abused or maltreated.[xx]

Vermont already has addressed this problem in its permanent guardianship statute found in Article 1A, Title 14 V.S.A. Vermont's permanent guardianships are subject to modification only upon motion by the permanent guardian, the child if the child is age 14 or older, or the commissioner of DCF or by the probate court on its own initiative. When the permanent guardianship is terminated, the custody and guardianship of the child reverts back to DCF. In the event it is necessary to appoint a successor permanent guardian, the parent may be considered with no greater priority than a third party. Section 2666, T. 14 V.S.A. Thus, the possibility of returning custody to the parent is not

absolutely foreclosed by the statute but DCF would be in a position to assess the current safety and suitability of placement with the parent.

Age Limit for Subsidized Guardianships

Prior to the enactment of the Fostering Connections Act, half of the states with subsidized guardianship programs had minimum age requirements, ranging from two to 14 years, for children to participate. [xxi] However, based on the summary provided by the Children's Defense Fund, "Key Components of State Legislation Needed to Implement the Federal Kinship Guardianship Assistance Option under the Title IV-E of the Social Security Act": "Eligibility may not be limited due to age of a child under 18 years old or to a child's special needs."

The subcommittee discussed how parent-child contact has the potential to rock a child's emotional boat and undermine the child's sense of security and stability in cases of serious family dysfunction. Very young children, especially, need that secure attachment and deserve the kind of permanence that comes only with adoption. However, some members were opposed to any age cut-off for subsidized guardianships. Ultimately, a consensus was reached that the individual circumstances of every case are unique and the consequences of creating a permanent guardianship need to be assessed on a case-by-case basis. Another alternative is to define "not adoptable" in a way that depends on the child's age and the extent of the child's attachment to and knowledge of relatives and extended family. (See Adoption Rule-Out Provision section below).

Adoption Rule-Out Provision

Both the Adoption and Safe Families Act (ASFA) and Vermont's JJPA, Section 5321 elevate adoption as a permanency goal above a guardianship when reunification is not possible. Adoption is viewed as lasting longer and being more legally binding than guardianship. It is less easily vacated by the caregiver and less vulnerable to legal challenge by birth parents whose parental rights have been terminated. [xxii] However, for children with a strong attachment to their parents, guardianship allows for continued involvement of birth parents in their lives because parents retain the right to parent-child contact. This may help to lessen the sense of loss that often accompanies an adoption.

The requirement in both the Fostering Connections Act and Article 1A, Title 14, V.S.A., that there be a determination that adoption is not a reasonable permanency option raises the question: "What does it mean to say that a child is not likely to be adopted? Adopted by whom-just this caregiver to whom the child is attached or anyone at any time?"

Members of our subcommittee felt strongly that children with a strong bond to their kin caregivers should not be removed from stable kinship placements in order to be placed in the pre-adoptive homes of strangers. Often it is clear that the caregiver is committed to the child for the long haul but is not comfortable with the idea of altering existing family relationships by pursuing adoption. The subcommittee believes that family members should be advised as to all permanency options and given the opportunity to make a fully informed decision. Evidence in other states suggests that most relatives are choosing adoption on their own at a ratio of 3:1.[xxiii]

DCF policy will need to be revised in order to incorporate this interpretation of the adoption rule-out provision.

In any event, under Title 15A, Section 401(c), a child age 14 and over cannot be adopted without his or her consent, so if a child that age is refusing to be adopted, that child is not adoptable.

Other Possible Amendments to Article 1A

T. 14 V.S.A. Section 2661(5) defines relative to mean "a grandparent, great grandparent, sibling, first cousin, aunt, uncle, great-aunt, great-uncle, niece or nephew of a person whether related to the person by the whole or the half blood, affinity or adoption. The term does not include a person's stepparent."

The Fostering Connections Act does not define relative. The Children's Defense Fund suggests that if a state decides to define the term "relative", they should define the term to mean "a person related by blood, marriage or adoption or family friend with whom the child has a close relationship." It could be argued that this broader definition is more in keeping with the spirit of the JJPA which gives preference to a transfer of custody to "a relative not listed in subdivision 3(A) of this subsection or a person with a significant relationship with the child" over a transfer of custody to DCF. 33 V.S.A. §5308(b)(4). However, it may be advisable not to broaden the definition in Title 14 until the federal government has had the opportunity to define "relative" in its regulations.

The subcommittee did not have time to fully discuss this issue and therefore makes no recommendation as to whether the definition of "relative" in Section 2661(5) ought to be amended.

Impact of the New JJPA Kinship Preference Provision

Section 5308 in the new Juvenile Judicial Proceedings Act creates a preference in favor of transferring custody to a relative over transferring custody to DCF and placing the child with that relative as a licensed foster parent. This statute was drafted - and passed into law --before the passage of the Fostering Connections Act. The drafters of the Vermont act purposely required that, for any child removed from the custody of a custodial parent, a judicial finding be made that it was contrary to the child's welfare to

remain in the home. At the time, this opened the door for later eligibility for an adoption subsidy, even if the child's custody was discharged to a relative.

Unfortunately, the Fostering Connections law disadvantages children whose relatives assume custody under the JJPA in two ways – they would be ineligible for both adoption subsidy and for subsidized guardianship in the future because both programs require that the child be in state's custody at the time the change in legal status occurs. In addition, children moving to subsidized guardianship must have been living with the relative for six months.

This reality raises the question: should the preference in Section 5308 be amended? Or is it enough to educate potential kin caregivers about what services, resources and legal options are being foreclosed if they choose to become custodians vs. foster parents?

Concerns about the kinship presumption in Section 5308 were raised even prior to the enactment of the Fostering Connections Act. A kin caregiver who chooses to become the custodian for the child rather than a foster parent loses the benefits of foster care payments, DCF case management and other services. However, some subcommittee members were opposed to removing that preference from the JJPA out of fear that potential kin caregivers would lose their standing to seek placement of the child with them.

The subcommittee decided not to make any recommendations about Section 5308 at this time. It is too early to understand the full impact of that statutory preference. Unfortunately neither DCF nor the courts have data on the number of cases where custody has been granted to a relative including cases where DCF has protective supervision or on how many of the relatives being granted custody at the emergency care hearings are retaining custody post-disposition.

Based on data obtained by Shari Young, Juvenile Court Improvement Manager, it appears that custody is, in fact, seldom being transferred to someone other than a parent or DCF under the new statute. As of Nov. 20, 2009, of the 95 juvenile cases filed that were pending initial disposition less than 30 days at that time, 2 juveniles were in the custody of someone other than a parent or DCF. As of July 3, 2009, of the 97 juvenile cases filed that were pending initial disposition for 30 days at that time, only 1 juvenile was in the custody of someone other than a parent or DCF. Of the 1,336 juvenile cases that reached initial disposition since January 1, 2009 (through October 2009), 333 kids were in DCF custody, and 24 were in the custody of someone "other" than DCF or parent. The 24 cases were all CHINS – no delinquencies. The rest had no change of custody ordered by the court. Of the 449 cases awaiting disposition as of November 20, 2009, 25 (<6%) were in the custody of someone "other" than DCF or parent.

The subcommittee believes that at the very least prospective kin guardians need to understand what resources and services they are giving up by accepting custody of the child instead of becoming a licensed foster home for the child. Unfortunately, kin caregivers are being asked to make these decisions at a time of great emotional upheaval. As Lynn Granger, Director of Vermont Kin as Parents, stated, in her

experience, a lot of families don't have the capacity to make that decision in the first 90 days, much less the first three days.

As stated above, the subcommittee recommends that DCF and the various stakeholders collaborate in developing a statement of best practices around helping kin caregivers make informed decisions about the consequences of the various legal options as well as an information sheet similar to that developed by Vermont Kin as Parents comparing the benefits of becoming a child's foster parent vs. custodian.

If the Task Force believes that an amendment to Section 5308 is advisable, the subcommittee would suggest that the Task Force consider a proposal to add as one criterion for transferring custody to kin the financial impact of custody on the kin caregiver and child compared to foster placement and the family's ability to handle that disparity in resources and support.

Recommendations

The subcommittee unanimously endorses a proposal that would allow for subsidized permanent guardianships for both Title IV-E eligible and non-eligible children in DCF custody in a manner consistent with the requirements of the Fostering Connections Act.

We also recommend that DCF policy encourage the exploration of this permanency option with families. DCF is already using Family Safety Planning meetings. This would be the ideal context within which to address the issue of guardianship and to explore such questions as: What is the relationship between the child and proposed guardian? Is there a healthy parent-child bond worth preserving? Is the guardian capable of setting healthy boundaries with the parents and managing the often complicated family dynamics? Why is adoption not appropriate? As stated in a publication by the Children's Defense Fund: "As with adoption, adequate preparation of all parties in advance and the provision of necessary services and supports can significantly reduce the risk of harmful disruptions." [xxiv] Guardianships are less likely to disrupt if the parents agree with the plan.

"A few states require prospective guardians to designate a co-guardian or standby guardian for the child, particularly when the guardian is older or ill. This requirement is designed to help ease the emotional and financial transition for the child in the event the guardian dies."[xxv] Rather than making this a requirement, this could be another issue that families explore in the context of Family Safety Planning meetings.

The subcommittee also recommends that the JCTF develop some means of tracking outcome data for children who have been placed in the custody of someone other than DCF or a parent.

Proposed Enabling Legislation

The Fostering Connections Act does not require that a state enact specific enabling legislation in order to take advantage of the subsidized guardianship provision but every state is different in terms of the authority granted by statute to their (Title IV-E) child protection agency. Some states may need to enact new legislation or amend existing laws.[xxvi]

States that opt to participate in the federally supported Kinship Guardianship Assistance Program must amend their Title IV-E state plan indicating their intention to do so and then providing state and/or local dollars necessary to draw down federal dollars for assistance. [xxvii]

In Vermont Section 305(b)(2) and Section 4901 of Title 33, V.S.A. appear to authorize DCF to receive the federal funds. Section 305(b)(2) states: “In addition to the powers vested in it by law, the department may:....(2) Cooperate with appropriate federal agencies in receiving federal funds in support of programs which the department administers." Section 4901 states: “The department may cooperate with the appropriate federal agency for the purpose of establishing, extending and strengthening services which supplement or substitute for parental care and supervision.”

In order to expend state funds, however, it may be necessary to add a provision to Section 4903 of Title 33 V.S.A. to authorize DCF to fund these subsidized guardianships. The subcommittee proposes the addition of the following provision to Section 4903 of Title 33:

(7) Providing aid to children in the permanent guardianship of a relative who prior to the creation of such guardianship were in the care and custody of the department and placed in the home of the proposed guardian for at least six months.

This language is modeled after the provision in Section 4903(6) which authorizes DCF to expend state funds for post-adoption assistance.

It may be that enabling legislation is not necessary in order to draw down federal IV-E funding for subsidized guardianships. In that event, DCF would simply need to amend their Title IV-E state plan and include the funding for the state’s share in their budget.

Recommendations for Further Study

The subcommittee recommends for further study the creation of permanent guardianships in probate proceedings and subsidizing guardianships that are created in probate court beyond the TANF child-only grants.

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Shum, Brenda, Achieving Permanency through Subsidized Guardianship, 26 ABA Child Law Practice p. 49, June 2007.
Steisel, Sheri, Federal Affairs Counsel, Senior Director, Human Services, National Conference of State Legislatures, "Fostering Connections to Success and Increasing Adoptions Act of 2008," Presentation to House Human Services Committeee, Vermont House of Representatives on Friday, January 23, 2009
Key Components of State Legislation Needed to Implement the Federal Kinship Guardianship Assistance Option under the Title IV-E of the Social Security Act
Summary Table- State Subsidized Guardianship Programs, 2008, Children's Defense Fund, updated 6/24/08

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[i] The problem with TANF grants is that the amount per child goes down with each additional child so the disparity between foster payments and TANF grants becomes greater in the case of sibling groups. Typically it is hardest to find adoptive homes for sibling groups as well as adolescent and special needs children.

[ii] Shum, Brenda, Achieving Permanency through Subsidized Guardianship, 26 ABA Child Law Practice p. 49, 58, June 2007.

[iii] Vermont does not have the option of funding subsidized guardianships out of TANF funds because our TANF block grant is fully expended.

[iv] Shum at 55

[v] 700 Children in Vermont are now getting child-only TANF grants. There are 1600 minor custodial guardianships in Vermont.

[vi] Children's Defense Fund, "Help for Children Raised by Grandparents and Other Relatives: Questions and Answers", Subsidized Guardianship/Kinship Guardianship Assistance Program, Section 4.6

[vii] Shum at

[viii] About $1.5 million was spent on post-adoption services and subsidies. There is only about $700,000 available for post-adoption services for 400 adopted children in this state. As Cindy says, we can't create a system that requires permanent social worker involvement. The child welfare system assumes these cases will be closed out.

[ix] Children's Defense Fund, "Help for Children Raised by Grandparents and Other Relatives: Questions and Answers", Subsidized Guardianship/Kinship Guardianship Assistance Program, Section 4.20

[x] *Id.* At Section 4.30

[xi] Bissell at 13

[xii] Emlen, A., "Overcoming Barriers to Planning

[xiv] Bissell at
[xv] Children's Defense Fund, "Help for Children Raised by Grandparents and Other Relatives: Questions and Answers", Subsidized Guardianship/Kinship Guardianship Assistance Program, Section 4.32
[xvi] According to JCTF data, under Performance Measure #4, Discharge Outcomes, only 2% of children discharged from DCF custody in calendar year 2008 were placed into permanent guardianships
[xviii] Bissell at 13
[xviv] *Id.* At 14
[xx] Shum at 56
[xxi] Children's Defense Fund, Overview, p. 8
[xxii] Cohen at 19
[xxiii] *Id.* At 22
[xxviii] Children's Defense Fund, "Help for Children Raised by Grandparents and Other Relatives: Questions and Answers", Subsidized Guardianship/Kinship Guardianship Assistance Program, Section 4.11

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