Virginia Commission on Youth

Restoration of Parental Rights Advisory Group

House Room3
September 17, 2012
10:00 a.m.

MINUTES

Members Attending:
Senator George Barker, Melanie Baker, Lisa Banks, Gary Close, Jessica Cochrane, Margaret Deglau, Victor Evans, Stacie Fisher, Richard Garriott, Lelia Baum Hopper, Christine Marra, Melissa O'Neill, Lisa Peacock, Catherine Pemberton, Karen Reilly-Jones, Eric Reynolds, Shawn Rozier, Mattie Satterfield, Adalay Wilson, Carol Wilson, Therese Wolf, Amy Woolard

Participating Electronically:
Delegate David Toscano, Patty Bailey, Betty Wade Coyle

Staff Attending:
Amy M. Atkinson, Leah Hamaker, Meg Burruss

Guests:
Sarah Stanton, Presenter; Denise Gallop, Sarah Stanton, Becky Bowers-Lanier

I. Welcome and Introductions

Amy M. Atkinson, Executive Director

II. Review of Legislative Draft

Meg Burruss, Legal Intern

Sarah Stanton, Senior Attorney, Division of Legislative Services

Ms. Burruss presented two handouts to the Advisory Group, the first being a "menu" of policy options and the second being a legislative draft to act as a concept to work from. Ms. Stanton reviewed the draft with the group, explaining that the primary changes were in Sections G, H, and I. Ms. Burruss then went over the policy options handout.

III. Discussion of Legislative Draft and Formulation of Options

Workgroup Discussion

The issue of limiting the availability of restoration to those cases in which a parent voluntarily entrusts his or her child with the local department of social services, rather than cases in which parental rights have been involuntary terminated, was discussed by the Advisory Group.

Richard Garriott argued that parents who voluntarily entrusted their child were more likely to have the "right attitude" and to have improved their circumstances. He asked

why this sort of limitation was not considered. Ms. Burruss responded that the primary reason was that the original legislation patroned by Del. Toscano and Sen. Barker did not include such a limitation, nor did other states' restoration laws. Del. Toscano discouraged the proposal of limiting restoration to cases of voluntary entrustment because of the artificial barrier it would create for parents whose rights were involuntarily terminated but have since gotten their lives together. Christie Marra echoed this, stating that every judge should be given every option to put these families back together when a parent has gotten things straight in his or her life.

The age threshold at which the restoration process becomes available was also discussed. Members debated the merits of a 12 years of age versus 14 years of age threshold.

Judge Maggie Deglau felt that the age threshold should be older than 12, due to her concerns regarding the maturity of the child at that age. Mattie Satterfield, on the other hand, argued that a 12 year old should be given the option to be included in this process and be allowed to have hope. Adalay Wilson agreed that 12 years of age was considerable, because the child will have probably been in foster care for several years at that point. However, many expressed a concern about consistency in the Code. Both Eric Reynolds and Lelia Hopper argued that a juvenile of the age of 14 years had the power to veto a termination. and to allow a juvenile age 12 to petition for restoration would be inconsistent. It was suggested that, rather than having a specific age threshold, it be required that a juvenile be of sufficient maturity. Judge Deglau expressed her concerns with this because it could possibly allow restoration for younger children, increasing the risk of a second termination. Again, members argued for consistency in the Code. Ultimately, the Advisory Group agreed on a 14 years of age threshold requirement.

During this discussion, the topic of exceptions to the age requirement came up. Referencing the policy handout, Ms. Burruss explained the various age exceptions in other states' legislation. Ms. Marra suggested the younger sibling exception to which the group agreed. Sen. Barker suggested an exception to the age requirement where both the juvenile's guardian ad litem and the local department of social services jointly file the petition for restoration. The group agreed to this as well.

The Advisory Group also discussed the appropriate period of time to be required post-termination. While everyone quickly settled on a two year requirement, Shawn Rozier posed a question about a situation in which the two year period would expire *after* a juvenile reached the age of 18. He suggested there be an exception to the two year period requirement for those cases. This was agreed to as well. Ms. Hopper pointed out there would then be a need for statutory language granting jurisdiction to the juvenile and domestic relations courts in these post-18th birthday cases.

Who should be permitted to file the petition for restoration was also discussed. Mr. Garriott expressed his concerns with only the local departments of social services being permitted to file. He thought an independent party, such as the juvenile's guardian ad litem, needed to be involved in the process. Mr. Reynolds, on the other hand, questioned what the role of the guardian ad litem would be in these cases,

particularly where he or she does not agree with restoration. Mr. Garriott, a guardian ad litem, said that the guardian ad litem's role is to act in the juvenile's best interest, even where he or she did not like the idea of restoring the parental rights. The group settled on permitting the petition to be filed by the juvenile's guardian ad litem *or* the local department of social services.

Mr. Garriott asked whether parents would be appointed counsel in the restoration process. Judge Deglau responded that at the point of restoration, these parents were not technically parents. Therefore, in her opinion, they did not have a constitutional right to be appointed counsel. Ms. Hopper then asked whether Judge Deglau herself would appoint counsel to a parent in this case. Judge Deglau answered that she probably would not. The local department is filing the petition, essentially, on behalf of the parent. Additionally, courts hear *pro se* litigation in custody cases all the time. She did say that if the parent had a disability, then perhaps she would appoint counsel for him or her. Senator Barker asked about whether a parent would have a right to appointed counsel if the guardian ad litem filed the petition but the local department opposed. Judge Deglau said that in her opinion, no. Ms. Hopper asked about a situation in which the parental rights of both parents are being considered for restoration independently. Judge Deglau said that, for example, if the parents are divorced and one has retained his or her parental rights, while the other has had parental rights terminated, the remaining legal parent would be entitled to appointed counsel.

Ms. Burruss asked the group whose consent should be required by the legislation and the group overwhelmingly agreed both the juvenile and the parent must consent. She then asked about including a parental interference section, as Illinois does in its restoration law, but the group felt that was unnecessary. Judge Deglau said a judge would make that determination and dismiss in that case, with or without a provision. The group also did not support the inclusion of hearing exception. Judge Deglau said hearings should always be held in these cases.

Amy Woolard asked about the availability of services and benefits to the juveniles whose parents have their rights restored. She said that these youth have spent time in foster care, exposed to those things which may lead to negative outcomes, and are then dropped into their families without benefits or services. Ms. Stanton pointed to the draft legislation which provides for a trial period in Section G. During this trial period, the local department retains legal custody of the juvenile, which allows the juvenile to continue to receive services and benefits. Judge Deglau said that the language in Section G should be changed to be more consistent with Title IV-E language. Mr. Rozier echoed this, stating that the visitation requirement should be changed to every month.

Some time was spent discussing minor provisions to be changed or included in the legislation, which Ms. Atkinson pointed out could be better done by a work group. The group agreed and it was decided that another draft of legislation would be sent out electronically for the group to make further suggestions and changes.

IV. Next Steps and Adjournment

Ms. Atkinson informed the Group that staff would present draft recommendations and policy options to the Commission on Youth at their October 17 meeting. There will be no public comment or vote at that time, however.

The Advisory Group adjourned at 12:00 noon.