



COMMONWEALTH of VIRGINIA
DEPARTMENT OF SOCIAL SERVICES
Office of the Commissioner

Danny TK Avula MD, MPH
Commissioner

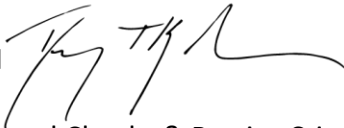
June 7, 2023

MEMORANDUM

TO: The Honorable Glenn Youngkin
Governor of Virginia

The Honorable Robert D. Orrock, Sr.
Chair, House Health, Welfare & Institutions Committee

The Honorable Barbara A. Favola
Chair, Senate Rehabilitation & Social Services Committee

FROM: Danny TK Avula MD, MPH 

SUBJECT: Annual Report on Background Checks & Barrier Crimes

This report is submitted in compliance with Chapter 432 of the 2022 Acts of Assembly (SB689), which states:

1. § 1. That the Department of Social Services shall, together with relevant stakeholders, develop recommendations regarding changes to provisions governing criminal history background checks and barrier crimes for applicants to serve as a foster or adoptive home. The Department of Social Services shall report its findings and recommendations to the Governor and the Chairmen of the House Committee on Health, Welfare and Institutions and the Senate Committee on Rehabilitation and Social Services by October 1, 2022.

Please contact me should you have questions.

DA:kc
Attachment

cc: The Honorable John Little, Secretary of Health and Human Resources

Virginia Department of Social Services Report on Barrier Crimes and Foster Parents

Report Mandate

Chapter 432 of the 2022 Virginia Acts of Assembly (SB689) states:

That the Department of Social Services shall, together with relevant stakeholders, develop recommendations regarding changes to provisions governing criminal history background checks and barrier crimes for applicants to serve as a foster or adoptive home. The Department of Social Services shall report its findings and recommendations to the Governor and the Chairmen of the House Committee on Health, Welfare and Institutions and the Senate Committee on Rehabilitation and Social Services by October 1, 2022.

The Problem

National research has highlighted the positive impact and outcomes for children in foster care being placed with a relative or fictive kin, to include:

- More stability in placement and greater likelihood of remaining with siblings.
- Lower rates of re-abuse and institutional abuse.
- Better behavioral and mental health outcomes, exhibited by fewer internalizing and externalizing behaviors, better adaptive behaviors, fewer psychiatric disorders, and better emotional health.
- Higher likelihood of achieving permanency through guardianship with their relative caregivers to maintain life-long connections with their family if they are unable to safely return home.¹

Despite this research, Virginia is currently the second lowest state for kinship placements.² The national average for relative kinship placement for children and youth in foster care is 34%, but Virginia's kinship placement is at 10%. The number of children in Virginia who enter foster care and are placed with relatives did increase from 6.9% to 10% over the past three years due to practice and technical assistance provided to local DSS.

VDSS has received consistent feedback from local DSS that Virginia's barrier crime statute (which prohibits individuals with certain criminal convictions from being eligible to be a foster or adoptive parent) contributes to this low kinship placement rate. In September 2011, the Virginia Commission on Youth (VCOY) completed a study on the "Barriers to Kinship Care in Virginia"³, which was reported to the General Assembly. VCOY's findings included:

¹ "Why should child protection agencies adopt a kin-first approach?" from Casey Family Programs, located at <https://www.casey.org/kin-first-approach/>

² Annie E. Casey Foundation Kids Count Data Center, 2020 children in foster care by placement in the U.S. data: <https://datacenter.kidscount.org/data/tables/6247-children-in-foster-care-by-placement-type?loc=1&loc=2#ranking/2/any/true/574/2621/12995>

³ "Barriers to Kinship Care in Virginia", Final Report of the Virginia Commission on Youth can be found here: <https://rga.lis.virginia.gov/Published/2012/RD17/PDF>

Barrier crime laws in Virginia which apply to kinship care placements are overly-restrictive. Relatives pursuing formal kinship care must undergo criminal background checks identical to foster care families. Virginia has created a statutory list of crimes that bar formal kinship care applicants for life, enumerated in the Code of Virginia § 63.2-1719. During fiscal year 2010, 80 cases were found to be ineligible for relative foster care placements because of a barrier crime. The majority of the denials involved cases where the barrier crime occurred over 20 years ago.

Additionally, Virginia's barrier crime statutes are confusing and there are gaps in the statutes which need to be corrected. Clarifying the statute will also strengthen existing gaps in the barrier crimes provisions.

In November 2020, in partnership with Casey Family Programs, Generations United and the ABA Center on Children and the Law conducted an assessment of Virginia's kinship efforts, which culminated in an assessment report titled "Virginia Kin-First Assessment"⁴. In their assessment, they recommended that Virginia update the barrier crimes law to align with the federal Adam Walsh barrier crime requirements and adopt the standards for assessing non-Adam Walsh crimes in the NARA (National Association for Regulatory Administration) Model⁵ which are the only comprehensive set of licensing standards available for family foster care homes.

In the 2022 General Assembly Session, Senator Mason introduced Senate Bill 689. In its original form, the bill sought to align Virginia's barrier crime statute for foster and adoptive parents to that of the federal statute. The final version adopted directed VDSS to lead a stakeholder working group to make recommendations on changes to the statute.

Lack of Data

It is important to note there is a lack of data on the problem because a number of prospective foster parents forego submitting a formal application and criminal record check once they are made aware of barrier crime rules (there is a cost to perform the criminal record check). There may also be confusion on the part of the prospective foster parent on the timeline of barrier crimes that operate on time contingencies.

DSS has made additional efforts to collect data regarding the prevalence of certain barrier crimes and their impact on prospective relative foster parents by requesting the LDSS to track the number of individuals that self-report the existence of a barrier crime. For those relatives that submitted to background checks in order to be approved as foster parents during 2021, the Office of Background Investigations (OBI) reported that 90 relatives were determined ineligible due to the presence of barrier crime convictions. Henrico County Department of Social Services reported that in their county alone, between August 2020 and April 2021, 11 prospective relative foster parents stopped the approval process prior to the submission of fingerprints due to self-reporting the existing of a

⁴ Virginia Kin-First Assessment report can be found here:

https://www.dss.virginia.gov/files/division/dfs/kinship/webinars/reports/Kin-First_Assessment_Report__Cover_Sheet_for_Public_Page.pdf

⁵ NARA Model can be found here: <https://nara.memberclicks.net/nara-model-foster-care-standards>; also linked on the Child Welfare Information Gateway:

<https://www.childwelfare.gov/topics/management/administration/requirements/standards/program-standards/care/>

barrier crime. The Virginia League of Social Services Executives (VLSEE) also surveyed local DSS as part of the stakeholder working group process (see attachment).

Stakeholder Working Group

The Department of Social Services (DSS) held stakeholder meetings on August 19 and October 17, 2022. Prior to the first meeting, DSS provided (1) a list of all relevant state and federal statutes governing barrier crimes for foster and adoptive parents, (2) a chart of each current Virginia barrier crime, (3) an overview of all relevant facts and data regarding the impact of barrier crimes on foster and adoptive parents; and (4) an outline of a possible waiver process for relative foster parents.

At the conclusion of the first meeting, the stakeholders requested information on the most common barrier crimes that prevent individuals from being a foster or adoptive parent. Prior to the second meeting, representatives from the Virginia League of Social Services Executives (VLSSE) conducted a survey of the 120 local departments of social services barrier crimes survey regarding the most prevalent crimes that prevent relatives from becoming foster parents. This information was presented at the second meeting, along with information provided by the Virginia Criminal Sentencing Commission (VCSC) regarding the number of convictions statewide for certain barrier crimes.

Recommendations

In considering recommendations for any changes to Virginia's current barrier crime list for foster parents, VDSS notes that federal title IV-E requirements do not allow for two separate barrier crime lists for non-kinship foster parents and kinship foster parents. Therefore, the workgroup had to consider modifying the barrier crime list for ALL foster parents, both non-kinship and kinship or creating a waiver process specifically for kinship foster parents only. The only crimes that cannot be waived for relatives per title IV-E requirements are the federal Adam Walsh barrier crimes.

The workgroup did not come to a consensus and/or make specific recommendations to modify and/or change Virginia's barrier crime list for non-kinship and kinship foster parents. It was decided that more research and data was needed to move forward. The information to gather included:

- Evaluating evidence that there is a correlation between barrier crimes and low kinship placement rate, particularly examining whether states with similarly restrictive lists of barrier crimes have lower kinship placement rates compared to those states with less restrictive rules. Understanding trends in which barrier crimes most commonly do not exist in other states or are under a different time limitation.
- Understanding the prevalence of certain types of convictions for the general public in comparison with the types of convictions identified by LDSS as the most common barriers for relatives and fictive kin being approved as kinship foster parents.
- Evaluating trends in the timing of the conviction of certain barrier crimes with the timing of being considered as a prospective foster parent.
- Identifying states with best practices for kinship placements and high-performance permanency outcomes to determine whether there are other practice considerations.

- Evaluating if more clarity can be given when discussing barrier crimes with prospective foster parents on barrier crimes that have time limitations to ensure prospective foster parents do not unnecessarily remove themselves from the process.
- Identifying whether there are barrier crimes that need to be added (not just those that could be eliminated).
- Establishing standards for LDSS to effectively collect information on barrier crimes in conversation with prospective parents before they have removed themselves from the process.

Working Group Members

General Assembly Members

Senator T. Montgomery Mason, Senate District 1

Delegate Robert B. Bell, House District 58

Stakeholders

Allison Gilbreath, Policy and Programs Director, Voices for Virginia's Children

Amy Atkinson, Executive Director, Virginia Commission on Youth

Cassie Baudeán, Director of Policy and Strategic Operations, Children's Home Society of Virginia

Em Parente, Assistant Director, Division of Family Services, Virginia Department of Social Services

Garrett Jones, Family Engagement and Resource Family Program Manager, Division of Family Services, Virginia Department of Social Services

Gena Boyle, Deputy Commissioner, Policy and Administration, Virginia Department of Social Services

Hallie Pence, Deputy Policy Director, Office of the Governor

James Pickral, Counsel, Virginia League of Social Services Executives

Julia Rubarth, Family Engagement and Resource Family Policy Specialist, Division of Family Services, Virginia Department of Social Services

Nikole Cox, Director, Division of Family Services, Virginia Department of Social Services

Nikki Callaghan, Attorney and Manager for Legislation, Regulations and Guidance for the Human Services Portfolio, Virginia Department of Social Services

Rebecca Morgan, President, Virginia League of Social Services Executives

Susan P.D. Whyte, Assistant Attorney General, Office of the Attorney General

Eric Reynolds, Director, Office of the Children's Ombudsman

Valerie L'Herrou, Staff Attorney for the Center for Family Advocacy, Virginia Poverty Law Center