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## Family Services Legislation July 2021

1 message

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Wed, Jun 2, 2021 at 9:23 AM

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# Family Services Legislation July 2021

## Categories: [Family Services](#)

This broadcast provides information for local departments of social services (LDSS) regarding changes to Adoption, Child Protective Services (CPS), Foster Care, Resource Family, and Prevention laws effective July 1, 2021. A brief summary of each bill and links to the legislation that passed the 2021 Session of the Virginia General Assembly appear below. LDSS staff should access the links provided to review the entire content of the legislation.

The Division of Family Services (DFS) is revising Adoption, CPS, Foster Care, Resource Family, and Prevention guidance as needed to reflect these legislative changes. The Administrative Process Act requires state agencies post guidance documents on the Virginia Town Hall website and in the Virginia Register for a 30-day public comment period prior to finalization. DFS is committed to providing guidance to the LDSS regarding implementation of this legislation as quickly as possible while complying with this requirement. It is anticipated that guidance will be posted before July 1. Transmittal training dates have already been provided.

### Adoption

[House Bill \(HB\) 1957](#) amended and reenacted [§ 63.2-1244](#) of the Code of Virginia, by eliminating the requirement for the circuit court to order a Report of Investigation to be completed, based on good cause, for adoption petitions filed for any person age 18 years of age or older when the person to be adopted is not at least 15 years younger than the petitioner and they have not known each other for one year prior to the filing.

[Senate Bill \(SB\) 1321](#) amended and reenacted [§ 63.2-1241](#) of the Code of Virginia, expanding the stepparent adoption provisions to allow a person who is not the child's stepparent but has a legitimate interest in the child to file a joint petition for adoption with the child's birth parent or parent by adoption.

In addition, the bill:

- Added language allowing a person with a legitimate interest to file a joint petition for adoption in circuit court.
- Defined a person with a legitimate interest, per § 20.124.1 of the Code of Virginia, to include, but is not limited to, grandparents, step-grandparents, stepparents, former stepparents, blood relatives, and family members. It does not include any person whose rights have been terminated by court order, either voluntarily or involuntarily, or whose interest in the child derives from or through a person whose parental rights have been terminated by the court, either voluntarily or involuntarily.
- Added that the birth parent or parent by adoption shall unite in the petition for the purpose of indicating consent to the adoption.
- Added that if the birth parent or parent by adoption refuses to join in filing the petition, indicating their consent, the court shall determine whether their withholding of consent is contrary to the child's well-being, and if so, order the adoption and grant the petition for change of name.

Funding was allocated during the General Assembly Special Session I to assist LDSS with any increase in caseloads due to the required completion of home studies for this population. Funding will be distributed evenly across 120 LDSS and added to the budget line 855 allocation on June 1, 2021. A local match of 15.5 percent is required. For more information on accessing these funds, contact your Regional Administrative Manager.

*Section 6 of adoption guidance will be updated to reflect changes to the Code of Virginia during the fall release of Adoption guidance.*

## **Child Protective Services**

**HB 2191** amended and reenacted §§ 63.2-1505 and 63.2-1506 of the Code of Virginia by allowing LDSS to disclose, upon request, to the child's parent or guardian the location of the child, provided that (i) the investigation or family assessment has not been completed; (ii) the parent or guardian requesting disclosure of the child's location has not been the subject of a founded report of child abuse or neglect; (iii) the parent or guardian requesting disclosure of the child's location has legal custody of the child and provides to the local department any records or other information necessary to verify such custody; (iv) the local department is not aware of any court order, and has confirmed with the child's other parent or guardian or other person responsible for the care of the child that no court order has been issued, that prohibits or limits contact by the parent or guardian requesting disclosure of the child's location with the child, the child's other parent or guardian or other person responsible for the care of the child, or any member of the household in which the child is located; and (v) disclosure of the child's location to the parent or guardian will not compromise the safety of the child, the child's other parent or guardian, or any other person responsible for the care of the child.

*Sections 4 and 9 of our CPS Guidance will be updated to reflect this change to the Code of Virginia.*

**SB 1206** amended and reenacted §16.1-305 of the Code of Virginia by opening juvenile court files for inspection by the Department of Social Services (DSS) or any local department of social services (LDSS) that is providing services or care for a juvenile, or has accepted a referral for investigation and the provision of services pursuant to a request for relief of custody regarding a juvenile, and that juvenile is the subject of the record for (a) a purpose relevant to the provision of the services or care or (b) the purpose of conducting an investigation or family assessment of child abuse or neglect involving the juvenile who is the subject of the record. Additionally, SB 1206 permits the inspection of juvenile court files by the Department of Behavioral Health and Developmental Services (DBHDS) or any local community services board that is providing treatment, services, or care for a juvenile who is the subject of the record for a purpose relevant to the provision of treatment, services, or care. The court service unit or Department of Juvenile Justice must determine which reports or records are relevant to the treatment, services or care of the juvenile and limit the inspection to such reports/records.

*Updates to CPS Guidance were not necessary based on this change to the Code of Virginia.*

**SB 1168** amended and reenacted § 16.1-228 of the Code of Virginia by aligning the definition of "abused or neglected child" in Title 16.1 with the definition of the same term in Title 63.2. In order to align the two definitions, the definition of an "abused or neglected child" in Title 16.1 was amended to include that a parent or other person with legal authority for a child with a life-threatening condition may refuse a particular medical treatment for the child so long as that decision is made jointly by the child and the parents or other person with legal authority, the child is 14 years of age or older and is sufficiently mature to make such decisions, the child and the parents or other person with legal authority have considered alternative treatment options, and the child and the parents or other person with legal authority believe in good faith that such decision is in the child's best interest. Additionally, SB 1168 aligns the two definitions by expanding the definition of an "abused or neglected child" in Title 16.1 to include a child whose parents or other person responsible for the care of the child commit or allow to be committed any act of sexual exploitation.

*Updates to CPS Guidance were not necessary based on this change to the Code of Virginia.*

## **Foster Care**

**HB 1962** amended and reenacted § 16.1-281 and § 63.2-906 of the Code of Virginia by requiring that the local department or child placing agency include relatives and fictive kin in the development of the foster care plan and modifying the requirement to involve children in the development of their foster care plan from children who are 14 years of age to children who are 12 years of age. HB 1962 amended and reenacted § 16.1-283 of the Code of Virginia by requiring the court to communicate to all parties regarding the basis of the decision to not grant custody of the child to a person with a legitimate interest before a termination of parental rights (TPR) order is entered. Additionally, HB 1962 requires that diligent efforts be made to locate the child's guardian or relatives, in addition to the parents, when TPR is being sought on the grounds of abandonment.

HB 1962 amended and reenacted § 63.2-910.2 of the Code of Virginia by modifying the exceptions to the requirement to file for TPR when a child has been in foster care for 15 out of the most recent 22 months by:

- Adding fictive kin to the exception regarding children being cared for by a relative; and
- Adding possible examples of a compelling reason to not TPR such as a relative or fictive kin having shown the will and ability to care for a child or a parent's incarceration or participation in a court-ordered residential treatment program if that constitutes the primary factor in the child's placement in foster care.

*Sections 2, 7, 8, 15, and 16 of Foster Care Guidance will be updated to reflect this change in the Code of Virginia. Child welfare information systems will be updated to support this change.*

SB 1328 amended and reenacted § 16.1-228 of the Code of Virginia by including the Federal-Funded Kinship Guardianship Assistance Program (KinGAP) and State-Funded KinGAP in the definition of foster care services. SB 1328 amended and reenacted § 16.1-282.1 and § 63.2-906 by including that transfer of custody to relative or fictive kin can be a permanency goal for the purposes of establishing eligibility for either KinGAP population. SB 1328 amended and reenacted § 63.2-100, and § 63.2-1305 of the Code of Virginia by specifying that references to KinGAP, as outlined in § 63.2-1305, refer to the Federal-Funded KinGAP. SB 1328 amended and reenacted § 63.2-100 of the Code of Virginia by removing the definition of "Kinship Guardianship Assistance program" and adding the definitions of "Federal-Funded Kinship Guardianship Assistance program" and "State-Funded Kinship Guardianship Assistance program". SB 1328 amended and reenacted § 63.2-905 by adding State-Funded KinGAP to the definition of foster care services. SB 1328 amended the Code of Virginia by adding § 63.2-1306, outlining the requirements for the State-Funded KinGAP, which includes eligibility requirements for the child and for the prospective relative guardian.

SB 1328 directed the Board of Social Services to promulgate regulations to implement the provisions of this act, to include conditions for establishing a kinship guardianship, requirements for the kinship guardianship assistance agreement, and the conditions that qualify a prospective kinship guardian for exemption from the relative foster home approval process.

*Foster Care Guidance will be updated to reflect this change in fall 2021 when the regulations have been finalized.*

### **Resource Family**

There are no Resource Family legislative updates for this time period.

### **Prevention**

SB 1184 amends and reenacts §§ 16.1-351, 16.1-352, and 16.1-353 of the Code of Virginia, relating to standby guardianship, by adding the detention, incarceration, or deportation of a parent to the list of triggering events for which a parent may designate a standby guardian to be appointed for the care of the parent's minor child.

*Updates to Prevention Services Guidance were not necessary based on this change to the Code of Virginia.*

### **All Child Welfare Programs**

SB 1406 and HB 2312 legalize marijuana in Virginia. *This change will not be explicitly addressed in guidance. However, programs will be working with the PACs on any needed implementation supports in the coming months.*

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