

SENATE BILL 31 - GUARDIANSHIP CHANGES

(Senators K. Duhigg, L. Lopez, and S. Correa Hemphill)

THE ISSUE

During the 2020 legislative session, a bill was passed to subsidize kinship guardianships when the Children, Youth and Families Department is involved with a family. Kinship guardianship allows for a close family member or other qualifying person to care for a child when the parents are unable or unwilling to care for them. It is important that children remain with their families and communities as often as possible.

The law enacted in 2020 codified the process for subsidized kinship guardianships under the Domestic Affairs statute (Chapter 40), where the Kinship Guardianship Act is located. However, the funding mechanism from the federal government to subsidize kinship guardianships requires that a parent, guardian, or custodian voluntarily place the child in the legal custody of CYFD by entering into a voluntary placement agreement (VPA). VPAs and CYFD-involvement with families are under the purview of the Children's Code (Chapter 32A).

In order to achieve the intent of the bill that was passed in 2020, some changes are necessary.

THE OPPORTUNITY

This bill will address the above issue by:

- Placing CYFD-related legal provisions in the Children's Code and domestic relations-related provisions in the Kinship Guardianship Act.
- Offering parents access to legal counsel prior to signing voluntary placement agreement and throughout the life of the agreement.
- Ensuring voluntary placement agreements are only used in situations where the arrangement is truly voluntary.



WHAT SB 31 DOES

This bill makes changes to the following changes to Kinship Guardianship Act within the Domestic Affairs statute:

- Removes VPA references and financial subsidy provisions from the KGA.
- Updates KGA language to align with the Indian Family Protection Act.

It makes the following changes to the Children's Code:

- Adds the financial subsidy provisions being repealed from the KGA to the Children's Code.
- Builds upon the existing VPA language in the Children's Code Family Services Act, including:
 - Clarifying court process for VPAs including timelines, confidentiality, notice, and findings.
 - Creating protections for parents, including access to counsel prior to signing VPAs and throughout the life of the VPA, including in-court representation.
 - Requiring assignment of a guardian ad litem (GAL) for children upon the signing of the VPA.
 - Allowing parents, children, or CYFD to file a petition for court review of the VPA prior to the signing or at any point during the life of the VPA.
 - Changing 72 hours to 48 hours for the return of a child upon a parent withdrawing consent to a VPA, making the timeframe the same for Native and non-Native children.



Why are items being moved from the Kinship Guardianship Act to the Children's Code?

Guardianships are only eligible for federal subsidies when CYFD has legal custody of a child pursuant to a voluntary placement agreement or by court order through an abuse/neglect case. Given CYFD's required involvement, the Children's Code is the appropriate place for these subsidies.

What is a voluntary placement agreement?

A voluntary placement agreement is an agreement between a parent, guardian, or custodian and CYFD that gives CYFD legal custody of the child and the authority to place the child in foster care. This is different from CYFD getting legal custody of a child and the child entering foster care through the Children's Court process due to allegations of abuse/neglect; the parent voluntarily gives custody of their child to the state.

What will it cost?

This legislation does not have an appropriation. The responsibility for the appointment of counsel for legal consultation for VPAs will fall on the Office of Family Representation and Advocacy. However, the use of VPAs are rare and the anticipated costs to OFRA are expected to be minimal. Any potential increase in court involvement due to review of VPAs will likely be offset by a reduction in the filing of abuse/neglect petitions, which often take many months or years, and a great deal of judicial resources.

How was this bill developed?

Concerns and conflicts in the 2020 amendments to the Kinship Guardianship Act prompted the convening of a statewide multi-disciplinary work group made up of judges, court staff, law enforcement, youth attorneys, tribal representatives, child welfare experts, community organizations, people with lived experience, and various CYFD staff. This legislation was created by that work group.

How will it benefit NM families?

More families will be able to take advantage of kinship guardianship subsidies, as was intended when the legislature passed the original bill in 2021.

Additional Questions

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