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STATE OF MAINE

TASK FORCE ON KINSHIP FAMILIES

***** INTEGRATED ANSWERS TO INFORMATION REQUESTS *****

(Italics=Barbara Kates; Shaded bold=Ginny Marriner, DHHS; Shaded Arial font=Janice Stuver, AAG)

1. Information on the Annie E. Casey Foundation meeting in Pittsburgh. (Sen. Craven and Ginny Marriner)

2. Have changes in adoption subsidy levels changed the rates of adoption in other states and in Maine? (Nina Williams-Mbenge, NCSL and Ginny Marriner, DHHS)

DHHS: The reduction of 12.5% to the Maine adoption subsidy rates that were higher than \$16.50 per day in 2007 did not impact the rate of adoption of the foster care population, they remained stable.

3. How to balance the parents' fundamental right to raise their child and the best interests of the child:

A. How do the best interests of the child interact with the parents' wishes and rights?

B. What time should be allowed for rehabilitation and reunification?

DHHS: Maine needs to be consistent with federal legislation that has been designed to meet the developing needs of the child for permanency. Decision to reunify or terminate within 12 months of entry into foster care and permanency within 24 months of entry into care.

C. When should the parents' visitation with the child be limited?

DHHS: Section of new policy:

- Visitation should occur in the most natural setting that will also meet the safety needs of the child. Supervision of visits is to be determined based on the individual situation. Many families are capable of interacting with their children in an unsupervised setting, while maintaining the child's need for safety. The need and justification for supervision will be communicated to the family. The visitation plan is fluid in nature and should allow for changes, as necessary and appropriate.-**
- Facilitated visits provide the parents with the opportunity to gain insight into family dynamics. The visit supervisor assists the parent by role modeling behavior and by engaging the family members in quality parent-child interaction.**

- **More restrictive supervision is necessary only when there are concerns about safety of the child in the visit setting. During these more restrictive supervised visits, it is important that the visits also provide components of facilitated visitation in the effort to assist with rebuilding positive family relationships.**

- D. Are there standards or benchmarks for the time periods for protective care, guardianship and adoption?
(Nina Williams-Mbenge, NCSL)

4. Suggestions for amending Title 20-A, section 5205, subsection 3-A (new law on school enrollment for children placed by DHHS in foster care) to extend it to children placed with kin in order to protect the child’s safety and well-being. (Nancy Connolly, DoE and Ginny Marriner, DHHS and Karen and Jane, OPLA)

DHHS: suggestion (underlined text) for changes.

Sec.1 20-A MRSA § 5205,sub-§3-A

3-A. Students placed by the Department of Health and Human Services. Notwithstanding subsection 3, a student who is placed by the Department of Health and Human Services either through formal foster care or through a Safety Plan with an adult who is not the child’s parent or legal guardian in accordance with the educational stability provisions of the federal Fostering Connections to Success and Increasing Adoptions Act of 2008, Public Law 110□351, 122 Stat. 3949 is considered a resident of either the school administrative unit where the student resides during the placement or the school administrative unit where the student resided prior to the placement based on the best interest of the student. The Department of Health and Human Services, in consultation with the department and the school administrative units, shall determine which of the 2 units is appropriate for children in formal foster care and notify that unit in writing of its determination. The school administrative unit that provides public education for the student shall count the student as a resident student for subsidy purposes. The Department of Education and school administrative units shall recognize a Power of Attorney granted to a relative in order to register a child placed with relatives.

5. Information on education decisions regarding children in kinship care that are made by superintendents and are appealable to the Commissioner of Education:

A. What types of decisions are these?

B. Can the law be changed to provide clearer or firmer standards for the superintendents in order to decrease the number of appeals to the Commissioner?

(David Stockford, DoE)

6. Suggestions for getting superintendents to recognize power of attorney forms for enrolling children in school. (David Stockford, DoE)

DHHS: suggestion in the law above. # 4.

B. Kates: In addition, kinship families with power of attorney need to be able to access mental health services for the children and need to be recognized as a family to be eligible for a larger subsidized home.

7. With regard to financial assistance or medical coverage for kinship families:
A. If the child qualifies for MaineCare does an adult in the household automatically qualify?

DHHS: No, the family must meet income eligibility.

- B. What is the “granny grant”? What is the child-only TANF grant?

DHHS: This is the same thing, a relative can apply to OIAS for a child only grant which can range from \$97 to \$230.

- C. Are there possibilities for financial assistance with General Fund and non-General Fund monies? For low-income families? For middle-income families?

DHHS: Almost all other state assistance programs are based on family income.

B. Kates: It would also be good to ask the question of whether assistance can be available for fictive kin families who are not related by blood or marriage but have the children through power of attorney from the parents or guardianship.

- D. How to provide more financial help for middle class kinship families?

- E. Do staff in the Office of Integrated Access and Support need additional training regarding consideration of the adults’ assets and income?

(Ginny Marriner, DHHS and Jane, OPLA)

DHHS: Yes, the child only grant does not appear to be uniformly applied.

8. With regard to information resources for kinship families in the informal system, how can we more widely disseminate information? (Ginny Marriner, DHHS, Barbara Kates)

DHHS: Need to update the Maine Kids-Kin Handbook, have it on several websites and do some public service announcements.

B. Kates: We can involve the resources of organizations and agencies across state systems to assist in providing information about Families And Children Together’s resources. This might include mailings to child-only TANF recipients, school departments, health services, and aging services. We can provide staff training and printed and online information services. In collaboration with DHHS, University of Maine Center on Aging, and the National Council on Aging, F.A.C.T. has recently increased resources for communications staff, marketing, and civic engagement at the agency.

9. Suggestions for amending Title 22, section 4038-C and section 4038-D to remove the requirement that a child eligible for a guardianship subsidy have special needs, conforming Maine law to federal law? (Ginny Marriner, DHHS)

DHHS: See attached proposed legislation.

10. Suggestions for reducing the threshold for terminating parental rights, making it easier to terminate. (Ginny Marriner, DHHS, Janice Stuver, AAG, Judge Mazziotti)

DHHS: Office of Child and Family Services has reservations about this.

J. Stuver: The U.S. Supreme Court has recognized that the freedom of personal choice in matters of family life is a fundamental liberty interest protected by fourteenth Amendment of the U.S. Constitution. Parents have a fundamental liberty interest in the care, custody, and management of their child. *Quillion v. Walcott*, 434 U.S. 246 (1978); *Smith v. Organization of Foster Families*, 431 U.S. 816 (1977); *Moore v. East Cleveland*, 431 U.S. 494 (1977).

In addition, the U.S. Supreme Court has held that the Fourteenth Amendment due process clause requires, at a minimum, the application of the “clear and convincing” standard of proof to a termination of parental rights proceeding. *Santosky v. Kramer*, 455 U.S. 745 (1982).

In summary, parents have a constitutional right to raise their children without governmental interference, unless is it proven that the parent is unfit and parental rights may only be terminated with the standard of proof of “clear and convincing evidence.”

A termination of parental rights within the probate code is permissible in conjunction with a Petition for Adoption. 18-A M.R.S.A. § 9-204. The probate code utilizes the termination of parental rights provisions outlined in Title 22. 18-A M.R.S.A. § 9-204(b).

The Child and Family Services and Child Protection Act provisions for termination of parental rights is codified at 22 M.R.S.A. § 4055. This statute provides 5 rebuttable presumptions that make it easier to terminate parental rights, specifically 22 M.R.S.A. § 4055(1-A)(A), (B), (C), (D) and (E). These provisions could be amended to permit the use of the presumptions by a legal guardian of the child rather than just the Department of Health and Human Services.

11. Once a guardianship has been ordered, suggestions for:

A. The legal standard for modifying a guardianship?

J. Stuver: There is no provision for modifying a guardianship. This is an area that could be developed. The powers and duties of a guardian are provided in 18-A M.R.S.A. § 5-209. Legislation could be developed that would provide the probate court with more comprehensive authority to govern the relationship between the guardian and the parents of the child. For example, authority to craft a plan that a parent would need to abide by in order to reunify with the child, establish benchmarks to measure progress, and/or a visitation schedule. Discussion with the probate courts would be beneficial to determine what would facilitate better guardianships for minors.

B. Kates: A. I do not think that there is agreement within the Probate Court system about whether Probate judges can determine whether visits are appropriate between the parent and the child, and, if so, set up a contact schedule for parents within a guardianship order. If there is a contact schedule, it needs to be flexible enough that the guardian may make changes within the child’s best interest. For example, if the guardian believes the visiting parent is under the influence of drugs or threatening the security of a family

member, then the guardian needs to be able to end the visit. The relationship between the parent and the guardian may be very stressful. A contact schedule may reduce the stress by ensuring the parent has the opportunity to visit and will need to go to court and not the guardian in order to change the schedule.

There is no consistent implementation of child support orders for guardianship cases. Some guardians are aware of the option to request an order and others are not. Many choose not to request it in order to gain consent for guardianship. It would be helpful for the court to assume that there will be an order and allow the guardians to request not to have one should they wish to meet the child's need without assistance or if they know that the parents will not have the resources for child support.

B. The legal standard for terminating a guardianship?

J. Stuver: Title 18-A M.R.S.A. §5-212(d) provides: "The court may not terminate the guardianship in the absence of the guardian's consent unless the court finds by a preponderance of the evidence that the termination is in the best interest of the ward."

In *Jeremiah T.*, 2009 ME 74, however, the Law Court made clear that that the best interest analysis must include a determination that as to parental unfitness: "Therefore, interpreting 18-A M.R.S.A. § 5-212(d) to recognize a parent's constitutional right to the care and custody of her child, the court must, on remand, consider evidence of the mother's fitness as a parent in addition to determining whether continuation of the guardianship is in the child's best interest. . . . The guardianship must be terminated unless the guardian proves that the mother is an unfit parent for the child and that continuation of the guardianship is in the child's best interests."

This standard may not be changed legally.

B. Kates: B. The Legislature should provide the Courts with additional considerations in determining when a parent is "unfit". A termination hearing should consider the length of time that a child is living with a guardian because the parent has chosen not to parent during that time. When parents choose not to take on responsibilities of parenting for extended periods of time, this often reflects on their fitness as a parent. This length of time that a parent chose not to parent should be explicitly allowed as part of the determining factors of a parent's fitness.

C. Requirements/limits on filing motions to amend or terminate a guardianship?

J. Stuver: Title 18-A M.R.S.A. § 5-212(d) governs the requirements and limits on filing motions to terminate a guardianship: "The petitioner has the burden of showing by a preponderance of the evidence that termination of the guardianship is in the best interest of the ward. If the court does not terminate guardianship, the court may dismiss subsequent petitions for termination of the guardianship unless there has been a substantial change of circumstances."

Compare

Title 22 M.R.S.A. §4038-C(6), Proceedings to Terminate Permanency Guardianship: "Any party to the child protection proceeding may petition to terminate a permanency guardianship . . . except that a person having once petitioned unsuccessfully to terminate a permanency guardianship . . . may not bring a new petition to terminate the permanency guardianship . . . within 12 months after the end of the previous proceeding and then only if the petitioner alleges and proves that there has been a substantial change of circumstances regarding the child's welfare."

B. Kates: C. Before a judge may terminate a contested guardianship of a child who has lived in guardianship for more than a substantial part (10%?) of her or his life, the court needs to ensure that there is appropriate transition. There can be a three step process to terminating a guardianship: Step one, is a hearing on the issues impeding termination that results in a plan to resolve those issues. Step two, is a transition time to resolve issues (this time would include the parents taking on parental responsibilities for an extended period of time), and step three is a final return. If a multi-step process is not possible, at the very least judges should be able to order a transition process that is in the best interest of the child.

D. A recognized timeline that should be followed or considered by the Courts?

E. Mechanisms for decreasing the uncertainty in kinship care situations, increasing the likelihood of the child staying with the kinship care provider?

(Judge Mazziotti, Janice Stuver, AAG, Ginny Marriner, DHHS, Barbara Kates)

J. Stuver: All court orders that delineate parental rights and responsibilities, even in the absence of kinship care situations, are necessarily uncertain and may be changed by any party to the court proceeding. Because all parents have a U.S. constitutional liberty interest in the care, custody, and management of their child, the care of children by kin will always be uncertain.

A Petition to Adopt the child with an accompanying request to terminate parental rights eliminates this uncertainty.

B. Kates: E. It would be helpful to require the court to state what the "intolerable living situation" is within the order for guardianship in a contested case and what factors led to the guardianship being in the child's best interest in a consensual order. My experience is that in consensual cases the family often is avoiding bringing the reasons for guardianship into court. They believe this has helped them to gain consent for the guardianship. But, such information can come into court in a positive framework that may help the family develop plans of what will happen for the child's return.

Guardianship does not always provide permanency. Currently, some children who are in guardianship through Probate Court do not have permanency due to several barriers. Can Maine better provide for permanency for children by better supporting parents to take on their responsibilities, creating a time line that guides families and courts

regarding permanency, and providing better supports after adoption? I suggest discussion of the following ideas may help move such a proposal forward.

- 1. Set up within the system an expectation that parents will take responsibility for their children within a reasonably calculated time period (perhaps 2 years?). At the time of guardianship, notify the parents of statutes related to permanency and termination of parental rights.*
- 2. Set up a system where state services should give priority to parents with children in guardianship and the children themselves for services which will help children achieve permanency. These services may include, for example, substance abuse treatment for parents or evaluations of children's behavior or needs.*
- 3. If the parents are not taking responsibility for the children, set within the law a presumption that the child's need for permanency has a higher priority.*
- 4. If there is clear and convincing evidence that a parent has been unable or unwilling to take on parental responsibilities within a reasonable calculated time period (two years?) and it is in the child's best interest to be adopted by the guardians, then upon petition from the guardians of the child, a judge may terminate parental rights based on these two factors in order to allow for permanency for the child.*
- 5. Make Maine Care available to children adopted from guardianship so that the lack of health insurance does not create a barrier.*

12. How can Maine provide more legal representation for kinship families in the informal system?

A. Who qualifies for assistance now?

B. Kates: With regards to representing the kinship caregiver in a contested guardianship or termination of guardianship hearing, most caregivers will hire their own lawyer or proceed without one. Low-income caregivers may qualify for a pro-bono lawyer through the Maine Volunteer Lawyers Project (VLP) if they meet VLP's income guidelines, and the child is already being cared for in the caregiver's home, and there is an attorney representing the opposing side. The income guidelines generally are that the household income can not exceed 125% of poverty level and the family can not have more than \$3000 in the bank. If a kinship caregiver meets the requirements, VLP will seek an attorney with no guarantee that they will find one. VLP provides attorney assistance to an average of twenty kinship families for full representations per year and fifteen kinship families for limited consultations per year.

Caregivers may receive information at no cost through Families And Children Together (F.A.C.T.) (www.maine-kids-kin.org), VLP, court clerks, and through Pine Tree Legal Assistance's (PTLA) website (www.ptla.org). VLP provides information to about 50 families per year. In the past year, F.A.C.T. provided legal information to 348 kinship parents. Kinship families may also receive a half hour consultation with an attorney through the Maine Bar Association Lawyer Referral and Information Service at a cost of \$25 or through VLP Family Law Helpline (if the family meets the guidelines). There are also several attorneys who provide a consultation at a reduced cost.

Another consideration is that an indigent parent who is in agreement with a petition for guardianship or who does not agree with a petition to terminate a guardianship is not provided an attorney by the court. This is unfortunate as it means that the parent who is in agreement with the kinship caregiver will not have an attorney to represent her or his desire to have his or her child in a guardianship placement.

B. Who funds the assistance?

B. Kates: Funding for PTLA and VLP is primarily through PTLA's general legal services funding sources that include a federal grant from Legal Services Corporation, state funding and IOLTA. Executive Director Nan Heald informs me that both state and IOLTA funding have declined dramatically during the past three years. Funding for Families and Children Together comes from the federal government through the Department of Health and Human Services.

C. If legal representation were more uniformly provided would total costs decrease?

D. How would savings be calculated and recognized?

(Ginny Marriner, DHHS, Barbara Kates, Sen. Craven regarding Volunteers of America idea, Judge Mazziotti)

DHHS: recommend agreement with law school for intern positions to do kinship legal representation.

13. Suggestions for legislation on reinstatement of parental rights. (Ginny Marriner, DHHS)

DHHS: See DHHS proposed legislation.