

RELATIVE/KINSHIP RESOURCE

Highlights of two legislative changes for 2023 regarding relative and kinship engagement and placement in D&N cases.



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HB23-1024 – Relative and Kin Placement of a Child (effective August 7th, 2023). This bill expands notification requirements and strengthens placement presumptions for relatives and kin. It adds a presumption in 19-3-507 and other areas of Title 19 that **placement with a capable, willing, and available relative or kin is in the best interests of the child.** This presumption is rebuttable by a preponderance of the evidence, giving *primary consideration to the child's or youth's preference regarding placement*. The Court shall consider whether a proposed placement would hinder efforts to reunite the parent and child or youth and the parent's preference regarding placement. A parent's objection to placement with a particular relative or kin is not alone sufficient to show that the proposed placement would hinder reunification.

Additional Relative Affidavit Requirements

- Must be filed with the court and served on the parties no later than 7 days after the hearing date.
- Court is required to inquire about changes to the information on the affidavit at the dispositional and permanency planning hearings.
- If a parent has not completed the affidavit, the court shall ask the parent, on the record, for names and contact information for relatives and kin whom the parent would like considered for engagement in the case.

New Notice Requirements in 19-3-403

A County DHS must exercise due diligence to contact relatives and kin within 30 days after removal of a child/youth and notify the kin of:

- The various options to participate in the child/youth's care of placement.
- Options to provide support to the family.
- Right to intervene.
- Services and supports available.
- Information about the state's entitlement plans (e.g. SNAP, child care assistance, and relative guardianship program).
- Information about family foster care certification and how to request a variance.
- Required background checks and how to request a court review a decision to deny.
- DHS is required to exercise due diligence to contact and engage relatives and who respond to the notice.



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Additional changes:

- Best interests language in 19-3-403 (3.6)(a)(V) is replaced with **“giving primary consideration to the child’s or youth’s mental, physical, and emotional needs, including the child’s or youth’s preference regarding placement.”**
- Requires DHS to use reasonable efforts to assist a relative or kin with obtaining necessary items if resources are preventing an emergency placement.
- Gives relatives and kin rights similar to foster parents in 19-3-217.
- Requires a **placement hearing** within 63 days if a party objects to a proposed placement.
 - In making this placement determination, the court shall give primary consideration to the child’s or youth’s mental, physical, and emotional needs, including the child’s or youth’s preference regarding placement.
 - If the Court denies placement with a relative or kin, the court must make detailed findings regarding the reasons for denial.
 - A decision not to be considered initially in the case may not be the sole basis for denial.
- When a child/youth resides with a relative or kin, and another relative/kin is seeking a placement change, the factors in 19-3-702 (6) must be considered.
 - An additional factor was added to 19-3-702 (6) that states placement with a relative/kin should not be denied based solely on ordinary bonding and attachment to a foster parent as a result of time spent in the home. Requires the Court to consider the number of prior placements, the child/youth’s mental, physical, and emotional needs, and any subsequent caregiver’s ability to provide emotional and psychological support when considering a change of placement.
- The Court may consider a relative/kin’s criminal background and if so, must also consider:
 - Whether the child/youth’s mental, physical, or emotional needs would be adversely affected,
 - Nature of the crime of conviction,
 - Whether there is a direct relationship between the conviction and the relative’s or kin’s ability to provide competent and safe care to the child or youth,
 - Length of time since conviction, and
 - Evidence of rehabilitation.

Factors the Court may NOT consider

The Court may not consider the following UNLESS it threatens the mental, physical, and emotional health or safety of the child or youth:

- Size of the home,
- If the child will have a separate room,
- Socioeconomic status of the relative or kin compared to other available placement options,
- Ability of the relative or kin to support the child/youth’s participation in extracurricular activities,
- Ordinary bonding or attachment that occurred during time spent in foster placement,
- Immigration status,
- Age or disability.

Changes to Intervention – 19-3-507



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- Relatives and kin who have the child/youth in their care for 3 months or more may intervene by right following adjudication.
- Foster Parents who have had the child/youth in their care for 12 months or more may intervene as a matter of right following adjudication.
- Clarifies that the purpose of intervention is to provide knowledge or information concerning the care and protection of the child/youth.
- Prohibits an intervenor from seeking to restrict family time, filing a motion to terminate parental rights, or appeal a denial of termination of parental rights.

HB23-1043 – Emergency and Continued Placement with Relative or Kin (effective August 7th, 2023).

This bill combines 19-3-406 and 19-3-407 into a new 19-3-406 that deals with both emergency and ongoing placement requirements for relative and kin. It clarifies procedures around finger-print background check and updates the “shall not” criminal history in section (5). Significant difference are:

- Adds a 5-year limitation for a felony with an underlying factual basis of domestic violence.
- Reduces the drug felony limitation to 3-years.
- Adds a pattern of misdemeanor convictions related to domestic violence within the preceding 5 years.
- Includes human trafficking in offenses involving unlawful sexual behavior.
- Removes violation of a protection order.