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HOUSE BILL NO. 1084

Offered January 24, 2000

A BILL to amend and reenact §§ 16.1-277.01, 16.1-277.02 and 16.1-278.3 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 16.1-283.1, relating to post-adoption contact agreements.

Patron—Jones, J.C.

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-277.01, 16.1-277.02 and 16.1-278.3 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding a section numbered 16.1-283.1 as follows:

§ 16.1-277.01. Approval of entrustment agreement.

A. In any case in which a child has been entrusted pursuant to § 63.1-56 or § 63.1-204 to the local board of social services or to a child welfare agency, a petition for approval of the entrustment agreement by the board or agency:

1. Shall be filed within a reasonable period of time, no later than eighty-nine days after the execution of an entrustment agreement for less than ninety days, if the child is not returned to the caretaker from whom he was entrusted within that period;

2. Shall be filed within a reasonable period of time, not to exceed thirty days after the execution of an entrustment agreement for ninety days or longer or for an unspecified period of time, if such entrustment agreement does not provide for the termination of all parental rights and responsibilities with respect to the child; and

3. May be filed in the case of a permanent entrustment agreement which provides for the termination of all parental rights and responsibilities with respect to the child.

The board or agency shall file a foster care plan pursuant to § 16.1-281 to be heard with any petition for approval of an entrustment agreement.

B. Upon the filing of a petition for approval of an entrustment agreement pursuant to subsection A of § 16.1-241, the court shall appoint a guardian ad litem to represent the child in accordance with the provisions of § 16.1-266, and shall schedule the matter for a hearing within forty-five days of the filing of the petition. The court shall provide notice of the hearing and a copy of the petition to the following, each of whom shall be a party entitled to participate in the proceeding:

1. The local board of social services or child welfare agency;

2. The child, if he is twelve years of age or older;

3. The guardian ad litem for the child; and

4. The child's parents, guardian, legal custodian or other person standing in loco parentis to the child. No such notification shall be required, however, if the judge certifies on the record that the identity of the parent or guardian is not reasonably ascertainable. An affidavit of the mother that the identity of the father is not reasonably ascertainable shall be sufficient evidence of this fact, provided there is no other evidence before the court which would refute such an affidavit. The hearing shall be held and an order may be entered, although a parent, guardian, legal custodian or person standing in loco parentis fails to appear and is not represented by counsel, provided personal or substituted service was made on the person, or the court determines that such person cannot be found, after reasonable effort, or in the case of a person who is without the Commonwealth, the person cannot be found or his post office address cannot be ascertained after reasonable effort. However, when a petition seeks approval of a permanent entrustment agreement which provides for the termination of all parental rights and responsibilities with respect to the child, a summons shall be served upon the parent or parents and the other parties specified in § 16.1-263. The summons or notice of hearing shall clearly state the consequences of a termination of residual parental rights. Service shall be made pursuant to § 16.1-264. The remaining parent's parental rights may be terminated even though that parent has not entered into an entrustment agreement if the court finds, based upon clear and convincing evidence, that it is in the best interest of the child and that (i) the identity of the parent is not reasonably ascertainable; (ii) the identity and whereabouts of the parent are known or reasonably ascertainable, and the parent is personally served with notice of the termination proceeding pursuant to § 8.01-296 or § 8.01-320; (iii) the whereabouts of the parent are not reasonably ascertainable and the parent is given notice of the termination proceedings by certified or registered mail to the last known address and such parent fails to object to the proceedings within twenty-one days of the mailing of such notice; or (iv) the whereabouts of the parent

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60 are not reasonably ascertainable and the parent is given notice of the termination proceedings through an
61 order of publication pursuant to §§ 8.01-316 and 8.01-317, and such parent fails to object to the
62 proceedings.

63 C. At the hearing held pursuant to this section, the court shall hear evidence on the petition filed and
64 shall review the foster care plan for the child filed by the local board or child welfare agency in
65 accordance with § 16.1-281.

66 D. At the conclusion of the hearing, the court shall make a finding, based upon a preponderance of
67 the evidence, whether approval of the entrustment agreement is in the best interest of the child.
68 However, if the petition seeks approval of a permanent entrustment agreement which provides for the
69 termination of all parental rights and responsibilities with respect to the child, the court shall make a
70 finding, based upon clear and convincing evidence, whether termination of parental rights is in the best
71 interest of the child. If the court makes either of these findings, the court may make any of the orders of
72 disposition permitted in a case involving an abused or neglected child pursuant to § 16.1-278.2. Any
73 such order transferring legal custody of the child shall be made in accordance with the provisions of
74 subdivision A 5 of § 16.1-278.2. This order shall include, but need not be limited to, the following
75 findings: (i) that there is no less drastic alternative to granting the requested relief; and (ii) that
76 reasonable efforts have been made to prevent removal and that continued placement in the home would
77 be contrary to the welfare of the child, if the order transfers legal custody of the child to a local board
78 of social services. *A birth parent may enter into a written post-adoption contact agreement in*
79 *accordance with the provisions of § 16.1-283.1.*

80 The effect of the court's order approving a permanent entrustment agreement is to terminate an
81 entrusting parent's residual parental rights. Any order terminating parental rights shall be accompanied
82 by an order (i) continuing or granting custody to a local board of social services or to a licensed
83 child-placing agency or (ii) granting custody or guardianship to a relative or other interested individual.
84 Such an order continuing or granting custody to a local board of social services or to a licensed
85 child-placing agency shall indicate whether that board or agency shall have the authority to place the
86 child for adoption and consent thereto. A final order terminating parental rights pursuant to this section
87 renders the approved entrustment agreement irrevocable. Such order may be appealed in accordance with
88 the provisions of § 16.1-296.

89 E. The local board or licensed child-placing agency to which authority is given to place the child for
90 adoption and consent thereto after an order terminating parental rights is entered pursuant to this section
91 shall file a written Adoption Progress Report with the juvenile court on the progress being made to
92 place the child in an adoptive home. The report shall be filed with the court every six months from the
93 date of the final order terminating parental rights until a final order of adoption is entered on behalf of
94 the child in the circuit court. At the conclusion of the hearing at which termination of parental rights is
95 ordered and authority is given to the local board or licensed child-placing agency to place the child for
96 adoption, the juvenile court shall schedule a date by which the board or agency shall file the first
97 Adoption Progress Report required by this section. A copy of the Adoption Progress Report shall be
98 sent by the court to the guardian ad litem for the child. The court may schedule a hearing on the report
99 with or without the request of a party.

100 § 16.1-277.02. Petition for relief of care and custody.

101 A. Requests for petitions for relief of the care and custody of a child shall be referred initially to the
102 local department of social services for investigation and the provision of services, if appropriate, in
103 accordance with the provisions of § 63.1-55 or Chapter 12.1 (§ 63.1-248.1 et seq.) of Title 63.1. Upon
104 the filing of a petition for relief of a child's care and custody pursuant to subdivision A 4 of § 16.1-241,
105 the court shall appoint a guardian ad litem to represent the child in accordance with the provisions of
106 § 16.1-266, and shall schedule the matter for a hearing on the petition. Such hearing on the petition may
107 include partial or final disposition of the matter. The court shall provide notice of the hearing and a
108 copy of the petition to the following, each of whom shall be a party entitled to participate in the
109 proceeding:

110 1. The child, if he is twelve years of age or older;

111 2. The guardian ad litem for the child;

112 3. The child's parents, custodian or other person standing in loco parentis to the child. No such
113 notification shall be required, however, if the judge certifies on the record that the identity of the parent
114 is not reasonably ascertainable. An affidavit of the mother that the identity of the father is not
115 reasonably ascertainable shall be sufficient evidence of this fact, provided there is no other evidence
116 before the court which would refute such an affidavit. The hearing on the petition shall be held pursuant
117 to this section although a parent fails to appear and is not represented by counsel, provided personal or
118 substituted service was made on the parent, or the court determines that such person cannot be found,
119 after reasonable effort, or in the case of a person who is without the Commonwealth, the person cannot
120 be found or his post office address cannot be ascertained after reasonable effort. However, in the case of
121 a hearing to grant a petition for permanent relief of custody and terminate a parent's residual parental

rights, notice to the parent whose rights may be affected shall be provided in accordance with the provisions of §§ 16.1-263 and 16.1-264; and

4. The local board of social services. Upon receiving notice of the hearing pursuant to this section, the local board of social services shall investigate the matter and provide services, as appropriate, in accordance with the provisions of § 63.1-55 or Chapter 12.1 of Title 63.1.

B. At the hearing, the local board of social services, the child, the child's parents, guardian, legal custodian or other person standing in loco parentis and any other family or household member of the child to whom notice was given shall have the right to confront and cross-examine all adverse witnesses and evidence and to present evidence on their own behalf.

C. At the conclusion of the hearing on the petition, the court shall make a finding, based upon a preponderance of the evidence, whether there is good cause shown for the petitioner's desire to be relieved of the child's care and custody, unless the petition seeks permanent relief of custody and termination of parental rights. If the petition seeks permanent relief of custody and termination of parental rights, the court shall make a finding, based upon clear and convincing evidence, whether termination of parental rights is in the best interest of the child. If the court makes either of these findings, the court may enter:

1. A preliminary protective order pursuant to § 16.1-253;

2. An order that requires the local board of social services to provide services to the family as required by law;

3. An order that is consistent with any of the dispositional alternatives pursuant to § 16.1-278.3; or

4. Any combination of these orders.

Any such order transferring legal custody of the child shall be made in accordance with the provisions of subdivision A 5 of § 16.1-278.2. This order shall include, but need not be limited to, the following findings: (i) that there is no less drastic alternative to granting the requested relief; and (ii) that reasonable efforts have been made to prevent removal and that continued placement in the home would be contrary to the welfare of the child, if the order transfers legal custody of the child to a local board of social services. Any order terminating residual parental rights shall be accompanied by an order continuing or granting custody to a local board of social services, to a licensed child-placing agency or the granting of custody or guardianship to a relative or other interested individual. Such an order continuing or granting custody to a local board of social services or to a licensed child-placing agency shall indicate whether that board or agency shall have the authority to place the child for adoption and consent thereto. *A birth parent may enter into a written post-adoption contact agreement in accordance with the provisions of § 16.1-283.1.*

The court shall schedule a subsequent hearing within seventy-five days of the hearing held pursuant to this section: (i) to enter a final order of disposition pursuant to § 16.1-278.3 or (ii) if the child is placed in foster care, for review of the foster care plan filed pursuant to § 16.1-281. If a party is required to be present at the subsequent hearing, and (i) is present at the hearing on the petition, the party shall be given notice of the date set for the subsequent hearing; (ii) if not present, shall be summoned as provided in § 16.1-263.

D. The local board or licensed child-placing agency to which authority is given to place the child for adoption and consent thereto after an order terminating parental rights is entered pursuant to this section shall file a written Adoption Progress Report with the juvenile court on the progress being made to place the child in an adoptive home. The report shall be filed with the court every six months from the date of the final order terminating parental rights until a final order of adoption is entered on behalf of the child in the circuit court. At the conclusion of the hearing at which termination of parental rights is ordered and authority is given to the local board or licensed child-placing agency to place the child for adoption, the juvenile court shall schedule a date by which the board or agency shall file the first Adoption Progress Report required by this section. A copy of the Adoption Progress Report shall be sent by the court to the guardian ad litem for the child. The court may schedule a hearing on the report with or without the request of a party.

§ 16.1-278.3. Relief of care and custody.

A. Within seventy-five days of a hearing on a petition for relief of the care and custody of any child pursuant to § 16.1-277.02 at which the court found (i) good cause for the petitioner's desire to be relieved of a child's care and custody or (ii) that permanent relief of custody and termination of residual parental rights is in the best interest of the child, a dispositional hearing shall be held, if a final order disposing of the matter was not entered at the conclusion of the hearing on the petition held pursuant to § 16.1-277.02.

B. Notice of the dispositional hearing shall be provided to the local department of social services, the guardian ad litem for the child, the child if he is at least twelve years of age, and the child's parents, custodian or other person standing in loco parentis. However, if a parent's residual parental rights were terminated at the hearing on the petition held pursuant to § 16.1-277.02, no such notice of the hearing

183 pursuant to this section shall be provided to the parent. The hearing shall be held and a dispositional
184 order may be entered, although a parent, guardian, legal custodian or person standing in loco parentis
185 fails to appear and is not represented by counsel, provided personal or substituted service was made on
186 the person, or the court determines that the person cannot be found, after reasonable effort, or in the
187 case of a person who is without the Commonwealth, the person cannot be found or his post office
188 address cannot be ascertained after reasonable effort. However, in the case of a hearing to grant a
189 petition for permanent relief of custody and terminate a parent's residual parental rights, notice to the
190 parent whose rights may be affected shall be provided in accordance with the provisions of §§ 16.1-263
191 and 16.1-264.

192 C. The court may make any of the orders of disposition permitted in a case involving an abused or
193 neglected child pursuant to § 16.1-278.2. Any preliminary protective orders entered on behalf of the
194 child shall be reviewed at the dispositional hearing and may be incorporated, as appropriate, in the
195 dispositional order. If the child has been placed in foster care, at the dispositional hearing the court shall
196 review the foster care plan for the child filed by the local board of social services or child welfare
197 agency in accordance with § 16.1-281.

198 D. If the parent or other custodian seeks to be relieved permanently of the care and custody of any
199 child and the court finds by clear and convincing evidence that termination of the parent's parental rights
200 is in the best interest of the child, the court may terminate the parental rights of that parent. If the
201 remaining parent has not petitioned for permanent relief of the care and custody of the child, the
202 remaining parent's parental rights may be terminated in accordance with the provisions of § 16.1-283.
203 Any order terminating parental rights shall be accompanied by an order (i) continuing or granting
204 custody to a local board of social services or to a licensed child-placing agency, or (ii) granting custody
205 or guardianship to a relative or other interested individual. Such an order continuing or granting custody
206 to a local board of social services or to a licensed child-placing agency shall indicate whether that board
207 or agency shall have the authority to place the child for adoption and consent thereto. Proceedings under
208 this section shall be advanced on the docket so as to provide for their earliest practicable disposition. A
209 *birth parent may enter into a written post-adoption contact agreement in accordance with the provisions*
210 *of § 16.1-283.1.*

211 E. The local board or licensed child-placing agency to which authority is given to place the child for
212 adoption and consent thereto after an order terminating parental rights is entered pursuant to this section
213 shall file a written Adoption Progress Report with the juvenile court on the progress being made to
214 place the child in an adoptive home. The report shall be filed with the court every six months from the
215 date of the final order terminating parental rights until a final order of adoption is entered on behalf of
216 the child in the circuit court. At the conclusion of the hearing at which termination of parental rights is
217 ordered and authority is given to the local board or licensed child-placing agency to place the child for
218 adoption, the juvenile court shall schedule a date by which the board or agency shall file the first
219 Adoption Progress Report required by this section. A copy of the Adoption Progress Report shall be
220 sent by the court to the guardian ad litem for the child. The court may schedule a hearing on the report
221 with or without the request of a party.

222 F. A dispositional order entered pursuant to this section is a final order from which an appeal may
223 be taken in accordance with § 16.1-296.

224 *§ 16.1-283.1. Authority to enter into voluntary post-adoption contact agreement.*

225 *In any case in which a child has been placed in foster care as a result of court commitment, an*
226 *entrustment agreement entered into by the parent or parents or other voluntary relinquishment by the*
227 *parent or parents, the child's birth parent may enter into a written post-adoption contact agreement with*
228 *the agency having authority to place the child for adoption or with the pre-adoptive parents, if*
229 *identified. Any such post-adoption contact agreement shall be mediated by a mediator who is certified*
230 *pursuant to guidelines promulgated by the Judicial Council of Virginia in accordance with the*
231 *provisions of § 8.01-576.8. The agreement entered into by the birth parent and the agency having*
232 *authority to place the child for adoption shall evidence the agency's agreement to ask as yet unidentified*
233 *pre-adoptive parents to consider the birth parent's request for the post-adoption sharing of information*
234 *specified in the agreement. The agreement entered into by the birth parent and the pre-adoptive parents,*
235 *if identified, shall provide for the post-adoption sharing of information as agreed by the birth parent*
236 *and the pre-adoptive parents. The information that is the subject of a post-adoption contact agreement*
237 *may include, but is not limited to, photographs of the child, and information about the child's education,*
238 *health and welfare.*

239 *Any written agreement between the birth parent and the pre-adoptive parents shall be filed by the*
240 *petitioner for adoption, if the petitioner for adoption is a party to the written agreement, with other*
241 *documents filed in the circuit court having jurisdiction over the child's adoption. Any written agreement*
242 *between the birth parent and the agency having authority to place the child for adoption that evidences*
243 *the agency's agreement to ask as yet unidentified pre-adoptive parents to consider the birth parent's*
244 *request for the post-adoption sharing of specified information shall be filed by the petitioner for*

245 adoption with other documents filed in the circuit court having jurisdiction over the child's adoption, if
246 the pre-adoptive parents, once identified, agree to the post-adoption sharing of information with the
247 birth parent as specified in the birth parent's agreement with the agency. A post-adoption contact
248 agreement entered into pursuant to this section shall not be enforceable in any court and in no event
249 shall failure to enter into a post-adoption contact agreement with identified adoptive parents after
250 authority to consent to the child's adoption is granted to a local board of public welfare or social
251 services or a child welfare agency, or failure to comply with a post-adoption contact agreement affect
252 the validity of (i) the consent to the adoption; (ii) the voluntary relinquishment of parental rights; (iii)
253 the voluntary or involuntary termination of parental rights; or (iv) the finality of the adoption.

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