

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact §§ 16.1-281, 16.1-282.1 and 16.1-283 of the Code of Virginia, relating to*
3 *termination of parental rights.*

4
5 Approved

[S 446]

6 **Be it enacted by the General Assembly of Virginia:**

7 **1. That §§ 16.1-281, 16.1-282.1 and 16.1-283 of the Code of Virginia are amended and reenacted as**
8 **follows:**

9 § 16.1-281. Foster care plan.

10 A. In any case in which (i) a local board of social services or a public agency designated by the
11 community policy and management team places a child through an agreement with the parents or
12 guardians where legal custody remains with the parents or guardian, or (ii) legal custody of a child is
13 given to a local board of public welfare or social services or a child welfare agency, the department of
14 public welfare or social services, the public agency designated or child welfare agency or the family
15 assessment and planning team established pursuant to § 2.1-753 shall prepare a foster care plan for such
16 child, as described hereinafter. The individual family service plan developed by the family assessment
17 and planning team pursuant to § 2.1-754 may be accepted by the court as the foster care plan if it meets
18 the requirements of this section. The representatives of such department, agency, or team shall consult
19 with the child's parents, except when parental rights have been terminated, and any other person or
20 persons standing in loco parentis at the time the board or child welfare agency obtained custody or the
21 board or the public agency placed the child, concerning the matters which should be included in such
22 plan. The department, public agency, child welfare agency or team shall file the plan with the juvenile
23 and domestic relations district court within sixty days following the transfer of custody or the board's or
24 public agency's placement of the child unless the court, for good cause shown, allows an extension of
25 time, which shall not exceed an additional sixty days. A foster care plan need not be prepared if the
26 child is returned to his prior family or placed in an adoptive home within sixty days following transfer
27 of custody to the board or agency or the board's or public agency's placement of the child.

28 B. The foster care plan shall describe (i) the programs, care, services and other support which will be
29 offered to the child and his parents and other prior custodians, (ii) the participation and conduct which
30 will be sought from the child's parents and other prior custodians, (iii) the visitation and other contacts
31 which will be permitted between the child and his parents and other prior custodians, (iv) the nature of
32 the placement or placements which will be provided for the child, and (v) in writing and where
33 appropriate for children age sixteen or over, the programs and services which will help the child prepare
34 for the transition from foster care to independent living. If consistent with the child's health and safety,
35 the plan shall be designed to support reasonable efforts which lead to the return of the child to his
36 parents or other prior custodians within the shortest practicable time which shall be specified in the plan.
37 The child's health and safety shall be the paramount concern of the court and the agency throughout the
38 placement, case planning, service provision and review process.

39 If the department, child welfare agency or team determines that it is not reasonably likely that the
40 child can be returned to his prior family within a practicable time, consistent with the best interests of
41 the child, in a separate section of the plan the department, child welfare agency or team shall (i) include
42 a full description of the reasons for this conclusion, (ii) determine the opportunities for placing the child
43 with a relative or in an adoptive home, (iii) design the plan to lead to the child's successful placement
44 with a relative if a subsequent transfer of custody to the relative is planned, or in an adoptive home
45 within the shortest practicable time, and if neither of such placements is feasible, (iv) explain why
46 independent living for a child sixteen years of age or older, permanent foster care or continued foster
47 care is the plan for the child. "Independent living" includes the services and programs needed to assist
48 the child in making a transition from foster care to self-sufficiency. The department or agency may
49 include with such proposed plan a proper pleading seeking the termination of residual parental rights
50 pursuant to § 16.1-283.

51 The local board or other child welfare agency having custody of the child shall not be required by
52 the court to make reasonable efforts to reunite the child with a parent if the court finds that (i) *the*
53 *parent is incarcerated in a local penal facility or a penal facility of the Commonwealth of Virginia or of*
54 *another state or of the United States or a foreign country based on any number of misdemeanor or*
55 *felony convictions or both, before or after the child's placement in foster care, and the length of the*
56 *parent's incarceration as a result of the sentence or sentences imposed has rendered or will render the*

parent unable to have the care and custody of the child for twenty consecutive months or longer, (ii) the residual parental rights of the parent regarding a sibling of the child have previously been involuntarily terminated, ~~(ii)~~ (iii) the parent has been convicted of an offense under the laws of this Commonwealth or a substantially similar law of any other state, the United States or any foreign jurisdiction which constitutes murder or voluntary manslaughter, or a felony attempt, conspiracy or solicitation to commit any such offense, if the victim of the offense was a child of the parent, a child with whom the parent resided at the time such offense occurred or the other parent of the child, or ~~(iii)~~ (iv) the parent has been convicted of an offense under the laws of this Commonwealth or a substantially similar law of any other state, the United States or any foreign jurisdiction which constitutes felony assault resulting in serious bodily injury or felony bodily wounding resulting in serious bodily injury or felony sexual assault, if the victim of the offense was a child of the parent or a child with whom the parent resided at the time of such offense. As used in this section "serious bodily injury" means bodily injury which involves substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ or mental faculty. Within thirty days of making a determination that reasonable efforts to reunite the child with the parents are not required, the court shall hold a permanency planning hearing pursuant to § 16.1-282.1.

C. A copy of the entire foster care plan shall be sent by the court to the attorney for the child, the attorney for the child's parents or for any other person standing in loco parentis at the time the board or child welfare agency obtained custody or the board or public agency placed the child, to the parents or other person standing in loco parentis, and such other persons as appear to the court to have a proper interest in the plan. However, a copy of the plan shall not be sent to a parent whose parental rights regarding the child have been terminated. A copy of the plan, excluding the section of the plan describing the reasons why the child cannot be returned home and the alternative chosen, shall be sent by the court to the foster parents. A hearing shall be held for the purpose of reviewing and approving the foster care plan. The hearing shall be held within seventy-five days of (i) the child's initial foster care placement, if the child was placed through an agreement between the parents or guardians and the local department of social services, other public agency or a child welfare agency, (ii) the original preliminary removal order hearing, if the child was placed in foster care pursuant to § 16.1-252, or (iii) the dispositional hearing at which the child was placed in foster care and an order was entered pursuant to §§ 16.1-278.2, 16.1-278.4, 16.1-278.5, 16.1-278.6 or § 16.1-278.8. If the judge makes any revision in any part of the foster care plan, a copy of the changes shall be sent by the court to all persons who received a copy of the original of that part of the plan.

D. The court in which the foster care plan is filed shall be notified immediately if the child is returned to his parents or other persons standing in loco parentis at the time the board or agency obtained custody or the board or public agency placed the child.

E. Nothing in this section shall limit the authority of the juvenile judge or the staff of the juvenile court, upon order of the judge, to review the status of children in the custody of local boards of ~~public welfare~~ or social services or placed by local boards of social services or the public agency designated by the community policy and management team on its own motion. The court shall appoint an attorney to act as guardian ad litem to represent the child any time a hearing is held to review the foster care plan filed for the child or to review the child's status in foster care.

F. At the conclusion of the hearing at which the foster care plan is reviewed, the court shall schedule a foster care review hearing to be held within six months in accordance with § 16.1-282. Parties who are present at the hearing pursuant to this section shall be given notice of the date set for the foster care review hearing and parties who are not present shall be summoned as provided in § 16.1-263.

§ 16.1-282.1. Permanency planning hearing for children in foster care.

A. In the case of a child who has not been returned to his prior family or placed in an adoptive home, is not receiving services to achieve independent living status or is not in permanent foster care within ten months of (i) the court's approval of the entrustment agreement pursuant to § 16.1-277.01 or (ii) the dispositional hearing at which the foster care plan was reviewed pursuant to § 16.1-281, the board, public agency or child welfare agency shall file a petition to (i) transfer the custody of the child to his prior family, (ii) transfer custody of the child to a relative other than the child's prior family or dissolve the board's or public agency's placement agreement and return the child to his prior family, (iii) terminate residual parental rights pursuant to § 16.1-283, (iv) direct the board or agency to provide the child with services to achieve independent living status, if the child has attained the age of sixteen years, (v) place the child in permanent foster care, (vi) continue custody with the board or agency or placement with the board or public agency through a parental agreement or (vii) transfer custody to the board or child welfare agency from the parents or guardian of a child who has been in foster care through an agreement where the parents or guardian retains custody.

B. The board, public agency or child welfare agency shall petition for alternative (vi) or (vii) of subsection A only if the board, public agency or child welfare agency has thoroughly investigated the

feasibility of the alternatives listed in clauses (i) through (v) of subsection A and determined that none of those alternatives is in the best interest of the child. If the board or agency petitions for alternatives (vi) or (vii), alternative (vi) or (vii) may be approved by the court for a maximum period of six months. The board or agency shall also file a foster care plan which (i) changes the permanent plan goal for the child to one of the placement alternatives specified in clauses (i) through (v) of subsection A; (ii) includes provisions for accomplishing the new permanent plan goal within six months; and (iii) summarizes the investigation conducted of the placement alternatives listed in clauses (i) through (v) of subsection A and why they are not in the best interest of the child.

Upon receipt of the petition, if a permanency planning hearing has not already been scheduled, the court shall schedule such a hearing to be held within thirty days. The permanency planning hearing shall be held within eleven months of the dispositional hearing at which the foster care plan was reviewed pursuant to § 16.1-281. The provisions of subdivisions 1 through 6 of subsection B of § 16.1-282 shall apply to the filing of such petitions. The procedures of subsection C of § 16.1-282 and the provisions of subsection E of § 16.1-282 shall apply to proceedings under this section.

C. Before approving alternative (vi) or (vii) of subsection A as the plan for the child, the court shall find:

1. When returning home remains the plan for the child, that the parent has made marked progress toward reunification with the child, the parent has maintained a close and positive relationship with the child, and the child is likely to return home within the near future, although it is premature to set an exact date for return at the time of this hearing; or

2. When returning home is not the plan for the child, that marked progress is being made to achieve the permanent goal identified by the board, public agency or child welfare agency and that it is premature to set an exact date for accomplishing the goal at the time of this hearing.

At the conclusion of the permanency planning hearing, if alternative (vi) or (vii) is the interim plan, the court shall enter an order that states whether reasonable efforts have been made to reunite the child with his or her family, if returning home remains the plan for the child; or whether reasonable efforts have been made to achieve the permanent goal identified by the board, when returning home is not the plan for the child. The court shall schedule a hearing to be held within six months to determine that the new permanent goal is accomplished and to enter an order consistent with alternative (i), (ii), (iii), (iv) or (v). All parties present at the initial permanency planning hearing shall be given notice of the date scheduled for the second permanency planning hearing. Parties not present shall be summoned to appear as provided in § 16.1-263. Otherwise, this subsection shall govern the scheduling and notice for such hearings.

D. The court shall review a foster care plan for (i) any child who is receiving services to achieve independent living status but who remains in the custody of the board, public agency or child welfare agency and (ii) any child for whom a termination of parental rights petition has been filed or for whom termination of parental rights has been ordered, but who has not been placed for adoption, every twelve months from the date of the permanency planning hearing held pursuant to this section, so long as the child remains in the custody of the board, public agency or child welfare agency. The board, public agency or child welfare agency shall file such petitions for review pursuant to the provisions of § 16.1-282. The board or agency shall file a written Adoption Progress Report with the juvenile court pursuant to §§ 16.1-277.01, 16.1-277.02 or § 16.1-278.3, or ~~subsection F of § 16.1-283~~, if applicable, with the petition for review required pursuant to this section. The court order entered at the conclusion of the hearing held on such petition for review shall state whether reasonable efforts were made to place the child in a timely manner in accordance with the permanency plan and to complete the steps necessary to finalize the permanent placement of the child.

§ 16.1-283. Termination of residual parental rights.

A. The residual parental rights of a parent or parents may be terminated by the court as hereinafter provided in a separate proceeding if the petition specifically requests such relief. No petition seeking termination of residual parental rights shall be accepted by the court prior to the filing of a foster care plan, pursuant to § 16.1-281, which documents termination of residual parental rights as being in the best interests of the child. The court may hear and adjudicate a petition for termination of parental rights in the same proceeding in which the court has approved a foster care plan which documents that termination is in the best interests of the child. The court may terminate the residual parental rights of one parent without affecting the rights of the other parent. The local board of social services or a licensed child-placing agency need not have identified an available and eligible family to adopt a child for whom termination of parental rights is being sought prior to the entry of an order terminating parental rights.

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. However, in such cases the court

shall give a consideration to granting custody to relatives of the child, including grandparents. 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.

The summons shall be served upon the parent or parents and the other parties specified in § 16.1-263. Written notice of the hearing shall also be provided to the foster parents of the child, a relative providing care for the child, and any preadoptive parents for the child informing them that they may appear as witnesses at the hearing to give testimony and otherwise participate in the proceeding. The persons entitled to notice and an opportunity to be heard need not be made parties to the proceedings. 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.

B. The residual parental rights of a parent or parents of a child found by the court to be neglected or abused and placed in foster care as a result of (i) court commitment, (ii) an entrustment agreement entered into by the parent or parents or (iii) other voluntary relinquishment by the parent or parents may be terminated if the court finds, based upon clear and convincing evidence, that it is in the best interests of the child and that:

1. The neglect or abuse suffered by such child presented a serious and substantial threat to his life, health or development; and

2. It is not reasonably likely that the conditions which resulted in such neglect or abuse can be substantially corrected or eliminated so as to allow the child's safe return to his parent or parents within a reasonable period of time. In making this determination, the court shall take into consideration the efforts made to rehabilitate the parent or parents by any public or private social, medical, mental health or other rehabilitative agencies prior to the child's initial placement in foster care.

Proof of any of the following shall constitute prima facie evidence of the conditions set forth in subdivision B 2 hereof:

a. The parent or parents are suffering from a mental or emotional illness or mental deficiency of such severity that there is no reasonable expectation that such parent will be able to undertake responsibility for the care needed by the child in accordance with his age and stage of development;

b. The parent or parents have habitually abused or are addicted to intoxicating liquors, narcotics or other dangerous drugs to the extent that proper parental ability has been seriously impaired and the parent, without good cause, has not responded to or followed through with recommended and available treatment which could have improved the capacity for adequate parental functioning; or

c. The parent or parents, without good cause, have not responded to or followed through with appropriate, available and reasonable rehabilitative efforts on the part of social, medical, mental health or other rehabilitative agencies designed to reduce, eliminate or prevent the neglect or abuse of the child.

C. The residual parental rights of a parent or parents of a child placed in foster care as a result of court commitment, an entrustment agreement entered into by the parent or parents or other voluntary relinquishment by the parent or parents may be terminated if the court finds, based upon clear and convincing evidence, that it is in the best interests of the child and that:

1. The parent or parents have, without good cause, failed to maintain continuing contact with and to provide or substantially plan for the future of the child for a period of six months after the child's placement in foster care notwithstanding the reasonable and appropriate efforts of social, medical, mental health or other rehabilitative agencies to communicate with the parent or parents and to strengthen the parent-child relationship. Proof that the parent or parents have failed without good cause to communicate on a continuing and planned basis with the child for a period of six months shall constitute prima facie evidence of this condition; or

2. The parent or parents, without good cause, have been unwilling or unable within a reasonable period of time not to exceed twelve months from the date the child was placed in foster care to remedy substantially the conditions which led to or required continuation of the child's foster care placement, notwithstanding the reasonable and appropriate efforts of social, medical, mental health or other rehabilitative agencies to such end. Proof that the parent or parents, without good cause, have failed or been unable to make substantial progress towards elimination of the conditions which led to or required continuation of the child's foster care placement in accordance with their obligations under and within the time limits or goals set forth in a foster care plan filed with the court or any other plan jointly designed and agreed to by the parent or parents and a public or private social, medical, mental health or other rehabilitative agency shall constitute prima facie evidence of this condition. The court shall take into consideration the prior efforts of such agencies to rehabilitate the parent or parents prior to the placement of the child in foster care.

D. The residual parental rights of a parent or parents of a child found by the court to be neglected or abused upon the ground of abandonment may be terminated if the court finds, based upon clear and convincing evidence, that it is in the best interests of the child and that:

1. The child was abandoned under such circumstances that either the identity or the whereabouts of the parent or parents cannot be determined; and

2. The child's parent or parents, guardian or relatives have not come forward to identify such child and claim a relationship to the child within three months following the issuance of an order by the court placing the child in foster care; and

3. Diligent efforts have been made to locate the child's parent or parents without avail.

E. The residual parental rights of a parent or parents of a child who is in the custody of a local board or licensed child-placing agency may be terminated by the court if the court finds, based upon clear and convincing evidence, that it is in the best interests of the child and that (i) the residual parental rights of the parent regarding a sibling of the child have previously been involuntarily terminated, (ii) the parent has been convicted of an offense under the laws of this Commonwealth or a substantially similar law of any other state, the United States or any foreign jurisdiction which constitutes murder or voluntary manslaughter, or a felony attempt, conspiracy or solicitation to commit any such offense, if the victim of the offense was a child of the parent, a child with whom the parent resided at the time such offense occurred or the other parent of the child, or (iii) the parent has been convicted of an offense under the laws of this Commonwealth or a substantially similar law of any other state, the United States or any foreign jurisdiction which constitutes felony assault resulting in serious bodily injury or felony bodily wounding resulting in serious bodily injury or felony sexual assault, if the victim of the offense was a child of the parent or a child with whom the parent resided at the time of such offense. As used in this section, "serious bodily injury" means bodily injury which involves substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ or mental faculty. The local board or other child welfare agency having custody of the child shall not be required by the court to make reasonable efforts to reunite the child with a parent who has been convicted of one of the felonies specified in this subsection.

F. The residual parental rights of a parent or parents of a child placed in foster care as a result of court commitment, an entrustment agreement entered into by the parent or parents or other voluntary relinquishment by the parent or parents may be terminated if the court finds, based upon clear and convincing evidence, that it is in the best interests of the child and that the parent is incarcerated in a local penal facility or a penal facility of the Commonwealth of Virginia or of another state or of the United States or a foreign country based on any number of misdemeanor or felony convictions or both, before or after the child's placement in foster care, and the length of the parent's incarceration as a result of the sentence or sentences imposed has rendered or will render the parent unable to have the care and custody of the child for twenty consecutive months or longer. In determining the best interests of the child, the court shall make findings concerning the following:

- 1. The child's age and attitude toward family reunification;*
- 2. The parent's relationship with the child and demonstrated commitment to maintaining a relationship with the child during incarceration;*
- 3. The extent to which the parent has developed a plan for alternative care of the child during the parent's incarceration, which is in the best interest of the child without termination of parental rights;*
- 4. The parent's participation in available rehabilitative programs during incarceration;*
- 5. Whether the child can safely be returned home after the parent's release, considering prior abuse or neglect, the nature of the crime that resulted in the parent's incarceration and the parent's ability to parent; and*

6. Such other factors as the court deems necessary and proper to the determination.

F. G. 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 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 written 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.

G. H. Notwithstanding any other provisions of this section, residual parental rights shall not be terminated if it is established that the child, if he is fourteen years of age or older or otherwise of an age of discretion as determined by the court, objects to such termination.