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SENATE BILL NO. 447

Offered January 21, 2000

A *BILL to amend and reenact §§ 16.1-251, 16.1-252, 16.1-277.01, 16.1-277.02, 16.1-278.2, 16.1-278.3, 16.1-281, 16.1-282, 16.1-282.1, and 16.1-283 of the Code of Virginia, relating to placement of foster care children.*

Patrons—Mims, Edwards, Forbes, Howell, Lucas, Puller, Quayle and Reynolds; Delegates: Almand, Cantor, Howell, Jones, J.C., Moran and Rust

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-251, 16.1-252, 16.1-277.01, 16.1-277.02, 16.1-278.2, 16.1-278.3, 16.1-281, 16.1-282, 16.1-282.1, and 16.1-283 of the Code of Virginia are amended and reenacted as follows:

§ 16.1-251. Emergency removal order.

A. A child may be taken into immediate custody and placed in shelter care pursuant to an emergency removal order in cases in which the child is alleged to have been abused or neglected. Such order may be issued ex parte by the court upon a petition supported by an affidavit or by sworn testimony in person before the judge or intake officer which establishes that:

1. The child would be subjected to an imminent threat to life or health to the extent that severe or irremediable injury would be likely to result if the child were returned to or left in the custody of his parents, guardian, legal custodian or other person standing in loco parentis pending a final hearing on the petition.

2. Reasonable efforts have been made to prevent removal of the child from his home and there are no alternatives less drastic than removal of the child from his home which could reasonably protect the child's life or health pending a final hearing on the petition. The alternatives less drastic than removal may include but not be limited to the provision of medical, educational, psychiatric, psychological, homemaking or other similar services to the child or family or the issuance of a preliminary protective order pursuant to § 16.1-253.

When a child is removed from his home and there is no reasonable opportunity to provide preventive services, reasonable efforts to prevent removal shall be deemed to have been made.

B. Whenever a child is taken into immediate custody pursuant to an emergency removal order, a hearing shall be held in accordance with § 16.1-252 as soon as practicable, but in no event later than five business days after the removal of the child.

C. In the emergency removal order the court shall give consideration to temporary placement of the child with ~~suitable relatives, including grandparents~~ *a relative or other interested individual, including grandparents, under the supervision of the local department of social services, until such time as the hearing in accordance with § 16.1-252 is held.*

D. ~~A person~~ *The local department of social services* having legal custody of a child as defined in § 16.1-228 (i) shall not be required to comply with the requirements of this section in order to redetermine where and with whom the child shall live, notwithstanding that the child had been placed with a natural parent.

§ 16.1-252. Preliminary removal order; hearing.

A. A preliminary removal order in cases in which a child is alleged to have been abused or neglected may be issued by the court after a hearing wherein the court finds that reasonable efforts have been made to prevent removal of the child from his home. The hearing shall be in the nature of a preliminary hearing rather than a final determination of custody.

B. Prior to the removal hearing, notice of the hearing shall be given at least twenty-four hours in advance of the hearing to the guardian ad litem for the child, to the parents, guardian, legal custodian or other person standing in loco parentis of the child and to the child if he or she is twelve years of age or older. If notice to the parents, guardian, legal custodian or other person standing in loco parentis cannot be given despite diligent efforts to do so, the hearing shall be held nonetheless, and the parents, guardian, legal custodian or other person standing in loco parentis shall be afforded a later hearing on their motion regarding a continuation of the summary removal order. The notice provided herein shall include (i) the time, date and place for the hearing; (ii) a specific statement of the factual circumstances which allegedly necessitate removal of the child; and (iii) notice that child support will be considered if a determination is made that the child must be removed from the home.

C. All parties to the hearing shall be informed of their right to counsel pursuant to § 16.1-266.

D. At the removal hearing the child and his parent, guardian, legal custodian or other person standing

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60 in loco parentis shall have the right to confront and cross-examine all adverse witnesses and evidence
61 and to present evidence on their own behalf. If the child was fourteen years of age or under on the date
62 of the alleged offense and is sixteen or under at the time of the hearing, the child's attorney or guardian
63 ad litem, or if the child has been committed to the custody of the Department of Social Services, the
64 local department of social services, may apply for an order from the court that the child's testimony be
65 taken in a room outside the courtroom and be televised by two-way closed-circuit television. The
66 provisions of § 63.1-248.13:1 shall apply, mutatis mutandis, to the use of two-way closed-circuit
67 television except that the person seeking the order shall apply for the order at least forty-eight hours
68 before the hearing, unless the court for good cause shown allows the application to be made at a later
69 time.

70 E. In order for a preliminary order to issue or for an existing order to be continued, the petitioning
71 party or agency must prove:

72 1. The child would be subjected to an imminent threat to life or health to the extent that severe or
73 irremediable injury would be likely to result if the child were returned to or left in the custody of his
74 parents, guardian, legal custodian or other person standing in loco parentis pending a final hearing on
75 the petition; and

76 2. Reasonable efforts have been made to prevent removal of the child from his home and there are
77 no alternatives less drastic than removal of the child from his home which could reasonably and
78 adequately protect the child's life or health pending a final hearing on the petition. The alternatives less
79 drastic than removal may include but not be limited to the provision of medical, educational, psychiatric,
80 psychological, homemaking or other similar services to the child or family or the issuance of a
81 preliminary protective order pursuant to § 16.1-253.

82 When a child is removed from his home and there is no reasonable opportunity to provide preventive
83 services, reasonable efforts to prevent removal shall be deemed to have been made.

84 F. If the court determines that pursuant to subsection E hereof the removal of the child is proper, the
85 court shall:

86 1. Order that the child be placed in the temporary care and custody of a suitable person, *subject to*
87 *the provisions of F1 of this section and under the supervision of the local department of social services,*
88 with consideration being given to placement in the temporary care and custody of a ~~nearest kin,~~
89 ~~including grandparents, or personal friend~~ *relative or other interested individual, including grandparents,*
90 *until such time as the court enters an order of disposition pursuant to § 16.1-278.2, or, if such*
91 *placement is not available, in the care and custody of a suitable agency;*

92 2. Order that reasonable visitation be allowed between the child and his parents, guardian, legal
93 custodian or other person standing in loco parentis, if such visitation would not endanger the child's life
94 or health; and

95 3. Order that the parent or other legally obligated person pay child support pursuant to § 16.1-290.

96 In addition, the court may enter a preliminary protective order pursuant to § 16.1-253 imposing
97 requirements and conditions as specified in that section which the court deems appropriate for protection
98 of the welfare of the child.

99 *F1. Prior to the entry of an order pursuant to subsection F of this section transferring temporary*
100 *custody of the child to a relative or other interested individual, including grandparents, the court shall*
101 *consider whether the relative or other interested individual is one who (i) is willing and qualified to*
102 *receive and care for the child; (ii) is willing to have a positive, continuous relationship with the child;*
103 *and (iii) is willing and has the ability to protect the child from abuse and neglect. The court's order*
104 *transferring temporary custody to a relative or other interested individual should provide for compliance*
105 *with any preliminary protective order entered on behalf of the child in accordance with the provisions*
106 *of § 16.1-253; initiation and completion of the investigation as directed by the court and court review of*
107 *the child's placement required in accordance with the provisions of § 16.1-278.2; and, as appropriate,*
108 *ongoing provision of social services to the child and the temporary custodian.*

109 G. At the conclusion of the preliminary removal order hearing, the court shall determine whether the
110 allegations of abuse or neglect have been proven by a preponderance of the evidence. Any finding of
111 abuse or neglect shall be stated in the court order. However, if, before such a finding is made, a person
112 responsible for the care and custody of the child, the child's guardian ad litem or the local department of
113 social services objects to a finding being made at the hearing, the court shall schedule an adjudicatory
114 hearing to be held within thirty days of the date of the initial preliminary removal hearing. The
115 adjudicatory hearing shall be held to determine whether the allegations of abuse and neglect have been
116 proven by a preponderance of the evidence. Parties who are present at the preliminary removal order
117 hearing shall be given notice of the date set for the adjudicatory hearing and parties who are not present
118 shall be summoned as provided in § 16.1-263. The hearing shall be held and an order may be entered,
119 although a party to the preliminary removal order hearing fails to appear and is not represented by
120 counsel, provided personal or substituted service was made on the person, or the court determines that
121 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.

The preliminary removal order and any preliminary protective order issued shall remain in full force and effect pending the adjudicatory hearing.

H. If the preliminary removal order includes a finding of abuse or neglect and the child is removed from his home or a preliminary protective order is issued, a dispositional hearing shall be held pursuant to § 16.1-278.2. The dispositional hearing shall be scheduled at the time of the preliminary removal order hearing and shall be held within seventy-five days of the preliminary removal order hearing. If an adjudicatory hearing is requested pursuant to subsection G, the dispositional hearing shall nonetheless be scheduled at the initial preliminary removal order hearing. All parties present at the preliminary removal order hearing shall be given notice of the date scheduled for the dispositional hearing; parties who are not present shall be summoned to appear as provided in § 16.1-263.

I. ~~A person~~ *The local department of social services* having legal custody of a child as defined in § 16.1-228 (i) shall not be required to comply with the requirements of this section in order to redetermine where and with whom the child shall live, notwithstanding that the child had been placed with a natural parent.

J. Violation of any order issued pursuant to this section shall constitute contempt of court.

§ 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 *to be held as follows:* within forty-five days of the filing of ~~the~~ *a petition pursuant to subsection A1, A2 or A3 of this section, except where an order of publication has been ordered by the court, in which case the hearing shall be held within seventy-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

183 with notice of the termination proceeding pursuant to § 8.01-296 or § 8.01-320; (iii) the whereabouts of
184 the parent are not reasonably ascertainable and the parent is given notice of the termination proceedings
185 by certified or registered mail to the last known address and such parent fails to object to the
186 proceedings within twenty-one days of the mailing of such notice; or (iv) the whereabouts of the parent
187 are not reasonably ascertainable and the parent is given notice of the termination proceedings through an
188 order of publication pursuant to §§ 8.01-316 and 8.01-317, and such parent fails to object to the
189 proceedings.

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

193 D. At the conclusion of the hearing, the court shall make a finding, based upon a preponderance of
194 the evidence, whether approval of the entrustment agreement is in the best interest of the child.
195 However, if the petition seeks approval of a permanent entrustment agreement which provides for the
196 termination of all parental rights and responsibilities with respect to the child, the court shall make a
197 finding, based upon clear and convincing evidence, whether termination of parental rights is in the best
198 interest of the child. If the court makes either of these findings, the court may make any of the orders of
199 disposition permitted in a case involving an abused or neglected child pursuant to § 16.1-278.2. Any
200 such order transferring legal custody of the child shall be made in accordance with the provisions of
201 subdivision A 5 of § 16.1-278.2 *and shall be subject to the provisions of subsection D1 of this section.*
202 This order shall include, but need not be limited to, the following findings: (i) that there is no less
203 drastic alternative to granting the requested relief; and (ii) that reasonable efforts have been made to
204 prevent removal and that continued placement in the home would be contrary to the welfare of the
205 child, if the order transfers legal custody of the child to a local board of social services.

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

215 *D1. Any order transferring custody of the child to a relative or other interested individual pursuant*
216 *to subsection D of this section shall be entered only upon a finding, based upon a preponderance of the*
217 *evidence, that the relative or other interested individual is one who (i) after an investigation as directed*
218 *by the court, is found by the court to be willing and qualified to receive and care for the child; (ii) is*
219 *willing to have a positive, continuous relationship with the child; (iii) is committed to providing a*
220 *permanent, suitable home for the child; and (iv) is willing and has the ability to protect the child from*
221 *abuse and neglect; and the order shall so state. The court's order transferring custody to a relative or*
222 *other interested individual should further provide for, as appropriate, any terms and conditions which*
223 *would promote the child's interest and welfare; ongoing provision of social services to the child and the*
224 *child's custodian; and court review of the child's placement.*

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

236 § 16.1-277.02. Petition for relief of care and custody.

237 A. Requests for petitions for relief of the care and custody of a child shall be referred initially to the
238 local department of social services for investigation and the provision of services, if appropriate, in
239 accordance with the provisions of § 63.1-55 or Chapter 12.1 (§ 63.1-248.1 et seq.) of Title 63.1. Upon
240 the filing of a petition for relief of a child's care and custody pursuant to subdivision A 4 of § 16.1-241,
241 the court shall appoint a guardian ad litem to represent the child in accordance with the provisions of
242 § 16.1-266, and shall schedule the matter for a hearing on the petition. Such hearing on the petition may
243 include partial or final disposition of the matter. The court shall provide notice of the hearing and a
244 copy of the petition to the following, each of whom shall be a party entitled to participate in the

proceeding:

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

2. The guardian ad litem for the child;

3. The child's parents, 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 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 on the petition shall be held pursuant to this section although a parent fails to appear and is not represented by counsel, provided personal or substituted service was made on the parent, 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, in the case of 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 *and shall be subject to the provisions of subsection C1 of this section.* 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.

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.

C1. Any order transferring temporary custody of the child to a relative or other interested individual pursuant to subsection C of this section shall be entered only upon a finding, based upon a preponderance of the evidence, that the relative or other interested individual is one who (i) is found by the court to be willing and qualified to receive and care for the child; (ii) is willing to have a positive, continuous relationship with the child; and (iii) is willing and has the ability to protect the child from abuse and neglect. The court's order transferring temporary custody to a relative or other interested individual should further provide for compliance with any preliminary protective order entered on behalf of the child in accordance with the provisions of § 16.1-253; and, as appropriate, ongoing provision of social services to the child and the child's custodian; and court review of the child's placement with the relative or other individual. Any final order transferring custody of the child to a relative or other

306 *interested individual pursuant to this section shall, in addition, be entered only after an investigation as*
307 *directed by the court and upon a finding, stated in the court's order, that the relative or other interested*
308 *individual is one who satisfies (i), (ii) and (iii) of this subsection C1 and is committed to providing a*
309 *permanent, suitable home for the child.*

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

321 § 16.1-278.2. Abused, neglected, or abandoned children or children without parental care.

322 A. Within seventy-five days of a preliminary removal order hearing held pursuant to § 16.1-252 or a
323 hearing on a preliminary protective order held pursuant to § 16.1-253, a dispositional hearing shall be
324 held if the court found abuse or neglect and (i) removed the child from his home or (ii) entered a
325 preliminary protective order. Notice of the dispositional hearing shall be provided to the child's parent,
326 guardian, legal custodian or other person standing in loco parentis in accordance with § 16.1-263. The
327 hearing shall be held and a dispositional order may be entered, although a parent, guardian, legal
328 custodian or person standing in loco parentis fails to appear and is not represented by counsel, provided
329 personal or substituted service was made on the person, or the court determines that such person cannot
330 be found, after reasonable effort, or in the case of a person who is without the Commonwealth, the
331 person cannot be found or his post office address cannot be ascertained after reasonable effort. Notice
332 shall also be provided to the local department of social services, the guardian ad litem and, if appointed,
333 the court-appointed special advocate.

334 If a child is found to be (i) abused or neglected; (ii) at risk of being abused or neglected by a parent
335 or custodian who has been adjudicated as having abused or neglected another child in his care; or (iii)
336 abandoned by his parent or other custodian, or without parental care and guardianship because of his
337 parent's absence or physical or mental incapacity, the juvenile court or the circuit court may make any
338 of the following orders of disposition to protect the welfare of the child:

339 1. Enter an order pursuant to the provisions of § 16.1-278;

340 2. Permit the child to remain with his parent, subject to such conditions and limitations as the court
341 may order with respect to such child and his parent or other adult occupant of the same dwelling;

342 3. Prohibit or limit contact as the court deems appropriate between the child and his parent or other
343 adult occupant of the same dwelling whose presence tends to endanger the child's life, health or normal
344 development. The prohibition may exclude any such individual from the home under such conditions as
345 the court may prescribe for a period to be determined by the court but in no event for longer than 180
346 days from the date of such determination. A hearing shall be held within 150 days to determine further
347 disposition of the matter which may include limiting or prohibiting contact for another 180 days;

348 4. Permit the local board of social services or a public agency designated by the community policy
349 and management team to place the child, subject to the provisions of § 16.1-281, in suitable family
350 homes, child-caring institutions, residential facilities, or independent living arrangements with legal
351 custody remaining with the parents or guardians. The local board or public agency and the parents or
352 guardians shall enter into an agreement which shall specify the responsibilities of each for the care and
353 control of the child. The board or public agency which places the child shall have the final authority to
354 determine the appropriate placement for the child.

355 Any order allowing a local board or public agency to place a child where legal custody remains with
356 the parents or guardians as provided in this section shall be entered only upon a finding by the court
357 that reasonable efforts have been made to prevent placement out of the home and that continued
358 placement in the home would be contrary to the welfare of the child; and the order shall so state.

359 5. After a finding that there is no less drastic alternative, transfer legal custody, subject to the
360 provisions of § 16.1-281, to any of the following:

361 a. A relative or other *interested* individual ~~who, after study, is found by the court to be qualified to~~
362 ~~receive and care for the child~~ *subject to the provisions of subsection A1 of this section;*

363 b. A child welfare agency, private organization or facility which is licensed or otherwise authorized
364 by law to receive and provide care for such child; however, a court shall not transfer legal custody of an
365 abused or neglected child to an agency, organization or facility out of the Commonwealth without the
366 approval of the Commissioner of Social Services; or

367 c. The local board of public welfare or social services of the county or city in which the court has

jurisdiction or, at the discretion of the court, to the local board of the county or city in which the child has residence if other than the county or city in which the court has jurisdiction. The local board shall accept the child for care and custody, provided that it has been given reasonable notice of the pendency of the case and an opportunity to be heard. However, in an emergency in the county or city in which the court has jurisdiction, the local board may be required to accept a child for a period not to exceed fourteen days without prior notice or an opportunity to be heard if the judge entering the placement order describes the emergency and the need for such temporary placement in the order. Nothing in this section shall prohibit the commitment of a child to any local board of public welfare or social services in the Commonwealth when the local board consents to the commitment. The board to which the child is committed shall have the final authority to determine the appropriate placement for the child.

Any order authorizing removal from the home and transferring legal custody of a child to a local board of public welfare or social services as provided in this section shall be entered only upon a finding by the court 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; and the order shall so state.

6. Transfer legal custody pursuant to subdivision 5 of this section and order the parent to participate in such services and programs or to refrain from such conduct as the court may prescribe; or

7. Terminate the rights of the parent pursuant to § 16.1-283.

A1. Any order transferring custody of the child to a relative or other interested individual pursuant to subdivision 5 a of subsection A of this section shall be entered only upon a finding, based upon a preponderance of the evidence, that the relative or other interested individual is one who, after an investigation as directed by the court, (i) is found by the court to be willing and qualified to receive and care for the child; (ii) is willing to have a positive, continuous relationship with the child; (iii) is committed to providing a permanent, suitable home for the child; and (iv) is willing and has the ability to protect the child from abuse and neglect; and the order shall so state. The court's order transferring custody to a relative or other interested individual should further provide for, as appropriate, any terms or conditions which would promote the child's interest and welfare; ongoing provision of social services to the child and the child's custodian; and court review of the child's placement.

B. If the child has been placed in foster care, at the dispositional hearing the court shall review the foster care plan for the child filed in accordance with § 16.1-281 by the local department of social services ~~in accordance with § 16.1-281~~, public agency designated by the community policy and management team which places a child through an agreement with the parents or guardians where legal custody remains with the parents or guardians, or child welfare agency.

C. Any preliminary protective orders entered on behalf of the child shall be reviewed at the dispositional hearing and may be incorporated, as appropriate, in the dispositional order.

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

§ 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 pursuant to this section shall be provided to the parent. The hearing shall be held and a dispositional 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 the 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, in the case of 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.

C. The court may make any of the orders of disposition permitted in a case involving an abused or neglected child pursuant to § 16.1-278.2. *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 and shall be subject to the provisions of subsection D1 of this section. 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)*

429 *that reasonable efforts have been made to prevent removal and that continued placement in the home*
430 *would be contrary to the welfare of the child, if the order transfers legal custody of the child to a local*
431 *board of social services. Any preliminary protective orders entered on behalf of the child shall be*
432 *reviewed at the dispositional hearing and may be incorporated, as appropriate, in the dispositional order.*
433 *If the child has been placed in foster care, at the dispositional hearing the court shall review the foster*
434 *care plan for the child filed by the local board of social services or child welfare agency in accordance*
435 *with § 16.1-281.*

436 D. If the parent or other custodian seeks to be relieved permanently of the care and custody of any
437 child and the court finds by clear and convincing evidence that termination of the parent's parental rights
438 is in the best interest of the child, the court may terminate the parental rights of that parent. If the
439 remaining parent has not petitioned for permanent relief of the care and custody of the child, the
440 remaining parent's parental rights may be terminated in accordance with the provisions of § 16.1-283.
441 Any order terminating parental rights shall be accompanied by an order (i) continuing or granting
442 custody to a local board of social services or to a licensed child-placing agency, or (ii) granting custody
443 or guardianship to a relative or other interested individual. Such an order continuing or granting custody
444 to a local board of social services or to a licensed child-placing agency shall indicate whether that board
445 or agency shall have the authority to place the child for adoption and consent thereto. Proceedings under
446 this section shall be advanced on the docket so as to provide for their earliest practicable disposition.

447 *D1. Any order transferring custody of the child to a relative or other interested individual pursuant*
448 *to subsection C or D of this section shall be entered only upon a finding, based upon a preponderance*
449 *of the evidence, that the relative or other interested individual is one who, after an investigation as*
450 *directed by the court, (i) is found by the court to be willing and qualified to receive and care for the*
451 *child; (ii) is willing to have a positive, continuous relationship with the child; (iii) is committed to*
452 *providing a permanent, suitable home for the child; and (iv) is willing and has the ability to protect the*
453 *child from abuse and neglect; and the order shall so state. The court's order transferring custody to a*
454 *relative or other interested individual should further provide for, as appropriate, any terms or conditions*
455 *which would promote the child's interest and welfare; ongoing provision of social services to the child*
456 *and the child's custodian; and court review of the child's placement.*

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

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

470 § 16.1-281. Foster care plan.

471 A. In any case in which (i) a local board of social services or a public agency designated by the
472 community policy and management team places a child through an agreement with the parents or
473 guardians where legal custody remains with the parents or guardian, or (ii) legal custody of a child is
474 given to a local board of public welfare or social services or a child welfare agency, the department of
475 public welfare or social services, the public agency designated or child welfare agency or the family
476 assessment and planning team established pursuant to § 2.1-753 shall prepare a foster care plan for such
477 child, as described hereinafter. The individual family service plan developed by the family assessment
478 and planning team pursuant to § 2.1-754 may be accepted by the court as the foster care plan if it meets
479 the requirements of this section. The representatives of such department, agency, or team shall consult
480 with the child's parents, except when parental rights have been terminated, and any other person or
481 persons standing in loco parentis at the time the board or child welfare agency obtained custody or the
482 board or the public agency placed the child, concerning the matters which should be included in such
483 plan. The department, public agency, child welfare agency or team shall file the plan with the juvenile
484 and domestic relations district court within sixty days following the transfer of custody or the board's or
485 public agency's placement of the child unless the court, for good cause shown, allows an extension of
486 time, which shall not exceed an additional sixty days. *However, a foster care plan shall be filed in*
487 *accordance with the provisions of § 16.1-277.01 with a petition for approval of an entrustment*
488 *agreement. A foster care plan need not be prepared if the child is returned to his prior family or placed*
489 *in an adoptive home within sixty days following transfer of custody to the board or agency or the*
490 *board's or public agency's placement of the child.*

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

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

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 if the court finds 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. 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~~ *child, if he is twelve years of age or older; the guardian ad litem* 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 hearing on the petition for relief of custody, if the child was placed in foster care pursuant to § 16.1-277.02; or* (iv) the dispositional hearing at which the child was placed in foster care and an order was entered pursuant to §§ 16.1-278.2, 16.1-278.3, 16.1-278.4, 16.1-278.5, 16.1-278.6 or § 16.1-278.8. *However, the hearing shall be held in accordance with the provisions of § 16.1-277.01 with a petition for approval of an entrustment agreement.* 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.

C1. Any order transferring custody of the child to a relative other than the child's prior family shall be entered only upon a finding, based upon a preponderance of the evidence, that the relative is one

552 *who, after an investigation as directed by the court, (i) is found by the court to be willing and qualified*
553 *to receive and care for the child; (ii) is willing to have a positive, continuous relationship with the*
554 *child; (iii) is committed to providing a permanent, suitable home for the child; and (iv) is willing and*
555 *has the ability to protect the child from abuse and neglect; and the order shall so state. The court's*
556 *order transferring custody to a relative should further provide for, as appropriate, any terms or*
557 *conditions which would promote the child's interest and welfare; ongoing provision of social services to*
558 *the child and the child's custodian; and court review of the child's placement.*

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

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

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

572 § 16.1-282. Foster care review.

573 A. This section shall apply to all children placed through an agreement between the parents or
574 guardians and the local board of social services or a public agency designated by the community policy
575 and management team where legal custody remains with the parents or guardians or under the legal
576 custody of a local board of social services or a child welfare agency (i) who were the subjects of a
577 foster care plan filed with the court pursuant to § 16.1-281 and (ii) who have not been returned to their
578 prior family or placed in an adoptive home within five months of the court's approval of (i) the
579 entrustment agreement pursuant to § 16.1-277.01 which placed the child in foster care or (ii) the
580 dispositional hearing at which the foster care plan was reviewed pursuant to § 16.1-281.

581 B. Any interested party, including the parent, guardian or person who stood in loco parentis prior to
582 the board's or child welfare agency's assumption of legal custody or the board's or public agency's
583 placement of the child, may file with the court the petition hereinafter described for each such child at
584 any time after the initial foster care placement of the child. However, the board or child welfare agency
585 having legal custody or the board or public agency placing the child shall file the petition within five
586 months of the court's approval of (i) the entrustment agreement pursuant to § 16.1-277.01, which placed
587 the child in foster care or (ii) the dispositional hearing at which the foster care plan was reviewed
588 pursuant to § 16.1-281.

589 The petition shall:

590 1. Be filed in the court in which the foster care plan for the child was reviewed and approved. Upon
591 the order of such court, however, the petition may be filed in the court of the county or city in which
592 the board or child welfare agency having legal custody or having placed the child has its principal office
593 or where the child resides;

594 2. State, if such is reasonably obtainable, the current address of the child's parents and, if the child
595 was in the custody of a person or persons standing in loco parentis at the time the board or child
596 welfare agency obtained legal custody or the board or public agency placed the child, of such person or
597 persons;

598 3. Describe the placement or placements provided for the child while in foster care and the services
599 or programs offered to the child and his parents and, if applicable, the persons previously standing in
600 loco parentis;

601 4. Describe the nature and frequency of the contacts between the child and his parents and, if
602 applicable, the persons previously standing in loco parentis;

603 5. Set forth in detail the manner in which the foster care plan previously filed with the court was or
604 was not complied with and the extent to which the goals thereof have been met; and

605 6. Set forth the disposition sought and the grounds therefor; however, if a continuation of foster care
606 is recommended, a foster care plan for such period of continued foster care shall also be included and
607 shall address (i) the role the current foster parents or other care providers will play in the future
608 planning for the child and (ii) in the case of a child who has attained age sixteen, the services and
609 programs needed to assist the child to make a transition from foster care to independent living.

610 C. Upon receipt of the petition filed by the board, public agency, child welfare agency, or any
611 interested party as provided in subsection B of this section, the court shall schedule a hearing to be held
612 within thirty days if a hearing was not previously scheduled pursuant to subsection F of § 16.1-281. A
613 review hearing shall be held within six months of the dispositional hearing at which the foster care plan

was reviewed. 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 child, if he is twelve years of age or older;
2. The attorney-at-law representing the child as guardian ad litem;
3. The child's parents and, if the child was in the custody of a person standing in loco parentis at the time the department obtained custody, such person or persons. 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. If the parent or guardian of the child did not appear at the dispositional hearing and was not noticed to return for the foster care review hearing in accordance with subsection F of § 16.1-281, the parent or guardian shall be summoned to appear at the foster care review hearing in accordance with § 16.1-263. The review hearing shall be held pursuant to this section although a parent or guardian fails to appear and is not represented by counsel, provided personal or substituted service was made on the parent or guardian, 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;
4. The foster parent or foster parents or other care providers of the child;
5. The petitioning board, public agency or child welfare agency; and
6. Such other persons as the court, in its discretion, may direct. The local board of social services or other child welfare agency shall identify for the court such other persons as have a legitimate interest in the hearing, including, but not limited to, preadoptive parents for a child in foster care.

D. At the conclusion of the hearing, the court shall, upon the proof adduced and in accordance with the best interests of the child, *and subject to the provisions of subsection D1 of this section*, enter any appropriate order of disposition consistent with the dispositional alternatives available to the court at the time of the original hearing. The court order shall state whether reasonable efforts, if applicable, have been made to reunite the child with his parents, guardian or other person standing in loco parentis to the child.

D1. Any order transferring custody of the child to a relative other than the child's prior family shall be entered only upon a finding, based upon a preponderance of the evidence, that the relative is one who, after an investigation as directed by the court, (i) is found by the court to be willing and qualified to receive and care for the child; (ii) is willing to have a positive, continuous relationship with the child; (iii) is committed to providing a permanent, suitable home for the child; and (iv) is willing and has the ability to protect the child from abuse and neglect; and the order shall so state. The court's order transferring custody to a relative should further provide for, as appropriate, any terms and conditions which would promote the child's interest and welfare; ongoing provision of social services to the child and the child's custodian; and court review of the child's placement.

E. The court shall possess continuing jurisdiction over cases reviewed under this section for so long as a child remains in a foster care placement or, when a child is returned to his prior family subject to conditions imposed by the court, for so long as such conditions are effective. After the hearing required pursuant to subsection C hereof, the court shall schedule a permanency planning hearing on the case to be held five months thereafter in accordance with § 16.1-282.1, except in the case of a child placed in permanent foster care after a hearing held pursuant to § 63.1-206.1, or within thirty days upon the petition of any party entitled to notice in proceedings under this section when the judge determines there is good cause shown for such a hearing.

§ 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 § 16.1-277.04 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, *subject to the provisions of subsection A1 of this section*, 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) *place the child in another planned permanent living arrangement in accordance with the provisions of subsection A2 of this section*; (vii) continue custody with the board or agency or placement with the board or public agency through a parental agreement; or ~~(vii) (viii)~~ 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.

675 A1. The following requirements shall apply to the transfer of custody of the child to a relative other
676 than the child's prior family in accordance with the provisions of (ii) of subsection A of this section. Any
677 order transferring custody of the child to a relative other than the child's prior family shall be entered
678 only upon a finding, based upon a preponderance of the evidence, that the relative is one who, after an
679 investigation as directed by the court, (i) is found by the court to be willing and qualified to receive and
680 care for the child; (ii) is willing to have a positive, continuous relationship with the child; (iii) is
681 committed to providing a permanent, suitable home for the child; and (iv) is willing and has the ability
682 to protect the child from abuse and neglect; and the order shall so state. The court's order transferring
683 custody to a relative should further provide, as appropriate, for any terms or conditions which would
684 promote the child's interest and welfare.

685 A2. The following requirements shall apply to the selection and approval of placement in another
686 planned permanent living arrangement as the permanent goal for the child in accordance with (vi) of
687 subsection A of this section.

688 1. The board, public agency or child welfare agency shall petition for alternative (vi) of subsection A
689 only if the child has a severe and chronic emotional, physical or neurological disabling condition for
690 which the child requires long-term residential treatment; and the board, public agency or child welfare
691 agency has thoroughly investigated the feasibility of the alternatives listed in clauses (i) through (v) of
692 subsection A and determined that none of those alternatives is in the best interests of the child. In a
693 foster care plan filed with the petition pursuant to this section, the board or agency shall document the
694 following: (i) the investigation conducted of the placement alternatives listed in clauses (i) through (v)
695 of subsection A and why each of these is not currently in the best interest of the child; (ii) at least one
696 compelling reason why none of the alternatives listed in clauses (i) through (v) is achievable for the
697 child at the time placement in another planned permanent living arrangement is selected as the
698 permanent goal for the child; (iii) the identity of the long-term residential treatment service provider;
699 (iv) the nature of the child's disability; (v) the anticipated length of time required for the child's
700 treatment; and (vi) the status of the child's eligibility for admission and long-term treatment.

701 2. Before approving alternative (vi) of subsection A of this section as the plan for the child, the court
702 shall find (i) that the child has a severe and chronic emotional, physical or neurological disabling
703 condition; (ii) that the child requires long-term residential treatment for the disabling condition; and
704 (iii) that none of the alternatives listed in clauses (i) through (v) of subsection A is achievable for the
705 child at the time placement in another planned permanent living arrangement is approved as the
706 permanent goal for the child. If the board or agency petitions for alternative (vi), alternative (vi) may be
707 approved by the court for a period of six months at a time.

708 3. At the conclusion of the permanency planning hearing, if alternative (vi) of subsection A of this
709 section is the permanent plan, the court shall schedule a hearing to be held within six months to review
710 the child's placement in another planned permanent living arrangement in accordance with subdivision
711 4 of subsection A2. All parties present at the hearing at which (vi) of subsection A is approved as the
712 permanent plan for the child shall be given notice of the date scheduled for the foster care review
713 hearing. Parties not present shall be summoned to appear as provided in § 16.1-263. Otherwise, this
714 subsection A2 shall govern the scheduling and notice for such hearings.

715 4. The court shall review a foster care plan for any child who is placed in another planned
716 permanent living arrangement every six months from the date of the permanency planning hearing held
717 pursuant to this subsection, so long as the child remains in the legal custody of the board, public
718 agency or child welfare agency. The board, public agency or child welfare agency shall file such
719 petitions for review pursuant to the provisions of § 16.1-282 and shall, in addition, include in the
720 petition the information required by subdivision 1 of subsection A2 of this section. The petition for foster
721 care review shall be filed no later than thirty days prior to the hearing scheduled in accordance with
722 subdivision 3 of subsection A2. At the conclusion of the foster care review hearing, if alternative (vi) of
723 subsection A of this section remains the permanent plan, the court shall enter an order that states
724 whether reasonable efforts have been made to place the child in a timely manner in accordance with the
725 permanency plan and to monitor the child's status in another planned permanent living arrangement.

726 However, if at any time during the six-month approval periods permitted by this subsection, a
727 determination is made by treatment providers that the child's need for long-term residential treatment
728 for the child's disabling condition is eliminated, the board or agency shall immediately begin to plan for
729 post-discharge services and shall, within thirty days of making such a determination, file a petition for a
730 permanency planning hearing pursuant to subsection A of this section. Upon receipt of the petition, the
731 court shall schedule a permanency planning hearing to be held within thirty days. The provisions of
732 subdivisions 1 through 6 of subsection B of § 16.1-282 shall apply to the filing of such petitions. The
733 procedures of subsection C of § 16.1-282 and the provisions of subsection E of § 16.1-282 shall apply to
734 proceedings under this section.

735 B. The board, public agency or child welfare agency shall petition for alternative ~~(vi)~~ or (vii) or (viii)
736 of subsection A of this section 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~~ *alternative (vi) or (vii) or (viii)*, alternative ~~(vi) or (vii) or (viii)~~ 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 each of these is~~ 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) or (viii)~~ 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) or (viii)~~ 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~~ *for whom a final order of adoption has not been entered*, 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, *subject to the provisions of subsection A1 of this section*. 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.

A1. Any order transferring custody of the child to a relative or other interested individual pursuant to subsection A of this section shall be entered only upon a finding, based upon a preponderance of the evidence, that the relative or other interested individual is one who, after an investigation as directed by the court, (i) is found by the court to be willing and qualified to receive and care for the child; (ii) is willing to have a positive, continuous relationship with the child; (iii) is committed to providing a permanent, suitable home for the child; and (iv) is willing and has the ability to protect the child from abuse and neglect; and the order shall so state. The court's order transferring custody to a relative or other interested individual should further provide, as appropriate, for any terms and conditions which would promote the child's interest and welfare.

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

860 been unable to make substantial progress towards elimination of the conditions which led to or required
861 continuation of the child's foster care placement in accordance with their obligations under and within
862 the time limits or goals set forth in a foster care plan filed with the court or any other plan jointly
863 designed and agreed to by the parent or parents and a public or private social, medical, mental health or
864 other rehabilitative agency shall constitute prima facie evidence of this condition. The court shall take
865 into consideration the prior efforts of such agencies to rehabilitate the parent or parents prior to the
866 placement of the child in foster care.

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

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

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

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

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

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

906 G. Notwithstanding any other provisions of this section, residual parental rights shall not be
907 terminated if it is established that the child, if he is fourteen years of age or older or otherwise of an
908 age of discretion as determined by the court, objects to such termination. *However, residual parental*
909 *rights of a child fourteen years of age or older may be terminated over the objection of the child, if the*
910 *court finds that any disability of the child reduces the child's developmental age and that the child is*
911 *not otherwise of an age of discretion.*