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HOUSE BILL NO. 314

House Amendments in [] — January 23, 2002

A *BILL to amend and reenact § 16.1-281 of the Code of Virginia, relating to foster care plan; consultation with parents.*

Patron Prior to Engrossment—Delegate Howell

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 16.1-281 of the Code of Virginia is amended and reenacted as follows:

§ 16.1-281. Foster care plan.

A. In any case in which (i) a local board of social services or a public agency designated by the community policy and management team places a child through an agreement with the parents or guardians where legal custody remains with the parents or guardian, or (ii) legal custody of a child is given to a local board of ~~public welfare~~ or social services or a child welfare agency, the department of ~~public welfare~~ or social services, the public agency designated or child welfare agency or the family assessment and planning team established pursuant to § 2.2-5207 shall prepare a foster care plan for such child, as described hereinafter. The individual family service plan developed by the family assessment and planning team pursuant to § 2.2-5208 may be accepted by the court as the foster care plan if it meets the requirements of this section. The representatives of such department, agency, or team shall [~~make reasonable efforts to~~] consult with the child's [~~parents parent(s)~~], except when parental rights have been terminated [~~or the local department of social services or other designated agency has exhausted all methods for locating the parent(s) and such parent(s) cannot be located~~], and any other person or persons standing in loco parentis at the time the board or child welfare agency obtained custody or the board or the public agency placed the child, concerning the matters which should be included in such plan. The department, public agency, child welfare agency or team shall file the plan with the juvenile and domestic relations district court within sixty days following the transfer of custody or the board's or public agency's placement of the child unless the court, for good cause shown, allows an extension of time, which shall not exceed an additional sixty days. However, a foster care plan shall be filed in accordance with the provisions of § 16.1-277.01 with a petition for approval of an entrustment agreement. A foster care plan need not be prepared if the child is returned to his prior family or placed in an adoptive home within sixty days following transfer of custody to the board or agency or the 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

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HB314E

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

74 C. A copy of the entire foster care plan shall be sent by the court to the child, if he is twelve years
75 of age or older; the guardian ad litem for the child, the attorney for the child's parents or for any other
76 person standing in loco parentis at the time the board or child welfare agency obtained custody or the
77 board or public agency placed the child, to the parents or other person standing in loco parentis, and
78 such other persons as appear to the court to have a proper interest in the plan. However, a copy of the
79 plan shall not be sent to a parent whose parental rights regarding the child have been terminated. A
80 copy of the plan, excluding the section of the plan describing the reasons why the child cannot be
81 returned home and the alternative chosen, shall be sent by the court to the foster parents. A hearing
82 shall be held for the purpose of reviewing and approving the foster care plan. The hearing shall be held
83 within seventy-five days of (i) the child's initial foster care placement, if the child was placed through
84 an agreement between the parents or guardians and the local department of social services, other public
85 agency or a child welfare agency; (ii) the original preliminary removal order hearing, if the child was
86 placed in foster care pursuant to § 16.1-252; (iii) the hearing on the petition for relief of custody, if the
87 child was placed in foster care pursuant to § 16.1-277.02; or (iv) the dispositional hearing at which the
88 child was placed in foster care and an order was entered pursuant to §§ 16.1-278.2, 16.1-278.3,
89 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
90 with the provisions of § 16.1-277.01 with a petition for approval of an entrustment agreement. If the
91 judge makes any revision in any part of the foster care plan, a copy of the changes shall be sent by the
92 court to all persons who received a copy of the original of that part of the plan.

93 C1. Any order transferring custody of the child to a relative other than the child's prior family shall
94 be entered only upon a finding, based upon a preponderance of the evidence, that the relative is one
95 who, after an investigation as directed by the court, (i) is found by the court to be willing and qualified
96 to receive and care for the child; (ii) is willing to have a positive, continuous relationship with the child;
97 (iii) is committed to providing a permanent, suitable home for the child; and (iv) is willing and has the
98 ability to protect the child from abuse and neglect; and the order shall so state. The court's order
99 transferring custody to a relative should further provide for, as appropriate, any terms or conditions
100 which would promote the child's interest and welfare; ongoing provision of social services to the child
101 and the child's custodian; and court review of the child's placement.

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

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

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