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HOUSE BILL NO. 328

Offered January 14, 2004

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A BILL to amend and reenact § 16.1-281 of the Code of Virginia, relating to foster care.

Patron—Griffith

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 social services or a child welfare agency, the local department of 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 consult with the child's parent(s), except when parental rights have been terminated or the local department of social services or other designated agency has made diligent efforts to locate 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~~ 60 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~~ 60 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~~ 60 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~~ 16 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~~ *that* lead to the return of the child to his parents or other prior custodians within the shortest practicable time, which *time* 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 concludes 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 (a) include a full description of the reasons for this conclusion; (b) provide information on the opportunities for placing the child with a relative or in an adoptive home; (c) 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; (d) explain why permanent foster care, independent living for a child ~~sixteen~~ 16 years of age or older 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 petition 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 (1) the residual parental rights of the parent regarding a sibling of the child have previously been involuntarily

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59 terminated; (2) the parent has been convicted of an offense under the laws of this Commonwealth or a
60 substantially similar law of any other state, the United States or any foreign jurisdiction that constitutes
61 murder or voluntary manslaughter, or a felony attempt, conspiracy or solicitation to commit any such
62 offense, if the victim of the offense was a child of the parent, a child with whom the parent resided at
63 the time such offense occurred or the other parent of the a child; (3) the parent has been convicted of
64 an offense under the laws of this Commonwealth or a substantially similar law of any other state, the
65 United States or any foreign jurisdiction that constitutes felony assault resulting in serious bodily injury
66 or felony bodily wounding resulting in serious bodily injury or felony sexual assault, if the victim of the
67 offense was a child of the parent or a child with whom the parent resided at the time of such offense; or
68 (4) based on clear and convincing evidence, the parent has subjected any child to aggravated
69 circumstances, or abandoned a child under circumstances which would justify the termination of residual
70 parental rights pursuant to subsection D of § 16.1-283.

71 As used in this section:

72 "Aggravated circumstances" means torture, chronic or severe abuse, or chronic or severe sexual
73 abuse, if the victim of such conduct was a child of the parent or child with whom the parent resided at
74 the time such conduct occurred, including the failure to protect such a child from such conduct, which
75 conduct or failure to protect: (i) evinces a wanton or depraved indifference to human life, or (ii) has
76 resulted in the death of such a child or in serious bodily injury to such a child.

77 "Chronic abuse" or "chronic sexual abuse" means recurring acts of physical abuse that place the
78 child's health, safety and well-being at risk.

79 "Serious bodily injury" means bodily injury that involves substantial risk of death, extreme physical
80 pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily
81 member, organ or mental faculty.

82 "Severe abuse" or "severe sexual abuse" may include an act or omission that occurred only once, but
83 otherwise meets the definition of "aggravated circumstances."

84 Within ~~thirty~~ 30 days of making a determination that reasonable efforts to reunite the child with the
85 parents are not required, the court shall hold a permanency planning hearing pursuant to § 16.1-282.1.

86 C. A copy of the entire foster care plan shall be sent by the court to the child, if he is ~~twelve~~ 12
87 years of age or older; the guardian ad litem for the child, the attorney for the child's parents or for any
88 other person standing in loco parentis at the time the board or child welfare agency obtained custody or
89 the board or public agency placed the child, to the parents or other person standing in loco parentis, and
90 such other persons as appear to the court to have a proper interest in the plan. However, a copy of the
91 plan shall not be sent to a parent whose parental rights regarding the child have been terminated. A
92 copy of the plan, excluding the section of the plan describing the reasons why the child cannot be
93 returned home and the alternative chosen, shall be sent by the court to the foster parents. A hearing
94 shall be held for the purpose of reviewing and approving the foster care plan. The hearing shall be held
95 within ~~seventy-five~~ 75 days of (i) the child's initial foster care placement, if the child was placed
96 through an agreement between the parents or guardians and the local department of social services, other
97 public agency or a child welfare agency; (ii) the original preliminary removal order hearing, if the child
98 was placed in foster care pursuant to § 16.1-252; (iii) the hearing on the petition for relief of custody, if
99 the child was placed in foster care pursuant to § 16.1-277.02; or (iv) the dispositional hearing at which
100 the child was placed in foster care and an order was entered pursuant to §§ 16.1-278.2, 16.1-278.3,
101 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
102 with the provisions of § 16.1-277.01 with a petition for approval of an entrustment agreement. If the
103 judge makes any revision in any part of the foster care plan, a copy of the changes shall be sent by the
104 court to all persons who received a copy of the original of that part of the plan.

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

114 C2. Any order entered at the conclusion of the hearing that has the effect of achieving a permanent
115 goal for the child by terminating residual parental rights pursuant to §§ 16.1-277.01, 16.1-277.02,
116 16.1-278.3 or § 16.1-283; by placing the child in permanent foster care pursuant to subdivision A iv of
117 § 16.1-282.1; or by directing the board or agency to provide the child with services to achieve
118 independent living status, if the child has attained the age of ~~sixteen~~ 16 years, pursuant to subdivision A
119 v of § 16.1-282.1 shall state whether reasonable efforts have been made to place the child in a timely
120 manner in accordance with the foster care plan and to complete the steps necessary to finalize the

121 permanent placement of the child.

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

125 E. At the conclusion of the hearing at which the initial foster care plan is reviewed, the court shall
126 schedule a foster care review hearing to be held within six months in accordance with § 16.1-282.
127 However, if an order is entered pursuant to subsection C2, the court shall schedule a foster care review
128 hearing to be held within twelve months of the entry of such order in accordance with the provisions of
129 § 16.1-282.2. Parties who are present at the hearing at which the initial foster care plan is reviewed shall
130 be given notice of the date set for the foster care review hearing and parties who are not present shall
131 be summoned as provided in § 16.1-263.

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

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