

062430342

**HOUSE BILL NO. 903**

Offered January 11, 2006

Prefiled January 10, 2006

*A BILL to amend and reenact § 16.1-283 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 16.1-283.1 and 16.1-283.2, relating to termination of parental rights.*

\_\_\_\_\_  
Patron—Iaquinto

\_\_\_\_\_  
Referred to Committee for Courts of Justice

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

**1. That § 16.1-283 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding sections numbered 16.1-283.1 and 16.1-283.2 as follows:**

§ 16.1-283. Involuntary termination of residual parental rights where the child is in the custody of a local board or licensed child-placing agency.

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~~ *If the child has been placed in the custody of a local board or licensed child-placing agency, 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 *under this section* 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

INTRODUCED

HB903

59 a reasonable period of time. In making this determination, the court shall take into consideration the  
60 efforts made to rehabilitate the parent or parents by any public or private social, medical, mental health  
61 or other rehabilitative agencies prior to the child's initial placement in foster care.

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

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

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

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

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

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

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

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

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

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

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

106 E. The residual parental rights of a parent or parents of a child who is in the custody of a local  
107 board or licensed child-placing agency may be terminated by the court if the court finds, based upon  
108 clear and convincing evidence, that it is in the best interests of the child and that (i) the residual  
109 parental rights of the parent regarding a sibling of the child have previously been involuntarily  
110 terminated; (ii) the parent has been convicted of an offense under the laws of this Commonwealth or a  
111 substantially similar law of any other state, the United States or any foreign jurisdiction that constitutes  
112 murder or voluntary manslaughter, or a felony attempt, conspiracy or solicitation to commit any such  
113 offense, if the victim of the offense was a child of the parent, a child with whom the parent resided at  
114 the time such offense occurred or the other parent of the child; (iii) the parent has been convicted of an  
115 offense under the laws of this Commonwealth or a substantially similar law of any other state, the  
116 United States or any foreign jurisdiction that constitutes felony assault resulting in serious bodily injury  
117 or felony bodily wounding resulting in serious bodily injury or felony sexual assault, if the victim of the  
118 offense was a child of the parent or a child with whom the parent resided at the time of such offense; or  
119 (iv) the parent has subjected any child to aggravated circumstances.

120 As used in this section:

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

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

"Serious bodily injury" means bodily injury that 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.

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

The local board or other child welfare agency having custody of the child shall not be required by the court to make reasonable efforts to reunite the child with a parent who has been convicted of one of the felonies specified in this subsection or who has been found by the court to have subjected any child to aggravated circumstances.

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

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

*§ 16.1-283.1. Involuntary termination of parental rights where the child is not in the custody of a local board or licensed child-placing agency.*

A. Where a child is not in the custody of a local board or licensed child-placing agency, a termination of parental rights petition may be filed by a child's parent or legal guardian, the local board of social services, or the guardian ad litem for the child. If the parent whose parental rights are at stake committed substantial or aggravated battery, repeated acts of sexual assault against the child, or child abuse resulting in great bodily harm to the child or any of the child's siblings, an attorney for the local board of social services, the appropriate child-placing agency, or an attorney for the Commonwealth shall file a termination of parental rights petition, or join in an existing petition. Any petition filed under this section shall state with specificity the grounds for the request.

B. The parental rights of a parent whose child is not in the custody of a local board or licensed child-placing agency may be terminated by the court if the court finds clear and convincing evidence that the parent has severely neglected or abused the child and that it is in the best interests of the child to terminate the parental rights.

C. The residual parental rights and responsibilities of a parent whose child is not in the custody of a local board or licensed child-placing agency may be terminated by the court if the court finds, based upon clear and convincing evidence, that it is in the best interests of the child and that the parent has: (i) had the residual parental rights and responsibilities regarding a sibling of the child involuntarily terminated; (ii) been convicted of an offense under the laws of the Commonwealth or a substantially similar law of any other state, the United States or any foreign jurisdiction that 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 the offense occurred or the other parent of the child; (iii) been convicted of an offense under the laws of the Commonwealth or a substantially similar law of any other state, the United States or any foreign jurisdiction that constitutes felony assault resulting in serious bodily injury, 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; or (iv) subjected any child to aggravated circumstances as defined in subsection B of § 16.1-281.

182 D. Notwithstanding any other provisions of this section, residual parental rights shall not be  
183 terminated if it is established that the child, if he is 14 years of age or older or otherwise of an age of  
184 discretion as determined by the court, objects to such termination. However, residual parental rights of  
185 a child 14 years of age or older may be terminated over the objection of the child, if the court finds  
186 that any disability of the child reduces the child's developmental age and that the child is not otherwise  
187 of an age of discretion.

188 E. The summons on a petition under this section shall be served upon the parent whose parental  
189 rights are at stake and the other parties specified in § 16.1-263. The persons entitled to notice and an  
190 opportunity to be heard need not be parties to the proceeding. The summons or notice of the hearing  
191 shall clearly state the consequences of a termination of residual parental rights and responsibility.  
192 Service shall be made pursuant to § 16.1-264.

193 § 16.1-283.2. Voluntary termination of parental rights.

194 A. A court may terminate parental rights by consent of a parent under the following conditions:

195 1. The parent appears at the hearing on the termination of parental rights petition and gives his  
196 consent. Before accepting the consent, the court shall explain the effect of termination of parental rights  
197 and question the parent to ensure that the consent is informed and voluntary.

198 2. If the court finds that it would be difficult or impossible for the parent to appear in person at the  
199 hearing on the termination of parental rights petition, the court may accept written consent as given  
200 before an embassy or consul official, a military judge or a judge of court of another country or state or  
201 in a foreign jurisdiction.

202 3. A person who may be the father of a non-marital child may consent to termination of parental  
203 rights by signing a written, notarized statement that he has been informed and understands the effect of  
204 termination of parental rights and voluntarily disclaims any rights to the child, including the right to  
205 notice of termination of parental rights proceedings.

206 4. If the termination of parental rights proceeding is held prior to a proceeding for adoption by the  
207 child's stepparent, or if the child's birth parent is a resident of a foreign jurisdiction, the parent may  
208 also consent to the termination of parental rights by filing an affidavit stating that the parent has been  
209 informed of and understands the effect of a termination of parental rights order and voluntarily  
210 disclaims all rights to the child, including notice of termination of parental rights proceedings.

211 B. If the capacity of a parent to give voluntary consent is in question, a guardian ad litem shall be  
212 appointed for the parent, and the guardian ad litem shall inform the court of any reason to doubt the  
213 parent's capacity to consent. If the court finds that the parent is incapable of knowingly and voluntarily  
214 consenting, the court shall dismiss the termination of parental rights proceedings. Such a dismissal does  
215 not preclude involuntary termination of parental rights.

216 C. The court shall not enter a consent order terminating the rights of a parent, unless the court finds  
217 that the petitioning parent or legal custodian meets the requirements of being (i) capable, willing and  
218 committed to providing a permanent, suitable home for the child and (ii) able to protect the child from  
219 abuse and neglect. The court order shall state these requirements.

220 D. Notwithstanding any other provisions of this section, residual parental rights shall not be  
221 terminated if it is established that the child, if he is 14 years of age or older or otherwise of an age of  
222 discretion as determined by the court, objects to such termination. However, residual parental rights of  
223 a child 14 years of age or older may be terminated over the objection of the child, if the court finds  
224 that any disability of the child reduces the child's developmental age and that the child is not otherwise  
225 of an age of discretion.

226

227

228