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HOUSE BILL NO. 1530

Offered January 18, 2008

A *BILL to amend and reenact §§ 16.1-252 and 16.1-281 of the Code of Virginia, and to amend the Code of Virginia by adding a section numbered 63.2-900.2, relating to foster children; group placement of siblings and visitation.*

Patrons—Nixon, Kilgore, Landes and Watts

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-252 and 16.1-281 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding a section numbered 63.2-900.2 as follows:

§ 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 in loco parentis shall have the right to confront and cross-examine all adverse witnesses and evidence and to present evidence on their own behalf. If the child was fourteen years of age or under on the date of the alleged offense and is sixteen or under at the time of the hearing, the child's attorney or guardian ad litem, or if the child has been committed to the custody of the Department of Social Services, the local department of social services, may apply for an order from the court that the child's testimony be taken in a room outside the courtroom and be televised by two-way closed-circuit television. The provisions of § 63.2-1521 shall apply, mutatis mutandis, to the use of two-way closed-circuit television except that the person seeking the order shall apply for the order at least forty-eight hours before the hearing, unless the court for good cause shown allows the application to be made at a later time.

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

1. The child would be subjected to an imminent threat to life or health to the extent that severe or irreparable 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; and

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 and adequately 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.

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

1. Order that the child be placed in the temporary care and custody of a suitable person, subject to the provisions of subsection F1 of this section and under the supervision of the local department of social services, with consideration being given to placement in the temporary care and custody of a relative or other interested individual, including grandparents, until such time as the court enters an

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59 order of disposition pursuant to § 16.1-278.2, or, if such placement is not available, in the care and
60 custody of a suitable agency;

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

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

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

68 F1. Prior to the entry of an order pursuant to subsection F of this section transferring temporary
69 custody of the child to a relative or other interested individual, including grandparents, the court shall
70 consider whether the relative or other interested individual is one who (i) is willing and qualified to
71 receive and care for the child; (ii) is willing to have a positive, continuous relationship with the child;
72 and (iii) is willing and has the ability to protect the child from abuse and neglect. The court's order
73 transferring temporary custody to a relative or other interested individual should provide for compliance
74 with any preliminary protective order entered on behalf of the child in accordance with the provisions of
75 § 16.1-253; initiation and completion of the investigation as directed by the court and court review of
76 the child's placement required in accordance with the provisions of § 16.1-278.2; and, as appropriate,
77 ongoing provision of social services to the child and the temporary custodian.

78 G. At the conclusion of the preliminary removal order hearing, the court shall determine whether the
79 allegations of abuse or neglect have been proven by a preponderance of the evidence. Any finding of
80 abuse or neglect shall be stated in the court order. However, if, before such a finding is made, a person
81 responsible for the care and custody of the child, the child's guardian ad litem or the local department of
82 social services objects to a finding being made at the hearing, the court shall schedule an adjudicatory
83 hearing to be held within thirty days of the date of the initial preliminary removal hearing. The
84 adjudicatory hearing shall be held to determine whether the allegations of abuse and neglect have been
85 proven by a preponderance of the evidence. Parties who are present at the preliminary removal order
86 hearing shall be given notice of the date set for the adjudicatory hearing and parties who are not present
87 shall be summoned as provided in § 16.1-263. The hearing shall be held and an order may be entered,
88 although a party to the preliminary removal order hearing fails to appear and is not represented by
89 counsel, provided personal or substituted service was made on the person, or the court determines that
90 such person cannot be found, after reasonable effort, or in the case of a person who is without the
91 Commonwealth, the person cannot be found or his post office address cannot be ascertained after
92 reasonable effort.

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

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

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

106 J. Violation of any order issued pursuant to this section shall constitute contempt of court.
107 § 16.1-281. Foster care plan.

108 A. In any case in which (i) a local board of social services or a public agency designated by the
109 community policy and management team places a child through an agreement with the parents or
110 guardians where legal custody remains with the parents or guardian, or (ii) legal custody of a child is
111 given to a local board of social services or a child welfare agency, the local department of social
112 services, the public agency designated or child welfare agency or the family assessment and planning
113 team established pursuant to § 2.2-5207 shall prepare a foster care plan for such child, as described
114 hereinafter. The individual family service plan developed by the family assessment and planning team
115 pursuant to § 2.2-5208 may be accepted by the court as the foster care plan if it meets the requirements
116 of this section.

117 The representatives of such department, agency, or team shall involve the child's parent(s) in the
118 development of the plan, except when parental rights have been terminated or the local department of
119 social services or other designated agency has made diligent efforts to locate the parent(s) and such
120 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. The representatives of such department, agency, or team shall involve the child in the development of the plan, if such involvement is consistent with the best interests of the child. In cases where either the parent(s) or child is not involved in the development of the plan, the department, agency, or team shall include in the plan a full description of the reasons therefor.

The department, public agency, child welfare agency or team shall file the plan with the juvenile and domestic relations district court within 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 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 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, *and between the child and his siblings*; (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 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 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 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 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 terminated; (2) the parent has 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 such offense occurred or the other parent of the child; (3) the parent has 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 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; or (4) based on clear and convincing evidence, the parent has subjected any child to aggravated circumstances, or abandoned a child under circumstances which would justify the termination of residual parental rights pursuant to subsection D of § 16.1-283.

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 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 that 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

182 member, organ or mental faculty.

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

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

187 C. A copy of the entire foster care plan shall be sent by the court to the child, if he is 12 years of
188 age or older; the guardian ad litem for the child, the attorney for the child's parents or for any other
189 person standing in loco parentis at the time the board or child welfare agency obtained custody or the
190 board or public agency placed the child, to the parents or other person standing in loco parentis, and
191 such other persons as appear to the court to have a proper interest in the plan. However, a copy of the
192 plan shall not be sent to a parent whose parental rights regarding the child have been terminated. A
193 copy of the plan, excluding the section of the plan describing the reasons why the child cannot be
194 returned home and the alternative chosen, shall be sent by the court to the foster parents. A hearing
195 shall be held for the purpose of reviewing and approving the foster care plan. The hearing shall be held
196 within 75 days of (i) the child's initial foster care placement, if the child was placed through an
197 agreement between the parents or guardians and the local department of social services, other public
198 agency or a child welfare agency; (ii) the original preliminary removal order hearing, if the child was
199 placed in foster care pursuant to § 16.1-252; (iii) the hearing on the petition for relief of custody, if the
200 child was placed in foster care pursuant to § 16.1-277.02; or (iv) the dispositional hearing at which the
201 child was placed in foster care and an order was entered pursuant to § 16.1-278.2, 16.1-278.3,
202 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
203 the provisions of § 16.1-277.01 with a petition for approval of an entrustment agreement. If the judge
204 makes any revision in any part of the foster care plan, a copy of the changes shall be sent by the court
205 to all persons who received a copy of the original of that part of the plan.

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

215 C2. Any order entered at the conclusion of the hearing that has the effect of achieving a permanent
216 goal for the child by terminating residual parental rights pursuant to § 16.1-277.01, 16.1-277.02,
217 16.1-278.3 or 16.1-283; by placing the child in permanent foster care pursuant to subdivision A iv of
218 § 16.1-282.1; or by directing the board or agency to provide the child with services to achieve
219 independent living status, if the child has attained the age of 16 years, pursuant to subdivision A v of
220 § 16.1-282.1 shall state whether reasonable efforts have been made to place the child in a timely manner
221 in accordance with the foster care plan and to complete the steps necessary to finalize the permanent
222 placement of the child.

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

226 E. At the conclusion of the hearing at which the initial foster care plan is reviewed, the court shall
227 schedule a foster care review hearing to be held within six months in accordance with § 16.1-282.
228 However, if an order is entered pursuant to subsection C2, the court shall schedule a foster care review
229 hearing to be held within 12 months of the entry of such order in accordance with the provisions of
230 § 16.1-282.2. Parties who are present at the hearing at which the initial foster care plan is reviewed shall
231 be given notice of the date set for the foster care review hearing and parties who are not present shall
232 be summoned as provided in § 16.1-263.

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

239 § 63.2-900.2. *Placement of sibling groups; visitation.*

240 *All reasonable steps shall be taken to place siblings entrusted to the care of a local board or*
241 *licensed child-placing agency, committed to the care of a local board or agency by any court of*
242 *competent jurisdiction, or placed with a local board or public agency through an agreement between a*
243 *local board or a public agency and the parent, parents, or guardians, where legal custody remains with*

244 the parent, parents, or guardian, together in the same foster home, unless such placement is determined
245 to be contrary to the best interests of a child or the special needs of a child require separate placement.
246 Where siblings are placed in separate foster homes, the local department, child-placing agency, or
247 public agency shall develop a plan to ensure frequent and regular visitation and communication between
248 the siblings, except where the local department, child-placing agency, or public agency determines that
249 visitation or communication will be contrary to the best interests of the child. The visitation plan shall
250 take into account the wishes of the child, and shall specify the frequency of visitation, identify the party
251 responsible for ensuring that visits occur, and state any other requirements or restrictions related to
252 such visitation as may be determined necessary by the local department, child-placing agency, or public
253 agency.