

VIRGINIA ACTS OF ASSEMBLY -- 2009 SESSION

CHAPTER 80

An Act to amend and reenact §§ 16.1-281 and 16.1-282 of the Code of Virginia, relating to foster care.

[H 1914]

Approved February 25, 2009

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-281 and 16.1-282 of the Code of Virginia are amended and reenacted as follows:

§ 16.1-281. Foster care plan.

A. In any case in which (i) a local board of social services 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 or child welfare agency 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 or agency shall involve the child's parent(s) in the development of the plan, except when parental rights have been terminated or the local department of social services or child welfare 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 placed the child. The representatives of such department or agency 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 or agency shall include in the plan a full description of the reasons therefor.

The department or child welfare agency shall file the plan with the juvenile and domestic relations district court within 60 days following the transfer of custody or the board'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 placement of the child.

B. The foster care plan shall describe in writing (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; (v) for children 14 years of age and older, the child's needs and goals in the areas of counseling, education, housing, employment, and money management skills development, along with specific independent living services that will be provided to the child to help him reach these goals; and (vi) 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 or child welfare agency 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, *or* independent living for a child 16 years of age or older, ~~or continued foster care~~ is the plan for the child. "Independent living" as used in this section has the meaning set forth in § 63.2-100.

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 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."

Within 30 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 child, if he is 12 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 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 75 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 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; (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 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 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.

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

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

obtained custody or the board placed the child.

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

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

§ 16.1-282. Foster care review.

A. In the case of a child who was the subject of a foster care plan filed with the court pursuant to § 16.1-281, a foster care review hearing shall be held within six months of the dispositional hearing at which the foster care plan pursuant to § 16.1-281 was reviewed if the child: (a) was placed through an agreement between the parents or guardians and the local board of social services where legal custody remains with the parents or guardians and such agreement has not been dissolved by court order; or (b) is under the legal custody of a local board of social services or a child welfare agency and has not had a petition to terminate parental rights granted, filed or ordered to be filed on the child's behalf; has not been placed in permanent foster care; or is age 16 or over and the plan for the child is not independent living.

Any interested party, including the parent, guardian or person who stood in loco parentis prior to the board's placement of the child or the board's or child welfare agency's assumption of legal custody, may file with the court the petition for a foster care review hearing hereinafter described at any time after the initial foster care placement of the child. However, the board or child welfare agency shall file the petition within five months of the dispositional hearing at which the foster care plan was reviewed pursuant to § 16.1-281.

B. The petition shall:

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

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

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

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

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

6. Set forth the disposition sought and the grounds therefor; however, if a ~~continuation of foster care is recommended, a foster care plan for such period of continued foster care shall also be included and shall address (i) the role the current foster parents or other care providers will play in the future planning for the child and (ii) in the case of a child who has attained age 16 and for whom the plan is independent living, the foster care plan shall be included and shall address~~ the services needed to assist the child to transition from foster care to independent living.

C. Upon receipt of the petition filed by the board, child welfare agency, or any interested party as provided in subsection B of this section, the court shall schedule a hearing to be held within 30 days if a hearing was not previously scheduled. 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 12 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 E 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 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 in accordance with the best interests of the child and subject to the provisions of subsection D1, 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. Any order entered at the conclusion of this hearing that has the effect of achieving a permanent goal for the child by terminating residual parental rights pursuant to § 16.1-277.01, 16.1-277.02, 16.1-278.3, or 16.1-283; by placing the child in permanent foster care pursuant to subdivision A iv of § 16.1-282.1; or, if the child has attained the age of 16 years and the plan for the child is independent living, directing the board or agency to provide the necessary services to transition from foster care, pursuant to subdivision A v of § 16.1-282.1 shall state whether reasonable efforts have been made to place the child in a timely manner in accordance with the foster care plan and to complete the steps necessary to finalize the permanent placement of 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, the court shall schedule a permanency planning hearing on the case to be held five months thereafter in accordance with § 16.1-282.1 or within 30 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. However, in the case of a child who is the subject of an order that has the effect of achieving a permanent goal for the child by terminating residual parental rights pursuant to § 16.1-277.01, 16.1-277.02, 16.1-278.3, or 16.1-283; by placing the child in permanent foster care pursuant to subdivision A iv of § 16.1-282.1; or by directing the board or agency to provide the child with services to achieve independent living status, if the child has attained the age of 16 years, pursuant to subdivision A v of § 16.1-282.1, a permanency planning hearing within five months shall not be required and the court shall schedule a foster care review hearing to be held within 12 months of the entry of such order in accordance with the provisions of § 16.1-282.2.