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## HOUSE BILL NO. 2117

House Amendments in [ ] — January 28, 2013

A *BILL to amend and reenact §§ 16.1-252, 16.1-253, 16.1-277.02, 16.1-278.2, 16.1-278.3, 16.1-281, 16.1-282, and 16.1-282.1 of the Code of Virginia, relating to foster care; time to conduct hearings, etc.*

Patron Prior to Engrossment—Delegate Hodges

Referred to Committee for Courts of Justice

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

**1. That §§ 16.1-252, 16.1-253, 16.1-277.02, 16.1-278.2, 16.1-278.3, 16.1-281, 16.1-282, and 16.1-282.1 of the Code of Virginia are amended and reenacted 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~~ 24 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~~ 12 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~~ 14 years of age or under on the date of the alleged offense and is ~~sixteen~~ 16 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~~ 48 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

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59 relative or other interested individual, including grandparents, until such time as the court enters an  
60 order of disposition pursuant to § 16.1-278.2, or, if such placement is not available, in the care and  
61 custody of a suitable agency;

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

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

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

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

79 G. At the conclusion of the preliminary removal order hearing, the court shall determine whether the  
80 allegations of abuse or neglect have been proven by a preponderance of the evidence. Any finding of  
81 abuse or neglect shall be stated in the court order. However, if, before such a finding is made, a person  
82 responsible for the care and custody of the child, the child's guardian ad litem or the local department of  
83 social services objects to a finding being made at the hearing, the court shall schedule an adjudicatory  
84 hearing to be held within ~~thirty~~ 30 days of the date of the initial preliminary removal hearing. The  
85 adjudicatory hearing shall be held to determine whether the allegations of abuse and neglect have been  
86 proven by a preponderance of the evidence. Parties who are present at the preliminary removal order  
87 hearing shall be given notice of the date set for the adjudicatory hearing and parties who are not present  
88 shall be summoned as provided in § 16.1-263. The hearing shall be held and an order may be entered,  
89 although a party to the preliminary removal order hearing fails to appear and is not represented by  
90 counsel, provided personal or substituted service was made on the person, or the court determines that  
91 such person cannot be found, after reasonable effort, or in the case of a person who is without the  
92 Commonwealth, the person cannot be found or his post office address cannot be ascertained after  
93 reasonable effort.

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

96 H. If the preliminary removal order includes a finding of abuse or neglect and the child is removed  
97 from his home or a preliminary protective order is issued, a dispositional hearing shall be held pursuant  
98 to § 16.1-278.2. The dispositional hearing shall be scheduled at the time of the preliminary removal  
99 order hearing and shall be held within ~~seventy-five~~ 60 days of the preliminary removal order hearing. If  
100 an adjudicatory hearing is requested pursuant to subsection G, the dispositional hearing shall nonetheless  
101 be scheduled at the initial preliminary removal order hearing. All parties present at the preliminary  
102 removal order hearing shall be given notice of the date scheduled for the dispositional hearing; parties  
103 who are not present shall be summoned to appear as provided in § 16.1-263.

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

107 J. Violation of any order issued pursuant to this section shall constitute contempt of court.

108 **§ 16.1-253. Preliminary protective order.**

109 A. Upon the motion of any person or upon the court's own motion, the court may issue a preliminary  
110 protective order, after a hearing, if necessary to protect a child's life, health, safety or normal  
111 development pending the final determination of any matter before the court. The order may require a  
112 child's parents, guardian, legal custodian, other person standing in loco parentis or other family or  
113 household member of the child to observe reasonable conditions of behavior for a specified length of  
114 time. These conditions shall include any one or more of the following:

115 1. To abstain from offensive conduct against the child, a family or household member of the child or  
116 any person to whom custody of the child is awarded;

117 2. To cooperate in the provision of reasonable services or programs designed to protect the child's  
118 life, health or normal development;

119 3. To allow persons named by the court to come into the child's home at reasonable times designated  
120 by the court to visit the child or inspect the fitness of the home and to determine the physical or

emotional health of the child;

4. To allow visitation with the child by persons entitled thereto, as determined by the court;

5. To refrain from acts of commission or omission which tend to endanger the child's life, health or normal development; or

6. To refrain from such contact with the child or family or household members of the child, as the court may deem appropriate, including removal of such person from the residence of the child. However, prior to the issuance by the court of an order removing such person from the residence of the child, the petitioner must prove by a preponderance of the evidence that such person's probable future conduct would constitute a danger to the life or health of such child, and that there are no less drastic alternatives which could reasonably and adequately protect the child's life or health pending a final determination on the petition.

B. A preliminary protective order may be issued ex parte upon motion of any person or the court's own motion in any matter before the court, or upon petition. The motion or petition shall be supported by an affidavit or by sworn testimony in person before the judge or intake officer which establishes that the child would be subjected to an imminent threat to life or health to the extent that delay for the provision of an adversary hearing would be likely to result in serious or irreparable injury to the child's life or health. If an ex parte order is issued without an affidavit being presented, the court, in its order, shall state the basis upon which the order was entered, including a summary of the allegations made and the court's findings. Following the issuance of an ex parte order the court shall provide an adversary hearing to the affected parties within the shortest practicable time not to exceed five business days after the issuance of the order.

C. Prior to the hearing required by this section, notice of the hearing shall be given at least 24 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, to any other family or household member of the child to whom the protective order may be directed and to the child if he or she is 12 years of age or older. The notice provided herein shall include (i) the time, date and place for the hearing and (ii) a specific statement of the factual circumstances which allegedly necessitate the issuance of a preliminary protective order.

D. All parties to the hearing shall be informed of their right to counsel pursuant to § 16.1-266.

E. At the hearing the child, his or her parents, guardian, legal custodian or other person standing in loco parentis and any other family or household member of the child to whom notice was given shall have the right to confront and cross-examine all adverse witnesses and evidence and to present evidence on their own behalf.

F. If a petition alleging abuse or neglect of a child has been filed, at the hearing pursuant to this section the court shall determine whether the allegations of abuse or neglect have been proven by a preponderance of the evidence. Any finding of abuse or neglect shall be stated in the court order. However, if, before such a finding is made, a person responsible for the care and custody of the child, the child's guardian ad litem or the local department of social services objects to a finding being made at the hearing, the court shall schedule an adjudicatory hearing to be held within 30 days of the date of the initial preliminary protective order hearing. The adjudicatory hearing shall be held to determine whether the allegations of abuse and neglect have been proven by a preponderance of the evidence. Parties who are present at the hearing shall be given notice of the date set for the adjudicatory hearing and parties who are not present shall be summoned as provided in § 16.1-263. The adjudicatory hearing shall be held and an order may be entered, although a party to the hearing fails to appear and is not represented by counsel, provided personal or substituted service was made on the person, 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.

Any preliminary protective order issued shall remain in full force and effect pending the adjudicatory hearing.

G. If at the preliminary protective order hearing held pursuant to this section the court makes a finding of abuse or neglect and a preliminary protective order is issued, a dispositional hearing shall be held pursuant to § 16.1-278.2. The court shall forthwith, but in all cases no later than the end of the business day on which the order was issued, enter and transfer electronically to the Virginia Criminal Information Network the respondent's identifying information and the name, date of birth, sex, and race of each protected person provided to the court. A copy of the preliminary protective order containing any such identifying information shall be forwarded forthwith to the primary law-enforcement agency responsible for service and entry of protective orders. Upon receipt of the order by the primary law-enforcement agency, the agency shall forthwith verify and enter any modification as necessary to the identifying information and other appropriate information required by the Department of State Police into the Virginia Criminal Information Network established and maintained by the Department of State

182 Police pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52 and the order shall be served forthwith on the  
183 allegedly abusing person in person as provided in § 16.1-264 and due return made to the court.  
184 However, if the order is issued by the circuit court, the clerk of the circuit court shall forthwith forward  
185 an attested copy of the order containing the respondent's identifying information and the name, date of  
186 birth, sex, and race of each protected person provided to the court to the primary law-enforcement  
187 agency providing service and entry of protective orders and upon receipt of the order, the primary  
188 law-enforcement agency shall enter the name of the person subject to the order and other appropriate  
189 information required by the Department of State Police into the Virginia Criminal Information Network  
190 established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52 and  
191 the order shall be served forthwith upon the allegedly abusing person in person as provided in  
192 § 16.1-264. Upon service, the agency making service shall enter the date and time of service and other  
193 appropriate information required by the Department of State Police into the Virginia Criminal  
194 Information Network and make due return to the court. The preliminary order shall specify a date for  
195 the dispositional hearing. The dispositional hearing shall be scheduled at the time of the hearing  
196 pursuant to this section, and shall be held within ~~75~~ 60 days of this hearing. If an adjudicatory hearing  
197 is requested pursuant to subsection F, the dispositional hearing shall nonetheless be scheduled at the  
198 hearing pursuant to this section. All parties present at the hearing shall be given notice of the date and  
199 time scheduled for the dispositional hearing; parties who are not present shall be summoned to appear as  
200 provided in § 16.1-263.

201 H. Nothing in this section enables the court to remove a child from the custody of his or her parents,  
202 guardian, legal custodian or other person standing in loco parentis, except as provided in § 16.1-278.2,  
203 and no order hereunder shall be entered against a person over whom the court does not have  
204 jurisdiction.

205 I. Neither a law-enforcement agency, the attorney for the Commonwealth, a court nor the clerk's  
206 office, nor any employee of them, may disclose, except among themselves, the residential address,  
207 telephone number, or place of employment of the person protected by the order or that of the family of  
208 such person, except to the extent that disclosure is (i) required by law or the Rules of the Supreme  
209 Court, (ii) necessary for law-enforcement purposes, or (iii) permitted by the court for good cause.

210 J. Violation of any order issued pursuant to this section shall constitute contempt of court.

211 K. The court shall forthwith, but in all cases no later than the end of the business day on which the  
212 order was issued, enter and transfer electronically to the Virginia Criminal Information Network the  
213 respondent's identifying information and the name, date of birth, sex, and race of each protected person  
214 provided to the court. A copy of the preliminary protective order containing any such identifying  
215 information shall be forwarded forthwith to the primary law-enforcement agency responsible for service  
216 and entry of protective orders. Upon receipt of the order by the primary law-enforcement agency, the  
217 agency shall forthwith verify and enter any modification as necessary to the identifying information and  
218 other appropriate information required by the Department of State Police into the Virginia Criminal  
219 Information Network established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et  
220 seq.) of Title 52 and the order shall be served forthwith on the allegedly abusing person in person as  
221 provided in § 16.1-264 and due return made to the court. However, if the order is issued by the circuit  
222 court, the clerk of the circuit court shall forthwith forward an attested copy of the order containing the  
223 respondent's identifying information and the name, date of birth, sex, and race of each protected person  
224 provided to the court to the primary law-enforcement agency providing service and entry of protective  
225 orders and upon receipt of the order, the primary law-enforcement agency shall enter the name of the  
226 person subject to the order and other appropriate information required by the Department of State Police  
227 into the Virginia Criminal Information Network established and maintained by the Department pursuant  
228 to Chapter 2 (§ 52-12 et seq.) of Title 52 and the order shall be served forthwith on the allegedly  
229 abusing person in person as provided in § 16.1-264. Upon service, the agency making service shall enter  
230 the date and time of service and other appropriate information required by the Department of State  
231 Police into the Virginia Criminal Information Network and make due return to the court. The  
232 preliminary order shall specify a date for the full hearing.

233 Upon receipt of the return of service or other proof of service pursuant to subsection C of  
234 § 16.1-264, the clerk shall forthwith forward an attested copy of the preliminary protective order to the  
235 primary law-enforcement agency and the agency shall forthwith verify and enter any modification as  
236 necessary into the Virginia Criminal Information Network as described above. If the order is later  
237 dissolved or modified, a copy of the dissolution or modification order shall also be attested, forwarded  
238 forthwith to the primary law-enforcement agency responsible for service and entry of protective orders,  
239 and upon receipt of the order by the primary law-enforcement agency, the agency shall forthwith verify  
240 and enter any modification as necessary to the identifying information and other appropriate information  
241 required by the Department of State Police into the Virginia Criminal Information Network as described  
242 above and the order shall be served forthwith and due return made to the court.

243 L. No fee shall be charged for filing or serving any petition or order pursuant to this section.

**§ 16.1-277.02. Petition for relief of care and custody.**

A. Requests for petitions for relief of the care and custody of a child shall be referred initially to the local department of social services for investigation and the provision of services, if appropriate, in accordance with the provisions of § 63.2-319 or Chapter 15 (§ 63.2-1500 et seq.) of Title 63.2. Upon the filing of a petition for relief of a child's care and custody pursuant to subdivision A 4 of § 16.1-241, the court shall appoint a guardian ad litem to represent the child in accordance with the provisions of § 16.1-266, and shall schedule the matter for a hearing on the petition. Such hearing on the petition may include partial or final disposition of the matter. 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 guardian ad litem for the child;
3. The child's parents, custodian or other person standing in loco parentis to the child. No such notification shall be required, however, if the judge certifies on the record that the identity of the parent 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. The hearing on the petition shall be held pursuant to this section although a parent fails to appear and is not represented by counsel, provided personal or substituted service was made on the parent, 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. However, in the case of a hearing to grant a petition for permanent relief of custody and terminate a parent's residual parental rights, notice to the parent whose rights may be affected shall be provided in accordance with the provisions of §§ 16.1-263 and 16.1-264; and

4. The local board of social services. Upon receiving notice of the hearing pursuant to this section, the local board of social services shall investigate the matter and provide services, as appropriate, in accordance with the provisions of § 63.2-319 or Chapter 15 (§ 63.2-1500 et seq.) of Title 63.2.

B. At the hearing, the local board of social services, the child, the child's parents, guardian, legal custodian or other person standing in loco parentis and any other family or household member of the child to whom notice was given shall have the right to confront and cross-examine all adverse witnesses and evidence and to present evidence on their own behalf.

C. At the conclusion of the hearing on the petition, the court shall make a finding, based upon a preponderance of the evidence, whether there is good cause shown for the petitioner's desire to be relieved of the child's care and custody, unless the petition seeks permanent relief of custody and termination of parental rights. If the petition seeks permanent relief of custody and termination of parental rights, the court shall make a finding, based upon clear and convincing evidence, whether termination of parental rights is in the best interest of the child. If the court makes either of these findings, the court may enter:

1. A preliminary protective order pursuant to § 16.1-253;
2. An order that requires the local board of social services to provide services to the family as required by law;
3. An order that is consistent with any of the dispositional alternatives pursuant to § 16.1-278.3; or
4. Any combination of these orders.

Any such order transferring legal custody of the child shall be made in accordance with the provisions of subdivision A 5 of § 16.1-278.2 and shall be subject to the provisions of subsection C1. This order shall include, but need not be limited to, the following findings: (i) that there is no less drastic alternative to granting the requested relief; and (ii) that reasonable efforts have been made to prevent removal and that continued placement in the home would be contrary to the welfare of the child, if the order transfers legal custody of the child to a local board of social services. Any order terminating residual parental rights 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 to guardianship to a relative or other interested individual. Such 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. At any time subsequent to the transfer of legal custody of the child pursuant to this section, a birth parent or parents of the child and the pre-adoptive parent or parents may enter into a written post-adoption contact and communication agreement in accordance with the provisions of § 16.1-283.1 and Article 1.1 (§ 63.2-1220.2 et seq.) of Chapter 12 of Title 63.2. The court shall not require a written post-adoption contact and communication agreement as a precondition to entry of an order in any case involving the child.

The court shall schedule a subsequent hearing within ~~75~~ 60 days of the hearing held pursuant to this

section: ~~(i)~~ (a) to enter a final order of disposition pursuant to § 16.1-278.3 or ~~(ii)~~ (b) if the child is placed in foster care, for review of the foster care plan filed pursuant to § 16.1-281. If a party is required to be present at the subsequent hearing, and ~~(i)~~ (1) is present at the hearing on the petition, the party shall be given notice of the date set for the subsequent hearing; ~~(ii)~~ (2) if not present, shall be summoned as provided in § 16.1-263.

C1. Any order transferring temporary custody of the child to a relative or other interested individual pursuant to subsection C shall be entered only upon a finding, based upon a preponderance of the evidence, that the relative or other interested individual is one who (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; and (iii) is willing and has the ability to protect the child from abuse and neglect. The court's order transferring temporary custody to a relative or other interested individual should further provide for compliance with any preliminary protective order entered on behalf of the child in accordance with the provisions of § 16.1-253; and, as appropriate, ongoing provision of social services to the child and the child's custodian; and court review of the child's placement with the relative or other individual. Any final order transferring custody of the child to a relative or other interested individual pursuant to this section shall, in addition, be entered only after an investigation as directed by the court and upon a finding, stated in the court's order, that the relative or other interested individual is one who satisfies clauses (i), (ii) and (iii) and is committed to providing a permanent, suitable home for the child.

D. 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 pursuant to this section 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 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.

**§ 16.1-278.2. Abused, neglected, or abandoned children or children without parental care.**

A. Within ~~seventy-five~~ 60 days of a preliminary removal order hearing held pursuant to § 16.1-252 or a hearing on a preliminary protective order held pursuant to § 16.1-253, a dispositional hearing shall be held if the court found abuse or neglect and (i) removed the child from his home or (ii) entered a preliminary protective order. Notice of the dispositional hearing shall be provided to the child's parent, guardian, legal custodian or other person standing in loco parentis in accordance with § 16.1-263. The hearing shall be held and a dispositional order may be entered, although a parent, guardian, legal custodian or person standing in loco parentis fails to appear and is not represented by counsel, provided personal or substituted service was made on the person, 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. Notice shall also be provided to the local department of social services, the guardian ad litem and, if appointed, the court-appointed special advocate.

If a child is found to be (a) abused or neglected; (b) at risk of being abused or neglected by a parent or custodian who has been adjudicated as having abused or neglected another child in his care; or (c) abandoned by his parent or other custodian, or without parental care and guardianship because of his parent's absence or physical or mental incapacity, the juvenile court or the circuit court may make any of the following orders of disposition to protect the welfare of the child:

1. Enter an order pursuant to the provisions of § 16.1-278;
2. Permit the child to remain with his parent, subject to such conditions and limitations as the court may order with respect to such child and his parent or other adult occupant of the same dwelling;
3. Prohibit or limit contact as the court deems appropriate between the child and his parent or other adult occupant of the same dwelling whose presence tends to endanger the child's life, health or normal development. The prohibition may exclude any such individual from the home under such conditions as the court may prescribe for a period to be determined by the court but in no event for longer than 180 days from the date of such determination. A hearing shall be held within 150 days to determine further disposition of the matter that may include limiting or prohibiting contact for another 180 days;
4. Permit the local board of social services or a public agency designated by the community policy and management team to place the child, subject to the provisions of § 16.1-281, in suitable family homes, child-caring institutions, residential facilities, or independent living arrangements with legal custody remaining with the parents or guardians. The local board or public agency and the parents or guardians shall enter into an agreement which shall specify the responsibilities of each for the care and

control of the child. The board or public agency that places the child shall have the final authority to determine the appropriate placement for the child.

Any order allowing a local board or public agency to place a child where legal custody remains with the parents or guardians as provided in this section shall be entered only upon a finding by the court that reasonable efforts have been made to prevent placement out of the home and that continued placement in the home would be contrary to the welfare of the child; and the order shall so state.

5. After a finding that there is no less drastic alternative, transfer legal custody, subject to the provisions of § 16.1-281, to any of the following:

a. A relative or other interested individual subject to the provisions of subsection A1 of this section;  
b. A child welfare agency, private organization or facility that is licensed or otherwise authorized by law to receive and provide care for such child; however, a court shall not transfer legal custody of an abused or neglected child to an agency, organization or facility out of the Commonwealth without the approval of the Commissioner of Social Services; or

c. The local board of social services of the county or city in which the court has jurisdiction or, at the discretion of the court, to the local board of the county or city in which the child has residence if other than the county or city in which the court has jurisdiction. The local board shall accept the child for care and custody, provided that it has been given reasonable notice of the pendency of the case and an opportunity to be heard. However, in an emergency in the county or city in which the court has jurisdiction, the local board may be required to accept a child for a period not to exceed ~~fourteen~~ 14 days without prior notice or an opportunity to be heard if the judge entering the placement order describes the emergency and the need for such temporary placement in the order. Nothing in this section shall prohibit the commitment of a child to any local board of social services in the Commonwealth when the local board consents to the commitment. The board to which the child is committed shall have the final authority to determine the appropriate placement for the child.

Any order authorizing removal from the home and transferring legal custody of a child to a local board of social services as provided in this section shall be entered only upon a finding by the court that reasonable efforts have been made to prevent removal and that continued placement in the home would be contrary to the welfare of the child; and the order shall so state.

6. Transfer legal custody pursuant to subdivision 5 of this section and order the parent to participate in such services and programs or to refrain from such conduct as the court may prescribe; or

7. Terminate the rights of the parent pursuant to § 16.1-283.

A1. Any order transferring custody of the child to a relative or other interested individual pursuant to subdivision A 5 a 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 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.

B. If the child has been placed in foster care, at the dispositional hearing the court shall review the foster care plan for the child filed in accordance with § 16.1-281 by the local department of social services, a public agency designated by the community policy and management team which places a child through an agreement with the parents or guardians where legal custody remains with the parents or guardians, or child welfare agency.

C. Any preliminary protective orders entered on behalf of the child shall be reviewed at the dispositional hearing and may be incorporated, as appropriate, in the dispositional order.

D. A dispositional order entered pursuant to this section is a final order from which an appeal may be taken in accordance with § 16.1-296.

### **§ 16.1-278.3. Relief of care and custody.**

A. Within ~~75~~ 60 days of a hearing on a petition for relief of the care and custody of any child pursuant to § 16.1-277.02 at which the court found (i) good cause for the petitioner's desire to be relieved of a child's care and custody or (ii) that permanent relief of custody and termination of residual parental rights is in the best interest of the child, a dispositional hearing shall be held, if a final order disposing of the matter was not entered at the conclusion of the hearing on the petition held pursuant to § 16.1-277.02.

B. Notice of the dispositional hearing shall be provided to the local department of social services, the guardian ad litem for the child, the child if he is at least 12 years of age, and the child's parents, custodian or other person standing in loco parentis. However, if a parent's residual parental rights were terminated at the hearing on the petition held pursuant to § 16.1-277.02, no such notice of the hearing

428 pursuant to this section shall be provided to the parent. The hearing shall be held and a dispositional  
429 order may be entered, although a parent, guardian, legal custodian or person standing in loco parentis  
430 fails to appear and is not represented by counsel, provided personal or substituted service was made on  
431 the person, or the court determines that the person cannot be found, after reasonable effort, or in the  
432 case of a person who is without the Commonwealth, the person cannot be found or his post office  
433 address cannot be ascertained after reasonable effort. However, in the case of a hearing to grant a  
434 petition for permanent relief of custody and terminate a parent's residual parental rights, notice to the  
435 parent whose rights may be affected shall be provided in accordance with the provisions of §§ 16.1-263  
436 and 16.1-264.

437 C. The court may make any of the orders of disposition permitted in a case involving an abused or  
438 neglected child pursuant to § 16.1-278.2. Any such order transferring legal custody of the child shall be  
439 made in accordance with the provisions of subdivision A 5 of § 16.1-278.2 and shall be subject to the  
440 provisions of subsection D1. This order shall include, but need not be limited to, the following findings:  
441 (i) that there is no less drastic alternative to granting the requested relief; and (ii) that reasonable efforts  
442 have been made to prevent removal and that continued placement in the home would be contrary to the  
443 welfare of the child, if the order transfers legal custody of the child to a local board of social services.  
444 Any preliminary protective orders entered on behalf of the child shall be reviewed at the dispositional  
445 hearing and may be incorporated, as appropriate, in the dispositional order. If the child has been placed  
446 in foster care, at the dispositional hearing the court shall review the foster care plan for the child filed  
447 by the local board of social services or child welfare agency in accordance with § 16.1-281.

448 D. If the parent or other custodian seeks to be relieved permanently of the care and custody of any  
449 child and the court finds by clear and convincing evidence that termination of the parent's parental rights  
450 is in the best interest of the child, the court may terminate the parental rights of that parent. If the  
451 remaining parent has not petitioned for permanent relief of the care and custody of the child, the  
452 remaining parent's parental rights may be terminated in accordance with the provisions of § 16.1-283.  
453 Any order terminating parental rights shall be accompanied by an order (i) continuing or granting  
454 custody to a local board of social services or to a licensed child-placing agency, or (ii) granting custody  
455 or guardianship to a relative or other interested individual. Such an order continuing or granting custody  
456 to a local board of social services or to a licensed child-placing agency shall indicate whether that board  
457 or agency shall have the authority to place the child for adoption and consent thereto. Proceedings under  
458 this section shall be advanced on the docket so as to provide for their earliest practicable disposition. At  
459 any time subsequent to the transfer of legal custody of the child pursuant to this section, a birth parent  
460 or parents of the child and the pre-adoptive parent or parents may enter into a written post-adoption  
461 contact and communication agreement in accordance with the provisions of § 16.1-283.1 and Article 1.1  
462 (§ 63.2-1220.2 et seq.) of Chapter 12 of Title 63.2. The court shall not require a written post-adoption  
463 contact and communication agreement as a precondition to entry of an order in any case involving the  
464 child.

465 D1. Any order transferring custody of the child to a relative or other interested individual pursuant to  
466 subsection C or D shall be entered only upon a finding, based upon a preponderance of the evidence,  
467 that the relative or other interested individual is one who, after an investigation as directed by the court,  
468 (i) is found by the court to be willing and qualified to receive and care for the child; (ii) is willing to  
469 have a positive, continuous relationship with the child; (iii) is committed to providing a permanent,  
470 suitable home for the child; and (iv) is willing and has the ability to protect the child from abuse and  
471 neglect; and the order shall so state. The court's order transferring custody to a relative or other  
472 interested individual should further provide for, as appropriate, any terms or conditions which would  
473 promote the child's interest and welfare; ongoing provision of social services to the child and the child's  
474 custodian; and court review of the child's placement.

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

486 F. A dispositional order entered pursuant to this section is a final order from which an appeal may  
487 be taken in accordance with § 16.1-296.

488 **§ 16.1-281. Foster care plan.**

489 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~~ 45 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~~ 45 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 school-age children, the school placement of the child; and (vi) 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. In cases in which a foster care plan approved prior to July 1, 2011, identifies independent living as the goal for the child, and in cases involving children admitted to the United States as refugees or asylees who are 16 years of age or older and for whom the goal is independent living, the plan shall also describe 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 is the plan for the child or independent living is the plan for the child in cases involving children admitted to the United States as refugees or asylees who are 16 years of age or older and for whom the goal is independent living.

"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

551 or felony bodily wounding resulting in serious bodily injury or felony sexual assault, if the victim of the  
552 offense was a child of the parent or a child with whom the parent resided at the time of such offense; or  
553 (4) based on clear and convincing evidence, the parent has subjected any child to aggravated  
554 circumstances, or abandoned a child under circumstances which would justify the termination of residual  
555 parental rights pursuant to subsection D of § 16.1-283.

556 As used in this section:

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

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

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

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

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

571 C. A copy of the entire foster care plan shall be sent by the court to the child, if he is 12 years of  
572 age or older; the guardian ad litem for the child, the attorney for the child's parents or for any other  
573 person standing in loco parentis at the time the board or child welfare agency obtained custody or the  
574 board placed the child, to the parents or other person standing in loco parentis, and such other persons  
575 as appear to the court to have a proper interest in the plan. However, a copy of the plan shall not be  
576 sent to a parent whose parental rights regarding the child have been terminated. A copy of the plan,  
577 excluding the section of the plan describing the reasons why the child cannot be returned home and the  
578 alternative chosen, shall be sent by the court to the foster parents. A hearing shall be held for the  
579 purpose of reviewing and approving the foster care plan. The hearing shall be held within 75 60 days of  
580 (i) the child's initial foster care placement, if the child was placed through an agreement between the  
581 parents or guardians and the local department of social services or a child welfare agency; (ii) the  
582 original preliminary removal order hearing, if the child was placed in foster care pursuant to § 16.1-252;  
583 (iii) the hearing on the petition for relief of custody, if the child was placed in foster care pursuant to  
584 § 16.1-277.02; or (iv) the dispositional hearing at which the child was placed in foster care and an order  
585 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.  
586 However, the hearing shall be held in accordance with the provisions of § 16.1-277.01 with a petition  
587 for approval of an entrustment agreement. If the judge makes any revision in any part of the foster care  
588 plan, a copy of the changes shall be sent by the court to all persons who received a copy of the original  
589 of that part of the plan.

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

599 C2. Any order entered at the conclusion of the hearing that has the effect of achieving a permanent  
600 goal for the child by terminating residual parental rights pursuant to § 16.1-277.01, 16.1-277.02,  
601 16.1-278.3, or 16.1-283; by placing the child in permanent foster care pursuant to clause (iv) of  
602 subsection A of § 16.1-282.1; or, in cases in which independent living was identified as the goal for a  
603 child in a foster care plan approved prior to July 1, 2011, or in which a child has been admitted to the  
604 United States as a refugee or asylee and is over 16 years of age and independent living has been  
605 identified as the permanency goal for the child, by directing the board or agency to provide the child  
606 with services to achieve independent living status, if the child has attained the age of 16 years, pursuant  
607 to clause (v) of subsection A of § 16.1-282.1 shall state whether reasonable efforts have been made to  
608 place the child in a timely manner in accordance with the foster care plan and to complete the steps  
609 necessary to finalize the permanent placement of the child.

610 D. The court in which the foster care plan is filed shall be notified immediately if the child is  
611 returned to his parents or other persons standing in loco parentis at the time the board or agency  
612 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~~ *four* ] 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~~ *four* ] 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~~ *three* 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, 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

674 or guardian fails to appear and is not represented by counsel, provided personal or substituted service  
675 was made on the parent or guardian, or the court determines that such person cannot be found, after  
676 reasonable effort, or in the case of a person who is without the Commonwealth, the person cannot be  
677 found or his post office address cannot be ascertained after reasonable effort;

678 4. The foster parent or foster parents or other care providers of the child;

679 5. The petitioning board or child welfare agency; and

680 6. Such other persons as the court, in its discretion, may direct. The local board of social services or  
681 other child welfare agency shall identify for the court such other persons as have a legitimate interest in  
682 the hearing, including, but not limited to, preadoptive parents for a child in foster care.

683 D. At the conclusion of the hearing, the court shall, upon the proof adduced in accordance with the  
684 best interests of the child and subject to the provisions of subsection D1, enter any appropriate order of  
685 disposition consistent with the dispositional alternatives available to the court at the time of the original  
686 hearing. The court order shall state whether reasonable efforts, if applicable, have been made to reunite  
687 the child with his parents, guardian or other person standing in loco parentis to the child. Any order  
688 entered at the conclusion of this hearing that has the effect of achieving a permanent goal for the child  
689 by terminating residual parental rights pursuant to § 16.1-277.01, 16.1-277.02, 16.1-278.3, or 16.1-283;  
690 by placing the child in permanent foster care pursuant to subdivision A iv of § 16.1-282.1; or, if the  
691 child has attained the age of 16 years and the plan for the child is independent living, directing the  
692 board or agency to provide the necessary services to transition from foster care, pursuant to subdivision  
693 A v of § 16.1-282.1 shall state whether reasonable efforts have been made to place the child in a timely  
694 manner in accordance with the foster care plan and to complete the steps necessary to finalize the  
695 permanent placement of the child.

696 D1. Any order transferring custody of the child to a relative other than the child's prior family shall  
697 be entered only upon a finding, based upon a preponderance of the evidence, that the relative is one  
698 who, after an investigation as directed by the court, (i) is found by the court to be willing and qualified  
699 to receive and care for the child; (ii) is willing to have a positive, continuous relationship with the child;  
700 (iii) is committed to providing a permanent, suitable home for the child; and (iv) is willing and has the  
701 ability to protect the child from abuse and neglect; and the order shall so state. The court's order  
702 transferring custody to a relative should further provide for, as appropriate, any terms and conditions  
703 which would promote the child's interest and welfare; ongoing provision of social services to the child  
704 and the child's custodian; and court review of the child's placement.

705 E. The court shall possess continuing jurisdiction over cases reviewed under this section for so long  
706 as a child remains in a foster care placement or, when a child is returned to his prior family subject to  
707 conditions imposed by the court, for so long as such conditions are effective. After the hearing required  
708 pursuant to subsection C, the court shall schedule a permanency planning hearing on the case to be held  
709 five months thereafter in accordance with § 16.1-282.1 or within 30 days upon the petition of any party  
710 entitled to notice in proceedings under this section when the judge determines there is good cause shown  
711 for such a hearing. However, in the case of a child who is the subject of an order that has the effect of  
712 achieving a permanent goal for the child by terminating residual parental rights pursuant to  
713 § 16.1-277.01, 16.1-277.02, 16.1-278.3, or 16.1-283; by placing the child in permanent foster care  
714 pursuant to subdivision A iv of § 16.1-282.1; or by directing the board or agency to provide the child  
715 with services to achieve independent living status, if the child has attained the age of 16 years, pursuant  
716 to subdivision A v of § 16.1-282.1, a permanency planning hearing within five months shall not be  
717 required and the court shall schedule a foster care review hearing to be held within 12 months of the  
718 entry of such order in accordance with the provisions of § 16.1-282.2.

719 **§ 16.1-282.1. Permanency planning hearing for children in foster care.**

720 A. In the case of a child who was the subject of a foster care plan filed with the court pursuant to  
721 § 16.1-281, a permanency planning hearing shall be held within ~~14~~ 10 months of the dispositional  
722 hearing at which the foster care plan pursuant to § 16.1-281 was reviewed if the child (a) was placed  
723 through an agreement between the parents or guardians and the local board of social services where  
724 legal custody remains with the parents or guardians and such agreement has not been dissolved by court  
725 order; or (b) is under the legal custody of a local board of social services or a child welfare agency and  
726 has not had a petition to terminate parental rights filed on the child's behalf, has not been placed in  
727 permanent foster care, or is age 16 or over and the plan for the child is not independent living. The  
728 board or child welfare agency shall file a petition for a permanency planning hearing [ ~~within 10~~ *nine*  
729 ~~months of the dispositional hearing at which the foster care plan was reviewed pursuant to § 16.1-281~~  
730 *30 days prior to the date of the permanency planning hearing scheduled by the court* ]. The purpose of  
731 this hearing is to establish a permanent goal for the child and either to achieve the permanent goal or to  
732 defer such action through the approval of an interim plan for the child.

733 To achieve the permanent goal, the petition for a permanency planning hearing shall seek to (i)  
734 transfer the custody of the child to his prior family, or dissolve the board's placement agreement and  
735 return the child to his prior family; (ii) transfer custody of the child to a relative other than the child's

prior family, subject to the provisions of subsection A1; (iii) terminate residual parental rights pursuant to § 16.1-277.01 or 16.1-283; (iv) place the child in permanent foster care pursuant to § 63.2-908; (v) if the child has been admitted to the United States as a refugee or asylee and has attained the age of 16 years or over and the plan is independent living, direct the board or agency to provide the child with services to transition from foster care; or (vi) place the child in another planned permanent living arrangement in accordance with the provisions of subsection A2. In cases in which a foster care plan approved prior to July 1, 2011, includes independent living as the goal for a child who is not admitted to the United States as an asylee or refugee, the petition shall direct the board or agency to provide the child with services to transition from foster care.

For approval of an interim plan, the petition for a permanency planning hearing shall seek to continue custody with the board or agency, or continue placement with the board through a parental agreement; or transfer custody to the board or child welfare agency from the parents or guardian of a child who has been in foster care through an agreement where the parents or guardian retains custody.

Upon receipt of the petition, if a permanency planning hearing has not already been scheduled, the court shall schedule such a hearing to be held within 30 days. The permanency planning hearing shall be held within 44 10 months of the dispositional hearing at which the foster care plan was reviewed pursuant to § 16.1-281. The provisions of subsection B of § 16.1-282 shall apply to this petition. The procedures of subsection C of § 16.1-282 and the provisions of subsection E of § 16.1-282 shall apply to the scheduling and notice of proceedings under this section.

A1. The following requirements shall apply to the transfer of custody of the child to a relative other than the child's prior family in accordance with the provisions of (ii) of subsection A of this section. 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, as appropriate, for any terms or conditions which would promote the child's interest and welfare.

A2. The following requirements shall apply to the selection and approval of placement in another planned permanent living arrangement as the permanent goal for the child in accordance with clause (vi) of subsection A of this section.

1. The board or child welfare agency shall petition for alternative (vi) of subsection A only if the child has a severe and chronic emotional, physical or neurological disabling condition for which the child requires long-term residential treatment; and the board or child welfare agency has thoroughly investigated the feasibility of the alternatives listed in clauses (i) through (v) of subsection A and determined that none of those alternatives is in the best interests of the child. In a foster care plan filed with the petition pursuant to this section, the board or agency shall document the following: (i) the investigation conducted of the placement alternatives listed in clauses (i) through (v) of subsection A and why each of these is not currently in the best interest of the child; (ii) at least one compelling reason why none of the alternatives listed in clauses (i) through (v) is achievable for the child at the time placement in another planned permanent living arrangement is selected as the permanent goal for the child; (iii) the identity of the long-term residential treatment service provider; (iv) the nature of the child's disability; (v) the anticipated length of time required for the child's treatment; and (vi) the status of the child's eligibility for admission and long-term treatment.

2. Before approving alternative (vi) of subsection A of this section as the plan for the child, the court shall find (i) that the child has a severe and chronic emotional, physical or neurological disabling condition; (ii) that the child requires long-term residential treatment for the disabling condition; and (iii) that none of the alternatives listed in clauses (i) through (v) of subsection A is achievable for the child at the time placement in another planned permanent living arrangement is approved as the permanent goal for the child. If the board or agency petitions for alternative (vi), alternative (vi) may be approved by the court for a period of six months at a time.

3. At the conclusion of the permanency planning hearing, if alternative (vi) of subsection A of this section is the permanent plan, the court shall schedule a hearing to be held within six months to review the child's placement in another planned permanent living arrangement in accordance with subdivision 4 of subsection A2. All parties present at the hearing at which clause (vi) of subsection A is approved as the permanent plan for the child shall be given notice of the date scheduled for the foster care review hearing. Parties not present shall be summoned to appear as provided in § 16.1-263. Otherwise, this subsection A2 shall govern the scheduling and notice for such hearings.

4. The court shall review a foster care plan for any child who is placed in another planned permanent living arrangement every six months from the date of the permanency planning hearing held

797 pursuant to this subsection, so long as the child remains in the legal custody of the board or child  
798 welfare agency. The board or child welfare agency shall file such petitions for review pursuant to the  
799 provisions of § 16.1-282 and shall, in addition, include in the petition the information required by  
800 subdivision 1 of subsection A2 of this section. The petition for foster care review shall be filed no later  
801 than 30 days prior to the hearing scheduled in accordance with subdivision 3 of subsection A2. At the  
802 conclusion of the foster care review hearing, if alternative (vi) of subsection A of this section remains  
803 the permanent plan, the court shall enter an order that states whether reasonable efforts have been made  
804 to place the child in a timely manner in accordance with the permanency plan and to monitor the child's  
805 status in another planned permanent living arrangement.

806 However, if at any time during the six-month approval periods permitted by this subsection, a  
807 determination is made by treatment providers that the child's need for long-term residential treatment for  
808 the child's disabling condition is eliminated, the board or agency shall immediately begin to plan for  
809 post-discharge services and shall, within 30 days of making such a determination, file a petition for a  
810 permanency planning hearing pursuant to subsection A of this section. Upon receipt of the petition, the  
811 court shall schedule a permanency planning hearing to be held within 30 days. The provisions of  
812 subsection B of § 16.1-282 shall apply to this petition. The procedures of subsection C of § 16.1-282  
813 and the provisions of subsection E of § 16.1-282 shall apply to proceedings under this section.

814 B. The following requirements shall apply to the selection and approval of an interim plan for the  
815 child in accordance with subsection A.

816 1. The board or child welfare agency shall petition for approval of an interim plan only if the board  
817 or child welfare agency has thoroughly investigated the feasibility of the alternatives listed in clauses (i)  
818 through (v) of subsection A and determined that none of those alternatives is in the best interest of the  
819 child. If the board or agency petitions for approval of an interim plan, such plan may be approved by  
820 the court for a maximum period of six months. The board or agency shall also file a foster care plan  
821 that (i) identifies a permanent goal for the child that corresponds with one of the alternatives specified in  
822 clauses (i) through (v) of subsection A; (ii) includes provisions for accomplishing the permanent goal  
823 within six months; and (iii) summarizes the investigation conducted of the alternatives listed in clauses  
824 (i) through (v) of subsection A and why achieving each of these is not in the best interest of the child at  
825 this time.

826 2. Before approving an interim plan for the child, the court shall find:

827 a. When returning home remains the plan for the child, that the parent has made marked progress  
828 toward reunification with the child, the parent has maintained a close and positive relationship with the  
829 child, and the child is likely to return home within the near future, although it is premature to set an  
830 exact date for return at the time of this hearing; or

831 b. When returning home is not the plan for the child, that marked progress is being made to achieve  
832 the permanent goal identified by the board or child welfare agency and that it is premature to set an  
833 exact date for accomplishing the goal at the time of this hearing.

834 3. Upon approval of an interim plan, the court shall schedule a hearing to be held within six months  
835 to determine that the permanent goal is accomplished and to enter an order consistent with alternative  
836 (i), (ii), (iii), (iv), or (v) of subsection A. All parties present at the initial permanency planning hearing  
837 shall be given notice of the date scheduled for the second permanency planning hearing. Parties not  
838 present shall be summoned to appear as provided in § 16.1-263. Otherwise, subsection A shall govern  
839 the scheduling and notice for such hearings.

840 C. At the conclusion of the permanency planning hearing held pursuant to this section, whether  
841 action is taken or deferred to achieve the permanent goal for the child, the court shall enter an order that  
842 states whether reasonable efforts have been made to reunite the child with the child's prior family, if  
843 returning home is the permanent goal for the child; or whether reasonable efforts have been made to  
844 achieve the permanent goal identified by the board or agency, if the goal is other than returning the  
845 child home.

846 In making this determination, the court shall give consideration to whether the board or agency has  
847 placed the child in a timely manner in accordance with the foster care plan and completed the steps  
848 necessary to finalize the permanent placement of the child.

849 **2. That the provisions of this act shall become effective on July 1, 2014.**