

## VIRGINIA ACTS OF ASSEMBLY — CHAPTER

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

[S 947]

Approved

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

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

**§ 16.1-281. Foster care plan.**

A. In any case in which (i) a local board of social services 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 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 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

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57 involving children admitted to the United States as refugees or asylees who are 16 years of age or older  
 58 and for whom the goal is independent living.

59 "Independent living" as used in this section has the meaning set forth in § 63.2-100.

60 The local board or other child welfare agency having custody of the child shall not be required by  
 61 the court to make reasonable efforts to reunite the child with a parent if the court finds that (1) the  
 62 residual parental rights of the parent regarding a sibling of the child have previously been involuntarily  
 63 terminated; (2) the parent has been convicted of an offense under the laws of the Commonwealth or a  
 64 substantially similar law of any other state, the United States or any foreign jurisdiction that constitutes  
 65 murder or voluntary manslaughter, or a felony attempt, conspiracy or solicitation to commit any such  
 66 offense, if the victim of the offense was a child of the parent, a child with whom the parent resided at  
 67 the time such offense occurred or the other parent of the child; (3) the parent has been convicted of an  
 68 offense under the laws of the Commonwealth or a substantially similar law of any other state, the  
 69 United States or any foreign jurisdiction that constitutes felony assault resulting in serious bodily injury  
 70 or felony bodily wounding resulting in serious bodily injury or felony sexual assault, if the victim of the  
 71 offense was a child of the parent or a child with whom the parent resided at the time of such offense; or  
 72 (4) based on clear and convincing evidence, the parent has subjected any child to aggravated  
 73 circumstances, or abandoned a child under circumstances which would justify the termination of residual  
 74 parental rights pursuant to subsection D of § 16.1-283.

75 As used in this section:

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

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

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

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

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

90 C. A copy of the entire foster care plan shall be sent by the court to the child, if he is 12 years of  
 91 age or older; the guardian ad litem for the child, the attorney for the child's parents or for any other  
 92 person standing in loco parentis at the time the board or child welfare agency obtained custody or the  
 93 board placed the child, to the parents or other person standing in loco parentis, and such other persons  
 94 as appear to the court to have a proper interest in the plan. However, a copy of the plan shall not be  
 95 sent to a parent whose parental rights regarding the child have been terminated. A copy of the plan,  
 96 ~~excluding the section of the plan describing the reasons why the child cannot be returned home and the~~  
 97 ~~alternative chosen,~~ shall be sent by the court to the foster parents. A hearing shall be held for the  
 98 purpose of reviewing and approving the foster care plan. The hearing shall be held within 60 days of (i)  
 99 the child's initial foster care placement, if the child was placed through an agreement between the  
 100 parents or guardians and the local department of social services or a child welfare agency; (ii) the  
 101 original preliminary removal order hearing, if the child was placed in foster care pursuant to § 16.1-252;  
 102 (iii) the hearing on the petition for relief of custody, if the child was placed in foster care pursuant to  
 103 § 16.1-277.02; or (iv) the dispositional hearing at which the child was placed in foster care and an order  
 104 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.  
 105 However, the hearing shall be held in accordance with the provisions of § 16.1-277.01 with a petition  
 106 for approval of an entrustment agreement. If the judge makes any revision in any part of the foster care  
 107 plan, a copy of the changes shall be sent by the court to all persons who received a copy of the original  
 108 of that part of the plan.

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

118 C2. Any order entered at the conclusion of the hearing that has the effect of achieving a permanent  
119 goal for the child by terminating residual parental rights pursuant to § 16.1-277.01, 16.1-277.02,  
120 16.1-278.3, or 16.1-283; by placing the child in permanent foster care pursuant to clause (iv) of  
121 subsection A of § 16.1-282.1; or, in cases in which independent living was identified as the goal for a  
122 child in a foster care plan approved prior to July 1, 2011, or in which a child has been admitted to the  
123 United States as a refugee or asylee and is over 16 years of age and independent living has been  
124 identified as the permanency goal for the child, by directing the board or agency to provide the child  
125 with services to achieve independent living status, if the child has attained the age of 16 years, pursuant  
126 to clause (v) of subsection A of § 16.1-282.1 shall state whether reasonable efforts have been made to  
127 place the child in a timely manner in accordance with the foster care plan and to complete the steps  
128 necessary to finalize the permanent placement of the child.

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

132 E. At the conclusion of the hearing at which the initial foster care plan is reviewed, the court shall  
133 schedule a foster care review hearing to be held within four months in accordance with § 16.1-282.  
134 However, if an order is entered pursuant to subsection C2, the court shall schedule a foster care review  
135 hearing to be held within 12 months of the entry of such order in accordance with the provisions of  
136 § 16.1-282.2. Parties who are present at the hearing at which the initial foster care plan is reviewed shall  
137 be given notice of the date set for the foster care review hearing and parties who are not present shall  
138 be summoned as provided in § 16.1-263.

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