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HOUSE BILL NO. 1219

Offered January 10, 2018

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A *BILL to amend and reenact §§ 16.1-282.2 and 16.1-283.2 of the Code of Virginia, relating to restoration of parental rights.*

Patrons—Reid, Murphy and Tran

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-282.2 and 16.1-283.2 of the Code of Virginia are amended and reenacted as follows:

§ 16.1-282.2. Annual foster care review.

A. The court shall review a foster care plan annually for any child who remains in the legal custody of a local board of social services or a child welfare agency and (i) on whose behalf a petition to terminate parental rights has been granted, filed or ordered to be filed, (ii) who is placed in permanent foster care, or (iii) who is age 16 or over and for whom the plan is independent living. The foster care review hearing shall be scheduled at the conclusion of a hearing held pursuant to § 16.1-281, 16.1-282, or 16.1-282.1 at which the order is entered: terminating parental rights, directing the filing of a petition for termination of parental rights by the board or agency, placing the child in permanent foster care, or directing the board or agency to provide the child who is age 16 or over and for whom the plan is independent living with services to transition from foster care. The foster care review hearing shall be held within 12 months of the date of such order, so long as the child remains in the custody of the board or agency.

The board or agency shall file the petition for a foster care review hearing, and the court shall provide notice of the foster care review hearing in accordance with the provisions of § 16.1-282. The board or agency shall file a written Adoption Progress Report with the juvenile court pursuant to § 16.1-277.01, 16.1-277.02, 16.1-278.3, or 16.1-283, if applicable, with the petition required by this section. The court order entered at the conclusion of the hearing held on the petition shall state whether reasonable efforts have been made to place the child in a timely manner in accordance with the approved foster care plan that established a permanent goal for the child and to complete the steps necessary to finalize the permanent placement of the child.

B. At the foster care review hearing in the case of a child who is placed in permanent foster care, the court shall give consideration to the appropriateness of the services being provided to the child and permanent foster parents, to any change in circumstances since the entry of the order placing the child in permanent foster care, and to such other factors as the court deems proper.

C. *At the foster care review hearing in the case of a child who meets the criteria of subdivisions A 1 through 4 of § 16.1-283.2, the court shall inquire as to whether it is the child's preference that the court investigate the possibility of restoring the parental rights of his parent or parents. If the child expresses such a preference, the court shall direct the local board of social services or the child's guardian ad litem to conduct an investigation of the parent or parents in order to provide the court with information necessary to determine whether restoration would be in the child's best interest.*

If all of the criteria of subsection A of § 16.1-283.2 are met, the court shall direct the local board of social services or the child's guardian ad litem to file a petition for the restoration of parental rights. A hearing on such petition shall be held as provided by § 16.1-283.2.

§ 16.1-283.2. Restoration of parental rights.

A. If a child is in the custody of the local department of social services and a pre-adoptive parent or parents have not been identified and approved for the child, the child's guardian ad litem or the local board of social services may file a petition to restore the previously terminated parental rights of the child's parent under the following circumstances:

1. The child is at least 14 years of age;
2. The child was previously adjudicated to be an abused or neglected child, child in need of services, child in need of supervision, or delinquent child;
3. The parent's rights were terminated under a final order pursuant to subsection B, C, or D of § 16.1-283 at least two years prior to the filing of the petition to restore parental rights;
4. The child has not achieved his permanency goal or the permanency goal was achieved but not sustained; and
5. The child, if he is 14 years of age or older, and the parent whose rights are to be reinstated

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59 consent to the restoration of the parental rights.

60 B. Notwithstanding the provisions of subsection A, the court may accept (i) a petition involving a
61 child younger than 14 years of age if (a) the child is the sibling of a child for whom a petition for
62 restoration of parental rights has been filed and the child who is younger than 14 years of age meets all
63 other criteria for restoration of parental rights set forth in subsection A; or (b) the child's guardian ad
64 litem and the local department of social services jointly file the petition for restoration; or (ii) a petition
65 filed before the expiration of the two-year period following termination of parental rights if the child
66 will turn 18 before the expiration of the two-year period, and the court finds that accepting such a
67 petition is in the best interest of the child.

68 C. *If the court determines that (i) the child meets the criteria of subdivisions A 1 through 4, (ii) the*
69 *child is interested in the restoration of parental rights of his parent or parents, and (iii) no petition has*
70 *been filed, the court shall direct the local board of social services or the child's guardian ad litem to*
71 *conduct an investigation in order to provide the court with information necessary to determine whether*
72 *restoration would be in the child's best interest.*

73 *If the court determines that the criteria of subsection A are met and no petition has been filed, the*
74 *court shall direct the local board of social services or the child's guardian ad litem to file such petition*
75 *to restore the previously terminated parental rights of the parent or parents.*

76 D. The court shall set a hearing on the petition and serve notice of the hearing along with a copy of
77 the petition on the former parent of the child whose rights are the subject of the petition, any other
78 parent who retains legal rights to the child, the child's court-appointed special advocate, if one has been
79 appointed, and either the child's guardian ad litem or the local board of social services, whichever is not
80 the petitioner.

81 D. E. If the court finds, based upon clear and convincing evidence, that the parent is willing and able
82 to (i) receive and care for the child; (ii) have a positive, continuous relationship with the child; (iii)
83 provide a permanent, suitable home for the child; and (iv) protect the child from abuse and neglect, the
84 court may enter an order permitting the local board of social services to place the child with the former
85 parent whose rights are the subject of the petition, subject to the requirements of the placement plan
86 developed pursuant to subsection E F and for visitation required pursuant to subsection F G.

87 E. F. Within 60 days of the filing of the petition for restoration of parental rights and prior to the
88 entry of an order pursuant to subsection D E, the local board of social services shall develop a written
89 placement plan for the child, which shall (i) describe the programs, services, and other supports that
90 shall be offered to the child and the former parent with whom the child has been placed and (ii) set
91 forth requirements for the participation of the former parent with whom the child has been placed in
92 programs and services described in the placement plan and the conduct of the child's former parent with
93 whom the child has been placed. Such plan shall be incorporated into the order entered pursuant to
94 subsection D E.

95 E. G. Following the placement of a child with his former parent following entry of an order pursuant
96 to subsection D E, the director of the local department of social services shall cause the child to be
97 visited by an agent of such local board or local department at least three times within the six-month
98 period immediately following placement of the child in order to evaluate the suitability of the placement
99 and the progress of the former parent toward remedying the factors and conditions that led to or
100 required continuation of the child's foster care placement; however, no less than 90 days shall elapse
101 between the first visit and the last visit. At least one of the visits shall be conducted in the home of the
102 former parent whose rights are the subject of the petition in the presence of the former parent.

103 G. H. Upon completion of the visitation required pursuant to subsection F G, the director of the local
104 department of social services shall make a written report to the court, in such form as the Commissioner
105 of Social Services may prescribe, describing (i) findings made as a result of the visits required pursuant
106 to subsection F G and (ii) findings and information related to the former parent's compliance with
107 requirements of the placement plan developed pursuant to subsection E F.

108 H. I. Upon receipt of the report required pursuant to subsection G H, the court shall set a hearing on
109 the petition for restoration of parental rights and serve notice of the hearing, along with a copy of the
110 report required pursuant to subsection G H, on the former parent of the child whose rights are the
111 subject of the petition, any other parent who retains legal rights to the child, the child's court-appointed
112 special advocate, if one has been appointed, and the child's guardian ad litem.

113 I. J. If, upon consideration of the report required pursuant to subsection G H, the court finds by clear
114 and convincing evidence that the restoration of parental rights is in the child's best interest, the court
115 shall enter an order restoring the parental rights of the child's parent. In determining whether restoration
116 is in the best interest of the child, the court shall consider the following:

117 1. Whether the parent whose rights are to be reinstated agrees to the reinstatement and has
118 substantially remedied the conditions that led to or required continuation of the child's foster care
119 placement;

120 2. The age and maturity of the child and whether the child consents to the reinstatement of the

former parent's rights, if the child is 14 years of age or older, or the child's preference with regard to the reinstatement of the former parent's rights, if the child is younger than 14 years of age;

3. Whether the restoration of parental rights will present a risk to the child's life, health, or development;

4. Whether the restoration of parental rights will affect benefits available to the child; and

5. Other material changes in circumstances, if any, that warrant the granting of the petition.

~~J.~~ *K.* The court may revoke its order permitting the placement of a child with his former parent pursuant to subsection ~~D~~ *E* at any time prior to entry of an order restoring parental rights to the former parent of the child, for good cause shown, on its own motion or on the motion of the child's guardian ad litem or the local department of social services.

~~K.~~ *L.* A petition for restoration of parental rights filed while the child is younger than 18 years of age shall not become invalid because the child reaches 18 years of age prior to the entry of an order of restoration of parental rights. Any order restoring parental rights to a parent of a child pursuant to this section entered after a child reaches 18 years of age, where the petition was filed prior to the child turning 18 years of age, shall have the same effect as if the child was under 18 years of age at the time the order was entered by the court.

~~L.~~ *M.* The granting of a petition under this section does not vacate the findings of fact or conclusions of law contained in the original order that terminated the parental rights of the child's parent.