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HOUSE BILL NO. 2622

Offered January 9, 2019

A *BILL to amend and reenact §§ 16.1-251, 16.1-252, 16.1-277.01, 16.1-277.02, 16.1-278.2, 16.1-278.3, and 16.1-283 of the Code of Virginia and to amend the Code of Virginia by adding in Article 1 of Chapter 11 of Title 16.1 a section numbered 16.1-229.1, relating to removal of child; names and contact information of relatives or other interested individuals, including grandparents and extended family members.*

Patron—Austin

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-251, 16.1-252, 16.1-277.01, 16.1-277.02, 16.1-278.2, 16.1-278.3, and 16.1-283 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Article 1 of Chapter 11 of Title 16.1 a section numbered 16.1-229.1 as follows:

§ 16.1-229.1. Removal of a child; names and contact information of relatives or other interested individuals.

In any proceeding held pursuant to this chapter in which a child is removed from his home, the court shall order the parents or guardians of such child to provide the names and contact information for all relatives and other interested individuals, including grandparents and extended family members, to the local department of social services.

§ 16.1-251. Emergency removal order.

A. A child may be taken into immediate custody and placed in shelter care pursuant to an emergency removal order in cases in which the child is alleged to have been abused or neglected. Such order may be issued ex parte by the court upon a petition supported by an affidavit or by sworn testimony in person before the judge or intake officer which establishes that:

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.

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 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.

If the petitioner fails to obtain an emergency removal order within four hours of taking custody of the child, the affidavit or sworn testimony before the judge or intake officer shall state the reasons therefor.

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.

The petitioner shall not be required by the court to make reasonable efforts to prevent removal of the child from his home if the court finds that (i) the residual parental rights of the parent regarding a sibling of the child have previously been involuntarily terminated; (ii) 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; (iii) the parent has been convicted of an offense under the laws of the Commonwealth or a substantially similar law of any other state, the United States, or any foreign jurisdiction that constitutes felony assault resulting in serious bodily injury or felony bodily wounding resulting in serious bodily injury or felony sexual assault, if the victim of the offense was a child of the parent or a child with whom the parent resided at the time of such offense; or (iv) on the basis of clear and convincing evidence, the parent has subjected any child to aggravated circumstances or abandoned a child under circumstances that would justify the termination of residual parental rights pursuant to subsection D of § 16.1-283.

As used in this section:

"Aggravated circumstances" means torture, chronic or severe abuse, or chronic or severe sexual

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59 abuse, if the victim of such conduct was a child of the parent or child with whom the parent resided at
60 the time such conduct occurred, including the failure to protect such a child from such conduct, which
61 conduct or failure to protect (i) evinces a wanton or depraved indifference to human life or (ii) has
62 resulted in the death of such a child or in serious bodily injury to such a child.

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

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

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

70 B. Whenever a child is taken into immediate custody pursuant to an emergency removal order, a
71 hearing shall be held in accordance with § 16.1-252 as soon as practicable, but in no event later than
72 five business days after the removal of the child.

73 C. In the emergency removal order the court shall give consideration to temporary placement of the
74 child with a relative or other interested individual, including grandparents *and extended family members*,
75 under the supervision of the local department of social services, until such time as the hearing in
76 accordance with § 16.1-252 is held.

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

80 **§ 16.1-252. Preliminary removal order; hearing.**

81 A. A preliminary removal order in cases in which a child is alleged to have been abused or
82 neglected may be issued by the court after a hearing wherein the court finds that reasonable efforts have
83 been made to prevent removal of the child from his home. The hearing shall be in the nature of a
84 preliminary hearing rather than a final determination of custody.

85 B. Prior to the removal hearing, notice of the hearing shall be given at least 24 hours in advance of
86 the hearing to the guardian ad litem for the child, to the parents, guardian, legal custodian or other
87 person standing in loco parentis of the child and to the child if he or she is 12 years of age or older. If
88 notice to the parents, guardian, legal custodian or other person standing in loco parentis cannot be given
89 despite diligent efforts to do so, the hearing shall be held nonetheless, and the parents, guardian, legal
90 custodian or other person standing in loco parentis shall be afforded a later hearing on their motion
91 regarding a continuation of the summary removal order. The notice provided herein shall include (i) the
92 time, date and place for the hearing; (ii) a specific statement of the factual circumstances which
93 allegedly necessitate removal of the child; and (iii) notice that child support will be considered if a
94 determination is made that the child must be removed from the home.

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

96 D. At the removal hearing the child and his parent, guardian, legal custodian or other person standing
97 in loco parentis shall have the right to confront and cross-examine all adverse witnesses and evidence
98 and to present evidence on their own behalf. If the child was 14 years of age or under on the date of
99 the alleged offense and is 16 or under at the time of the hearing, the child's attorney or guardian ad
100 litem, or if the child has been committed to the custody of the Department of Social Services, the local
101 department of social services, may apply for an order from the court that the child's testimony be taken
102 in a room outside the courtroom and be televised by two-way closed-circuit television. The provisions of
103 § 63.2-1521 shall apply, mutatis mutandis, to the use of two-way closed-circuit television except that the
104 person seeking the order shall apply for the order at least 48 hours before the hearing, unless the court
105 for good cause shown allows the application to be made at a later time.

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

108 1. The child would be subjected to an imminent threat to life or health to the extent that severe or
109 irremediable injury would be likely to result if the child were returned to or left in the custody of his
110 parents, guardian, legal custodian or other person standing in loco parentis pending a final hearing on
111 the petition; and

112 2. Reasonable efforts have been made to prevent removal of the child from his home and there are
113 no alternatives less drastic than removal of the child from his home which could reasonably and
114 adequately protect the child's life or health pending a final hearing on the petition. The alternatives less
115 drastic than removal may include but not be limited to the provision of medical, educational, psychiatric,
116 psychological, homemaking or other similar services to the child or family or the issuance of a
117 preliminary protective order pursuant to § 16.1-253.

118 When a child is removed from his home and there is no reasonable opportunity to provide preventive
119 services, reasonable efforts to prevent removal shall be deemed to have been made.

120 The petitioner shall not be required by the court to make reasonable efforts to prevent removal of the

child from his home if the court finds that (i) the residual parental rights of the parent regarding a sibling of the child have previously been involuntarily terminated; (ii) 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; (iii) the parent has been convicted of an offense under the laws of the Commonwealth or a substantially similar law of any other state, the United States, or any foreign jurisdiction that constitutes felony assault resulting in serious bodily injury or felony bodily wounding resulting in serious bodily injury or felony sexual assault, if the victim of the offense was a child of the parent or a child with whom the parent resided at the time of such offense; or (iv) on the basis of clear and convincing evidence, the parent has subjected any child to aggravated circumstances, or abandoned a child under circumstances that would justify the termination of residual parental rights pursuant to subsection D of § 16.1-283.

As used in this section:

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

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

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

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

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

1. Order that the child be placed in the temporary care and custody of a suitable person, subject to the provisions of subsection F1 of ~~this section~~ and under the supervision of the local department of social services, with consideration being given to placement in the temporary care and custody of a relative or other interested individual, including grandparents *and extended family members*, until such time as the court enters an order of disposition pursuant to § 16.1-278.2, or, if such placement is not available, in the care and custody of a suitable agency;

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

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

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

F1. Prior to the entry of an order pursuant to subsection F of ~~this section~~ transferring temporary custody of the child to a relative or other interested individual, including grandparents *and extended family members*, the court shall consider whether ~~the~~ *such* relative or other interested individual is one who (i) is 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 provide for compliance with any preliminary protective order entered on behalf of the child in accordance with the provisions of § 16.1-253; initiation and completion of the investigation as directed by the court and court review of the child's placement required in accordance with the provisions of § 16.1-278.2; and, as appropriate, ongoing provision of social services to the child and the temporary custodian.

G. At the conclusion of the preliminary removal order hearing, 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 removal 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 preliminary removal order

182 hearing shall be given notice of the date set for the adjudicatory hearing and parties who are not present
183 shall be summoned as provided in § 16.1-263. The hearing shall be held and an order may be entered,
184 although a party to the preliminary removal order hearing fails to appear and is not represented by
185 counsel, provided personal or substituted service was made on the person, or the court determines that
186 such person cannot be found, after reasonable effort, or in the case of a person who is without the
187 Commonwealth, the person cannot be found or his post office address cannot be ascertained after
188 reasonable effort.

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

191 H. If the preliminary removal order includes a finding of abuse or neglect and the child is removed
192 from his home or a preliminary protective order is issued, a dispositional hearing shall be held pursuant
193 to § 16.1-278.2. The dispositional hearing shall be scheduled at the time of the preliminary removal
194 order hearing and shall be held within 60 days of the preliminary removal order hearing. If an
195 adjudicatory hearing is requested pursuant to subsection G, the dispositional hearing shall nonetheless be
196 scheduled at the initial preliminary removal order hearing. All parties present at the preliminary removal
197 order hearing shall be given notice of the date scheduled for the dispositional hearing; parties who are
198 not present shall be summoned to appear as provided in § 16.1-263.

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

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

203 **§ 16.1-277.01. Approval of entrustment agreement.**

204 A. In any case in which a child has been entrusted pursuant to § 63.2-903 or 63.2-1817 to the local
205 board of social services or to a child welfare agency, a petition for approval of the entrustment
206 agreement by the board or agency:

207 1. Shall be filed within a reasonable period of time, no later than 89 days after the execution of an
208 entrustment agreement for less than 90 days, if the child is not returned to the caretaker from whom he
209 was entrusted within that period;

210 2. Shall be filed within a reasonable period of time, not to exceed 30 days after the execution of an
211 entrustment agreement for 90 days or longer or for an unspecified period of time, if such entrustment
212 agreement does not provide for the termination of all parental rights and responsibilities with respect to
213 the child; and

214 3. May be filed in the case of a permanent entrustment agreement which provides for the termination
215 of all parental rights and responsibilities with respect to the child.

216 The board or agency shall file a foster care plan pursuant to § 16.1-281 to be heard with any petition
217 for approval of an entrustment agreement.

218 B. Upon the filing of a petition for approval of an entrustment agreement pursuant to subsection A
219 of § 16.1-241, the court shall appoint a guardian ad litem to represent the child in accordance with the
220 provisions of § 16.1-266, and shall schedule the matter for a hearing to be held as follows: within 45
221 days of the filing of a petition pursuant to subdivision A 1, A 2 or A 3, except where an order of
222 publication has been ordered by the court, in which case the hearing shall be held within 75 days of the
223 filing of the petition. The court shall provide notice of the hearing and a copy of the petition to the
224 following, each of whom shall be a party entitled to participate in the proceeding:

225 1. The local board of social services or child welfare agency;

226 2. The child, if he is 12 years of age or older;

227 3. The guardian ad litem for the child; and

228 4. The child's parents, guardian, legal custodian or other person standing in loco parentis to the child.

229 No such notification shall be required, however, if the judge certifies on the record that the identity of
230 the parent or guardian is not reasonably ascertainable. A birth father shall be given notice of the
231 proceedings if he is an acknowledged father pursuant to § 20-49.1, adjudicated pursuant to § 20-49.8, or
232 presumed pursuant to § 63.2-1202, or has registered with the Virginia Birth Father Registry pursuant to
233 Article 7 (§ 63.2-1249 et seq.). An affidavit of the mother that the identity of the father is not
234 reasonably ascertainable shall be sufficient evidence of this fact, provided there is no other evidence
235 before the court which would refute such an affidavit. Failure to register with the Virginia Birth Father
236 Registry pursuant to Article 7 (§ 63.2-1249 et seq.) of Chapter 12 of Title 63.2 shall be evidence that
237 the identity of the father is not reasonably ascertainable. The hearing shall be held and an order may be
238 entered, although a parent, guardian, legal custodian or person standing in loco parentis fails to appear
239 and is not represented by counsel, provided personal or substituted service was made on the person, or
240 the court determines that such person cannot be found, after reasonable effort, or in the case of a person
241 who is without the Commonwealth, the person cannot be found or his post office address cannot be
242 ascertained after reasonable effort. However, when a petition seeks approval of a permanent entrustment
243 agreement which provides for the termination of all parental rights and responsibilities with respect to

the child, a summons shall be served upon the parent or parents and the other parties specified in § 16.1-263. The summons or notice of hearing shall clearly state the consequences of a termination of residual parental rights. Service shall be made pursuant to § 16.1-264. The remaining parent's parental rights may be terminated even though that parent has not entered into an entrustment agreement if the court finds, based upon clear and convincing evidence, that it is in the best interest of the child and that (i) the identity of the parent is not reasonably ascertainable; (ii) the identity and whereabouts of the parent are known or reasonably ascertainable, and the parent is personally served with notice of the termination proceeding pursuant to § 8.01-296 or 8.01-320; (iii) the whereabouts of the parent are not reasonably ascertainable and the parent is given notice of the termination proceedings by certified or registered mail to the last known address and such parent fails to object to the proceedings within 15 days of the mailing of such notice; or (iv) the whereabouts of the parent are not reasonably ascertainable and the parent is given notice of the termination proceedings through an order of publication pursuant to §§ 8.01-316 and 8.01-317, and such parent fails to object to the proceedings.

C. At the hearing held pursuant to this section, the court shall hear evidence on the petition filed and shall review the foster care plan for the child filed by the local board or child welfare agency in accordance with § 16.1-281.

D. At the conclusion of the hearing, the court shall make a finding, based upon a preponderance of the evidence, whether approval of the entrustment agreement is in the best interest of the child. However, if the petition seeks approval of a permanent entrustment agreement which provides for the termination of all parental rights and responsibilities with respect to the child, 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 make any of the orders of disposition permitted in a case involving an abused or neglected child pursuant to § 16.1-278.2. 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 D1. 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. 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 effect of the court's order approving a permanent entrustment agreement is to terminate an entrusting parent's residual parental rights. Any order terminating parental rights shall be accompanied by an order (i) continuing or granting custody to a local board of social services or to a licensed child-placing agency or (ii) granting custody or guardianship to a relative or other interested individual, *including grandparents and extended family members*. 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. A final order terminating parental rights pursuant to this section renders the approved entrustment agreement irrevocable. Such order may be appealed in accordance with the provisions of § 16.1-296.

D1. Any order transferring custody of the child to a relative or other interested individual, *including grandparents and extended family members*, pursuant to subsection D shall be entered only upon a finding, based upon a preponderance of the evidence, that ~~the~~ *such* relative or other interested individual is one who (i) after an investigation as directed by the court, 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 and conditions which would promote the child's interest and welfare; ongoing provision of social services to the child and the child's custodian; and court review of the child's placement.

E. The 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

305 adoption, the juvenile court shall schedule a date by which the board or agency shall file the first
306 Adoption Progress Report required by this section. A copy of the Adoption Progress Report shall be
307 sent by the court to the guardian ad litem for the child. The court may schedule a hearing on the report
308 with or without the request of a party.

309 **§ 16.1-277.02. Petition for relief of care and custody.**

310 A. Requests for petitions for relief of the care and custody of a child shall be referred initially to the
311 local department of social services for investigation and the provision of services, if appropriate, in
312 accordance with the provisions of § 63.2-319 or Chapter 15 (§ 63.2-1500 et seq.) of Title 63.2. Upon the
313 filing of a petition for relief of a child's care and custody pursuant to subdivision A 4 of § 16.1-241, the
314 court shall appoint a guardian ad litem to represent the child in accordance with the provisions of
315 § 16.1-266, and shall schedule the matter for a hearing on the petition. Such hearing on the petition may
316 include partial or final disposition of the matter. The court shall provide notice of the hearing and a
317 copy of the petition to the following, each of whom shall be a party entitled to participate in the
318 proceeding:

319 1. The child, if he is 12 years of age or older;

320 2. The guardian ad litem for the child;

321 3. The child's parents, custodian or other person standing in loco parentis to the child. No such
322 notification shall be required, however, if the judge certifies on the record that the identity of the parent
323 is not reasonably ascertainable. An affidavit of the mother that the identity of the father is not
324 reasonably ascertainable shall be sufficient evidence of this fact, provided there is no other evidence
325 before the court which would refute such an affidavit. The hearing on the petition shall be held pursuant
326 to this section although a parent fails to appear and is not represented by counsel, provided personal or
327 substituted service was made on the parent, or the court determines that such person cannot be found,
328 after reasonable effort, or in the case of a person who is without the Commonwealth, the person cannot
329 be found or his post office address cannot be ascertained after reasonable effort. However, in the case of
330 a hearing to grant a petition for permanent relief of custody and terminate a parent's residual parental
331 rights, notice to the parent whose rights may be affected shall be provided in accordance with the
332 provisions of §§ 16.1-263 and 16.1-264; and

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

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

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

347 1. A preliminary protective order pursuant to § 16.1-253;

348 2. An order that requires the local board of social services to provide services to the family as
349 required by law;

350 3. An order that is consistent with any of the dispositional alternatives pursuant to § 16.1-278.3; or

351 4. Any combination of these orders.

352 Any such order transferring legal custody of the child shall be made in accordance with the
353 provisions of subdivision A 5 of § 16.1-278.2 and shall be subject to the provisions of subsection C1.
354 This order shall include, but need not be limited to, the following findings: (i) that there is no less
355 drastic alternative to granting the requested relief; and (ii) that reasonable efforts have been made to
356 prevent removal and that continued placement in the home would be contrary to the welfare of the
357 child, if the order transfers legal custody of the child to a local board of social services. Any order
358 terminating residual parental rights shall be accompanied by an order continuing or granting custody to a
359 local board of social services; *or* to a licensed child-placing agency or ~~the~~ granting of custody or
360 guardianship to a relative or other interested individual, *including grandparents and extended family*
361 *members*. Such an order continuing or granting custody to a local board of social services or to a
362 licensed child-placing agency shall indicate whether that board or agency shall have the authority to
363 place the child for adoption and consent thereto. At any time subsequent to the transfer of legal custody
364 of the child pursuant to this section, a birth parent or parents of the child and the pre-adoptive parent or
365 parents may enter into a written post-adoption contact and communication agreement in accordance with
366 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

367 court shall not require a written post-adoption contact and communication agreement as a precondition
 368 to entry of an order in any case involving the child.

369 The court shall schedule a subsequent hearing within 60 days of the hearing held pursuant to this
 370 section: (a) to enter a final order of disposition pursuant to § 16.1-278.3 or (b) if the child is placed in
 371 foster care, for review of the foster care plan filed pursuant to § 16.1-281. If a party is required to be
 372 present at the subsequent hearing, and (1) is present at the hearing on the petition, the party shall be
 373 given notice of the date set for the subsequent hearing; (2) if not present, shall be summoned as
 374 provided in § 16.1-263.

375 C1. Any order transferring temporary custody of the child to a relative or other interested individual,
 376 *including grandparents and extended family members*, pursuant to subsection C shall be entered only
 377 upon a finding, based upon a preponderance of the evidence, that ~~the~~ *such* relative or other interested
 378 individual is one who (i) is found by the court to be willing and qualified to receive and care for the
 379 child; (ii) is willing to have a positive, continuous relationship with the child; and (iii) is willing and has
 380 the ability to protect the child from abuse and neglect. The court's order transferring temporary custody
 381 to a relative or other interested individual should further provide for compliance with any preliminary
 382 protective order entered on behalf of the child in accordance with the provisions of § 16.1-253; and, as
 383 appropriate, ongoing provision of social services to the child and the child's custodian; and court review
 384 of the child's placement with the relative or other individual. Any final order transferring custody of the
 385 child to a relative or other interested individual pursuant to this section shall, in addition, be entered
 386 only after an investigation as directed by the court and upon a finding, stated in the court's order, that
 387 the relative or other interested individual is one who satisfies clauses (i), (ii), and (iii) and is committed
 388 to providing a permanent, suitable home for the child.

389 D. The local board or licensed child-placing agency to which authority is given to place the child for
 390 adoption and consent thereto after an order terminating parental rights is entered pursuant to this section
 391 shall file a written Adoption Progress Report with the juvenile court on the progress being made to
 392 place the child in an adoptive home. The report shall be filed with the court every six months from the
 393 date of the final order terminating parental rights until a final order of adoption is entered on behalf of
 394 the child in the circuit court. At the conclusion of the hearing at which termination of parental rights is
 395 ordered and authority is given to the local board or licensed child-placing agency to place the child for
 396 adoption, the juvenile court shall schedule a date by which the board or agency shall file the first
 397 Adoption Progress Report required by this section. A copy of the Adoption Progress Report shall be
 398 sent by the court to the guardian ad litem for the child. The court may schedule a hearing on the report
 399 with or without the request of a party.

400 **§ 16.1-278.2. Abused, neglected, or abandoned children or children without parental care.**

401 A. Within 60 days of a preliminary removal order hearing held pursuant to § 16.1-252 or a hearing
 402 on a preliminary protective order held pursuant to § 16.1-253, a dispositional hearing shall be held if the
 403 court found abuse or neglect and (i) removed the child from his home or (ii) entered a preliminary
 404 protective order. Notice of the dispositional hearing shall be provided to the child's parent, guardian,
 405 legal custodian, or other person standing in loco parentis in accordance with § 16.1-263. The hearing
 406 shall be held and a dispositional order may be entered, although a parent, guardian, legal custodian, or
 407 person standing in loco parentis fails to appear and is not represented by counsel, provided personal or
 408 substituted service was made on the person, or the court determines that such person cannot be found,
 409 after reasonable effort, or in the case of a person who is without the Commonwealth, the person cannot
 410 be found or his post office address cannot be ascertained after reasonable effort. Notice shall also be
 411 provided to the local department of social services, the guardian ad litem and, if appointed, the
 412 court-appointed special advocate.

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

- 418 1. Enter an order pursuant to the provisions of § 16.1-278;
- 419 2. Permit the child to remain with his parent, subject to such conditions and limitations as the court
 420 may order with respect to such child and his parent or other adult occupant of the same dwelling;
- 421 3. Prohibit or limit contact as the court deems appropriate between the child and his parent or other
 422 adult occupant of the same dwelling whose presence tends to endanger the child's life, health or normal
 423 development. The prohibition may exclude any such individual from the home under such conditions as
 424 the court may prescribe for a period to be determined by the court but in no event for longer than 180
 425 days from the date of such determination. A hearing shall be held within 150 days to determine further
 426 disposition of the matter that may include limiting or prohibiting contact for another 180 days;
- 427 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, *including grandparents and extended family members*, 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 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.

A finding by the court that reasonable efforts were made to prevent removal of the child from his home shall not be required if the court finds that (i) the residual parental rights of the parent regarding a sibling of the child have previously been involuntarily terminated; (ii) 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; (iii) the parent has been convicted of an offense under the laws of the Commonwealth or a substantially similar law of any other state, the United States, or any foreign jurisdiction that constitutes felony assault resulting in serious bodily injury or felony bodily wounding resulting in serious bodily injury or felony sexual assault, if the victim of the offense was a child of the parent or a child with whom the parent resided at the time of such offense; or (iv) on the basis of clear and convincing evidence, the parent has subjected any child to aggravated circumstances, or abandoned a child under circumstances that would justify the termination of residual parental rights pursuant to subsection D of § 16.1-283.

As used in this section:

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

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

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

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

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 shall be entered only upon a finding, based upon a preponderance of the evidence, that ~~the~~ *such* 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 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 pursuant to this section shall be provided to the parent. 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 the 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.

C. The court may make any of the orders of disposition permitted in a case involving an abused or neglected child pursuant to § 16.1-278.2. 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 D1. 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 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. 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 by the local board of social services or child welfare agency in accordance with § 16.1-281.

D. If the parent or other custodian seeks to be relieved permanently of the care and custody of any child and the court finds by clear and convincing evidence that termination of the parent's parental rights is in the best interest of the child, the court may terminate the parental rights of that parent. If the remaining parent has not petitioned for permanent relief of the care and custody of the child, the remaining parent's parental rights may be terminated in accordance with the provisions of § 16.1-283. Any order terminating parental rights shall be accompanied by an order (i) continuing or granting custody to a local board of social services or to a licensed child-placing agency, or (ii) granting custody or guardianship to a relative or other interested individual, *including grandparents and extended family members*. 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. Proceedings under this section shall be advanced on the docket so as to provide for their earliest practicable disposition. 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.

D1. Any order transferring custody of the child to a relative or other interested individual, *including grandparents and extended family members*, pursuant to subsection C or D shall be entered only upon a finding, based upon a preponderance of the evidence, that ~~the~~ *such* 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.

E. 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.

F. 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.

§ 16.1-283. Termination of residual parental rights.

A. The residual parental rights of a parent or parents may be terminated by the court as hereinafter provided in a separate proceeding if the petition specifically requests such relief. No petition seeking termination of residual parental rights shall be accepted by the court prior to the filing of a foster care plan, pursuant to § 16.1-281, which documents termination of residual parental rights as being in the best interests of the child. The court may hear and adjudicate a petition for termination of parental rights in the same proceeding in which the court has approved a foster care plan which documents that termination is in the best interests of the child. The court may terminate the residual parental rights of one parent without affecting the rights of the other parent. The local board of social services or a licensed child-placing agency need not have identified an available and eligible family to adopt a child for whom termination of parental rights is being sought prior to the entry of an order terminating parental rights.

Any order terminating residual parental rights shall be accompanied by an order continuing or granting custody to a local board of social services; *or* to a licensed child-placing agency or ~~the~~ granting of custody or guardianship to a relative or other interested individual, *including grandparents and extended family members*, subject to the provisions of subsection A1. However, in such cases the court shall give a consideration to granting custody to relatives of the child, including grandparents *and extended family members*. 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.

The summons shall be served upon the parent or parents and the other parties specified in § 16.1-263. Written notice of the hearing shall also be provided to the foster parents of the child, a relative providing care for the child, and any preadoptive parents for the child informing them that they may appear as witnesses at the hearing to give testimony and otherwise participate in the proceeding. The persons entitled to notice and an opportunity to be heard need not be made parties to the proceedings. The summons or notice of hearing shall clearly state the consequences of a termination of residual parental rights. Service shall be made pursuant to § 16.1-264.

A1. Any order transferring custody of the child to a relative or other interested individual, *including grandparents and extended family members*, pursuant to subsection A shall be entered only upon a finding, based upon a preponderance of the evidence, that ~~the~~ *such* 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, as appropriate, for any terms and conditions which would promote the child's interest and welfare.

B. The residual parental rights of a parent or parents of a child found by the court to be neglected or abused and placed in foster care as a result of (i) court commitment; (ii) an entrustment agreement entered into by the parent or parents; or (iii) other voluntary relinquishment by the parent or parents may be terminated if the court finds, based upon clear and convincing evidence, that it is in the best interests of the child and that:

1. The neglect or abuse suffered by such child presented a serious and substantial threat to his life, health or development; and

2. It is not reasonably likely that the conditions which resulted in such neglect or abuse can be substantially corrected or eliminated so as to allow the child's safe return to his parent or parents within a reasonable period of time. In making this determination, the court shall take into consideration the efforts made to rehabilitate the parent or parents by any public or private social, medical, mental health or other rehabilitative agencies prior to the child's initial placement in foster care.

Proof of any of the following shall constitute prima facie evidence of the conditions set forth in subdivision B 2:

a. The parent or parents have a mental or emotional illness or intellectual disability of such severity that there is no reasonable expectation that such parent will be able to undertake responsibility for the care needed by the child in accordance with his age and stage of development;

b. The parent or parents have habitually abused or are addicted to intoxicating liquors, narcotics or other dangerous drugs to the extent that proper parental ability has been seriously impaired and the parent, without good cause, has not responded to or followed through with recommended and available treatment which could have improved the capacity for adequate parental functioning; or

c. The parent or parents, without good cause, have not responded to or followed through with appropriate, available and reasonable rehabilitative efforts on the part of social, medical, mental health or other rehabilitative agencies designed to reduce, eliminate or prevent the neglect or abuse of the child.

C. The residual parental rights of a parent or parents of a child placed in foster care as a result of court commitment, an entrustment agreement entered into by the parent or parents or other voluntary relinquishment by the parent or parents may be terminated if the court finds, based upon clear and convincing evidence, that it is in the best interests of the child and that:

1. The parent or parents have, without good cause, failed to maintain continuing contact with and to provide or substantially plan for the future of the child for a period of six months after the child's placement in foster care notwithstanding the reasonable and appropriate efforts of social, medical, mental health or other rehabilitative agencies to communicate with the parent or parents and to strengthen the parent-child relationship. Proof that the parent or parents have failed without good cause to communicate on a continuing and planned basis with the child for a period of six months shall constitute prima facie evidence of this condition; or

2. The parent or parents, without good cause, have been unwilling or unable within a reasonable period of time not to exceed 12 months from the date the child was placed in foster care to remedy substantially the conditions which led to or required continuation of the child's foster care placement, notwithstanding the reasonable and appropriate efforts of social, medical, mental health or other rehabilitative agencies to such end. Proof that the parent or parents, without good cause, have failed or been unable to make substantial progress towards elimination of the conditions which led to or required continuation of the child's foster care placement in accordance with their obligations under and within the time limits or goals set forth in a foster care plan filed with the court or any other plan jointly designed and agreed to by the parent or parents and a public or private social, medical, mental health or other rehabilitative agency shall constitute prima facie evidence of this condition. The court shall take into consideration the prior efforts of such agencies to rehabilitate the parent or parents prior to the placement of the child in foster care.

D. The residual parental rights of a parent or parents of a child found by the court to be neglected or abused upon the ground of abandonment may be terminated if the court finds, based upon clear and convincing evidence, that it is in the best interests of the child and that:

1. The child was abandoned under such circumstances that either the identity or the whereabouts of the parent or parents cannot be determined; and

2. The child's parent or parents, guardian or relatives have not come forward to identify such child and claim a relationship to the child within three months following the issuance of an order by the court placing the child in foster care; and

3. Diligent efforts have been made to locate the child's parent or parents without avail.

E. The residual parental rights of a parent or parents of a child who is in the custody of a local board or licensed child-placing agency may be terminated by the court if the court finds, based upon clear and convincing evidence, that it is in the best interests of the child and that (i) the residual parental rights of the parent regarding a sibling of the child have previously been involuntarily terminated; (ii) 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; (iii) the parent has been convicted of an offense under the laws of the Commonwealth or a substantially similar law of any other state, the United States or any foreign jurisdiction that constitutes felony assault resulting in serious bodily injury or felony bodily wounding resulting in serious bodily injury or felony sexual assault, if the victim of the offense was a child of the parent or a child with whom the parent resided at the time of such offense; or (iv) the parent has subjected any child to aggravated circumstances.

As used in this section:

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

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

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

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

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 who has been convicted of one of the felonies specified in this subsection or who has been found by the court to have subjected any child to aggravated circumstances.

F. 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 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 written 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.

G. Notwithstanding any other provisions of this section, residual parental rights shall not be terminated if it is established that the child, if he is 14 years of age or older or otherwise of an age of discretion as determined by the court, objects to such termination. However, residual parental rights of a child 14 years of age or older may be terminated over the objection of the child, if the court finds that any disability of the child reduces the child's developmental age and that the child is not otherwise of an age of discretion.