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SENATE BILL NO. 472

Offered January 8, 2020

Prefiled January 7, 2020

A BILL to amend and reenact §§ 16.1-282.1 and 63.2-906 of the Code of Virginia, relating to foster care; termination of parental rights; independent living needs assessments; supervisory spans of control.

Patrons—Reeves, Howell and Peake; Delegates: Cole, M.L. and LaRock

Referred to Committee on Rehabilitation and Social Services

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-282.1 and 63.2-906 of the Code of Virginia are amended and reenacted as follows:

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

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

To achieve the permanent goal, the petition for a permanency planning hearing shall seek to (i) transfer the custody of the child to his prior family, or dissolve the board's placement agreement and return the child to his prior family; (ii) transfer custody of the child to a relative other than the child's prior family, subject to the provisions of subsection A1; (iii) terminate residual parental rights pursuant to § 16.1-277.01 or 16.1-283; (iv) place a child who is 16 years of age or older in permanent foster care pursuant to § 63.2-908; (v) if the child has been admitted to the United States as a refugee or asylee and has attained the age of 16 years or older and the plan is independent living, direct the board or agency to provide the child with services to transition from foster care; or (vi) place a child who is 16 years of age or older in another planned permanent living arrangement in accordance with the provisions of subsection A2. If the child has been in the custody of a local board or child welfare agency for 15 months and no petition for termination of parental rights has been filed with the court, the local board or child welfare agency shall include in its petition for a permanency planning hearing a clear description of the reasons why a petition for termination of parental rights has not been filed. In cases in which a foster care plan approved prior to July 1, 2011, includes independent living as the goal for a child who is not admitted to the United States as an asylee or refugee, the petition shall direct the board or agency to provide the child with services to transition from foster care.

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

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

A1. The following requirements shall apply to the transfer of custody of the child to a relative other than the child's prior family in accordance with the provisions of clause (ii) of subsection A. Any order transferring custody of the child to a relative other than the child's prior family shall be entered only upon a finding, based upon a preponderance of the evidence, that the relative is one who, after an investigation as directed by the court, (i) is found by the court to be willing and qualified to receive and care for the child; (ii) is willing to have a positive, continuous relationship with the child; (iii) is committed to providing a permanent, suitable home for the child; and (iv) is willing and has the ability

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SB472

59 to protect the child from abuse and neglect; and the order shall so state. The court's order transferring  
60 custody to a relative should further provide, as appropriate, for any terms or conditions which would  
61 promote the child's interest and welfare.

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

65 1. The board or child welfare agency shall petition for alternative (vi) of subsection A only if the  
66 child has a severe and chronic emotional, physical or neurological disabling condition for which the  
67 child requires long-term residential treatment; and the board or child welfare agency has thoroughly  
68 investigated the feasibility of the alternatives listed in clauses (i) through (v) of subsection A and  
69 determined that none of those alternatives is in the best interests of the child. In a foster care plan filed  
70 with the petition pursuant to this section, the board or agency shall document the following: (i) the  
71 investigation conducted of the placement alternatives listed in clauses (i) through (v) of subsection A  
72 and why each of these is not currently in the best interest of the child; (ii) at least one compelling  
73 reason why none of the alternatives listed in clauses (i) through (v) is achievable for the child at the  
74 time placement in another planned permanent living arrangement is selected as the permanent goal for  
75 the child; (iii) the identity of the long-term residential treatment service provider; (iv) the nature of the  
76 child's disability; (v) the anticipated length of time required for the child's treatment; and (vi) the status  
77 of the child's eligibility for admission and long-term treatment. The court shall ensure that the local  
78 department has documentation of the intensive, ongoing, and, as of the date of the hearing, unsuccessful  
79 efforts made to return the child home or secure a placement for the child with a fit and willing relative,  
80 including adult siblings, or an adoptive parent, including through efforts that utilize search technology,  
81 including social media, to find the child's biological family members. The court shall ask the child about  
82 the child's desired permanency outcome and make a judicial determination, accompanied by an  
83 explanation of the reasons that the alternatives listed in clauses (i) through (iii) of subsection A continue  
84 to not be in the best interest of the child.

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

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

99 4. The court shall review a foster care plan for any child who is placed in another planned  
100 permanent living arrangement every six months from the date of the permanency planning hearing held  
101 pursuant to this subsection, so long as the child remains in the legal custody of the board or child  
102 welfare agency. The board or child welfare agency shall file such petitions for review pursuant to the  
103 provisions of § 16.1-282 and shall, in addition, include in the petition the information required by  
104 subdivision A2 1. The petition for foster care review shall be filed no later than 30 days prior to the  
105 hearing scheduled in accordance with subdivision A2 3. At the conclusion of the foster care review  
106 hearing, if alternative (vi) of subsection A remains the permanent plan, the court shall enter an order  
107 that states whether reasonable efforts have been made to place the child in a timely manner in  
108 accordance with the permanency plan and to monitor the child's status in another planned permanent  
109 living arrangement.

110 However, if at any time during the six-month approval periods permitted by this subsection, a  
111 determination is made by treatment providers that the child's need for long-term residential treatment for  
112 the child's disabling condition is eliminated, the board or agency shall immediately begin to plan for  
113 post-discharge services and shall, within 30 days of making such a determination, file a petition for a  
114 permanency planning hearing pursuant to subsection A. Upon receipt of the petition, the court shall  
115 schedule a permanency planning hearing to be held within 30 days. The provisions of subsection B of  
116 § 16.1-282 shall apply to this petition. The procedures of subsection C of § 16.1-282 and the provisions  
117 of subsection G of § 16.1-282 shall apply to proceedings under this section.

118 A3. The following requirements shall apply to the selection and approval of permanent foster care  
119 pursuant to clause (iv) of subsection A:

120 1. The court shall ensure that the local department has documentation of the intensive, ongoing, and,

121 as of the date of the hearing, unsuccessful efforts made to return the child home or secure a placement  
122 for the child with a fit and willing relative, including adult siblings, or an adoptive parent, including  
123 through efforts that utilize search technology, including social media, to find the child's biological family  
124 members.

125 2. The court shall ask the child about the child's desired permanency outcome and make a judicial  
126 determination, accompanied by an explanation of the reasons that the alternatives listed in clauses (i)  
127 through (iii) of subsection A continue to not be in the best interest of the child.

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

130 1. The board or child welfare agency shall petition for approval of an interim plan only if the board  
131 or child welfare agency has thoroughly investigated the feasibility of the alternatives listed in clauses (i)  
132 through (v) of subsection A and determined that none of those alternatives is in the best interest of the  
133 child. If the board or agency petitions for approval of an interim plan, such plan may be approved by  
134 the court for a maximum period of six months. The board or agency shall also file a foster care plan  
135 that (i) identifies a permanent goal for the child that corresponds with one of the alternatives specified in  
136 clauses (i) through (v) of subsection A; (ii) includes provisions for accomplishing the permanent goal  
137 within six months; and (iii) summarizes the investigation conducted of the alternatives listed in clauses  
138 (i) through (v) of subsection A and why achieving each of these is not in the best interest of the child at  
139 this time. The foster care plan shall describe the child's placement, including the in-state and out-of-state  
140 placement options and whether the child's placement is in state or out of state. If the child's placement is  
141 out of state, the foster care plan shall provide the reason why the out-of-state placement is appropriate  
142 and in the best interests of the child.

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

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

148 b. When returning home is not the plan for the child, that marked progress is being made to achieve  
149 the permanent goal identified by the board or child welfare agency and that it is premature to set an  
150 exact date for accomplishing the goal at the time of this hearing. The court shall consider the in-state  
151 and out-of-state placement options, and if the child has been placed out of state, determine whether the  
152 out-of-state placement is appropriate and in the best interests of the child.

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

159 C. In each permanency planning hearing and in any hearing regarding the transition of the child from  
160 foster care to independent living, the court shall consult with the child in an age-appropriate manner  
161 regarding the proposed permanency plan or transition plan for the child, unless the court finds that such  
162 consultation is not in the best interests of the child.

163 D. In cases in which a child is placed by the local board of social services or a licensed  
164 child-placing agency in a qualified residential treatment program as defined in § 16.1-228, the provisions  
165 of subsection E of § 16.1-281 shall apply to any hearing held pursuant to this section.

166 E. At the conclusion of the permanency planning hearing held pursuant to this section, whether  
167 action is taken or deferred to achieve the permanent goal for the child, the court shall enter an order that  
168 states whether reasonable efforts have been made to reunite the child with the child's prior family, if  
169 returning home is the permanent goal for the child; or whether reasonable efforts have been made to  
170 achieve the permanent goal identified by the board or agency, if the goal is other than returning the  
171 child home.

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

175 **§ 63.2-906. Foster care plans; permissible plan goals; court review of foster children.**

176 A. Each child who is committed or entrusted to the care of a local board or to a licensed  
177 child-placing agency or who is placed through an agreement between a local board and the parent,  
178 parents or guardians, where legal custody remains with the parent, parents or guardians, shall have a  
179 foster care plan prepared by the local department, the child welfare agency, or the family assessment  
180 and planning team established pursuant to § 2.2-5207, as specified in § 16.1-281. The representatives of  
181 such local department, child welfare agency, or team shall (i) involve the child's parent(s) in the

182 development of the plan, except when parental rights have been terminated or the local department or  
183 child welfare agency has made diligent efforts to locate the parent(s) and such parent(s) cannot be  
184 located, and any other person or persons standing in loco parentis at the time the board or child welfare  
185 agency obtained custody or the board or the child welfare agency placed the child and (ii) for any child  
186 for whom reunification remains the goal, meet and consult with the child's parent(s) or other person  
187 standing in loco parentis, provided that the parent(s) or other person has been located and parental rights  
188 have not been terminated, no less than once every two months and at all critical decision-making points  
189 throughout the child's foster care case. *If reunification is not the goal for the child, the local board,*  
190 *child welfare agency, or team shall provide information to the child's parent regarding the parent's*  
191 *option to voluntarily terminate parental rights.* The representatives of such department, child welfare  
192 agency, or team shall involve the child in the development of the plan, if such involvement is consistent  
193 with the best interests of the child. In cases where either the parent(s) or child is not involved in the  
194 development of the plan, the department, child welfare agency, or team shall include in the plan a full  
195 description of the reasons therefor in accordance with § 16.1-281.

196 A court may place a child in the care and custody of (a) a public agency in accordance with  
197 § 16.1-251 or 16.1-252, and (b) a public or licensed private child-placing agency in accordance with  
198 § 16.1-278.2, 16.1-278.4, 16.1-278.5, 16.1-278.6, or 16.1-278.8. Children may be placed by voluntary  
199 relinquishment in the care and custody of a public or private agency in accordance with § 16.1-277.01  
200 or §§ 16.1-277.02 and 16.1-278.3. Children may be placed through an agreement where legal custody  
201 remains with the parent, parents or guardians in accordance with §§ 63.2-900 and 63.2-903, or §  
202 2.2-5208.

203 B. Each child in foster care shall be assigned a permanent plan goal to be reviewed and approved by  
204 the juvenile and domestic relations district court having jurisdiction of the child's case. Permissible plan  
205 goals are to:

- 206 1. Transfer custody of the child to his prior family;
- 207 2. Transfer custody of the child to a relative other than his prior family;
- 208 3. Finalize an adoption of the child;
- 209 4. Place a child who is 16 years of age or older in permanent foster care;
- 210 5. Transition to independent living if, and only if, the child is admitted to the United States as a  
211 refugee or asylee; or
- 212 6. Place a child who is 16 years of age or older in another planned permanent living arrangement in  
213 accordance with subsection A2 of § 16.1-282.1.

214 C. Each child in foster care shall be subject to the permanency planning and review procedures  
215 established in §§ 16.1-281, 16.1-282, and 16.1-282.1.

216 **2. That the Board of Social Services shall promulgate regulations that (i) establish clear guidance**  
217 **for local boards of social services (local boards) and child-placing agencies regarding acceptable**  
218 **reasons for not filing a petition for termination of parental rights; (ii) require local boards and**  
219 **child-placing agencies to (a) conduct independent living needs assessments and develop transition**  
220 **plans within 30 days of a child in foster care reaching 14 years of age or within 30 days of a child**  
221 **who is 14 years of age or older entering foster care and (b) update such assessments and plans**  
222 **annually; and (iii) require local boards and child-placing agencies to report to the Commissioner**  
223 **of Social Services (the Commissioner) all instances in which a petition for termination of parental**  
224 **rights has not been filed for a child who has been in the custody of a local board or child-placing**  
225 **agency for 15 months, which shall include a clear description of the reasons why such petition has**  
226 **not been filed. The Commissioner shall compile the information set forth in clause (iii) into a**  
227 **de-identified annual report and provide such report to all local boards and child-placing agencies.**  
228 **The Commissioner shall use the information contained in the report to establish a training**  
229 **program that educates local boards and child-placing agencies regarding common errors made by**  
230 **local boards and child-placing agencies when declining to file a petition for termination of parental**  
231 **rights.**

232 **3. That the Commissioner of Social Services shall develop clear guidance documents for local**  
233 **boards of social services and child-placing agencies that explain the process through which a**  
234 **parent may voluntarily terminate parental rights and the manner in which such information**  
235 **should be relayed to the parent.**

236 **4. That the Commissioner of Social Services (the Commissioner) shall establish a work group to**  
237 **review the feasibility and costs of establishing a standard for supervisory spans of control that**  
238 **would limit the number of caseworkers that a foster care supervisor may oversee. The**  
239 **Commissioner shall report the findings and recommendations of the work group to the Chairmen**  
240 **of the Senate Committee on Finance and the House Committee on Appropriations by November**  
241 **30, 2020.**