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SENATE BILL NO. 396

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on the Judiciary
on January 24, 2022)

(Patron Prior to Substitute—Senator Edwards)

A *BILL to amend and reenact §§ 16.1-278.2, 16.1-278.4, 16.1-278.8, and 16.1-281 of the Code of Virginia and to amend the Code of Virginia by adding a section number 16.1-282.3, relating to foster care placements; court review; best interests of the child.*

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-278.2, 16.1-278.4, 16.1-278.8, and 16.1-281 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 16.1-282.3 as follows:

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

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

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

1. Enter an order pursuant to the provisions of § 16.1-278;
2. Permit the child to remain with his parent, subject to such conditions and limitations as the court may order with respect to such child and his parent or other adult occupant of the same dwelling;
3. Prohibit or limit contact as the court deems appropriate between the child and his parent or other adult occupant of the same dwelling whose presence tends to endanger the child's life, health or normal development. The prohibition may exclude any such individual from the home under such conditions as the court may prescribe for a period to be determined by the court but in no event for longer than 180 days from the date of such determination. A hearing shall be held within 150 days to determine further disposition of the matter that may include limiting or prohibiting contact for another 180 days;
4. Permit the local board of social services or a public agency designated by the community policy and management team to place the child, subject to the provisions of § 16.1-281, in suitable family homes, child-caring institutions, residential facilities, or independent living arrangements with legal custody remaining with the parents or guardians. The local board or public agency and the parents or guardians shall enter into an agreement which shall specify the responsibilities of each for the care and control of the child. The board or public agency that places the child shall have the final authority to determine the appropriate placement for the child. *Nothing herein shall limit the authority of the court to review and approve or deny the foster care plan filed for the child and to review the child's status in foster care in accordance with subsection G of § 16.1-281 and § 16.1-282.*

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 person with a legitimate interest subject to the provisions of subsection A1;
- 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. *Nothing herein shall limit the authority of the court to review and approve or deny the foster care plan filed for the child and to review the child's status in foster care in accordance with subsection G of § 16.1-281 and § 16.1-282.*

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 person with a legitimate interest pursuant to subdivision A 5 a shall be entered only upon a finding, based upon a preponderance of the evidence, that such person 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 person with a legitimate interest 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.

§ 16.1-278.4. Children in need of services.

If a child is found to be in need of services or a status offender, the juvenile court or the circuit court may make any of the following orders of disposition for the supervision, care and rehabilitation of the child:

1. Enter an order pursuant to the provisions of § 16.1-278.

2. Permit the child to remain with his parent subject to such conditions and limitations as the court may order with respect to such child and his parent.

3. Order the parent with whom the child is living to participate in such programs, cooperate in such treatment or be subject to such conditions and limitations as the court may order and as are designed for the rehabilitation of the child and his parent.

4. Beginning July 1, 1992, in the case of any child fourteen years of age or older, where the court finds that the child is not able to benefit appreciably from further schooling, the court may excuse the child from further compliance with any legal requirement of compulsory school attendance as provided under § 22.1-254 or authorize the child, notwithstanding the provisions of any other law, to be employed in any occupation which is not legally declared hazardous for children under the age of eighteen.

5. 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. *Nothing herein shall limit the authority of the court to review and approve or deny the foster care plan filed for the child and to review the child's status in foster care in accordance with subsection G of § 16.1-281 and § 16.1-282.*

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.

6. Transfer legal custody to any of the following:

a. A relative or other individual who, after study, is found by the court to be qualified to receive and care for the child;

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. The court shall not transfer legal custody of a child in need of services to an agency, organization or facility out of the Commonwealth without the approval of the Commissioner of Social Services; or

c. The local board of social services of the county or city in which the court has jurisdiction or, at the discretion of the court, to the local board of the county or city in which the child has residence if other than the county or city in which the court has jurisdiction. The local board shall accept the child for care and custody, provided that it has been given reasonable notice of the pendency of the case and an opportunity to be heard. However, in an emergency in the county or city in which the court has jurisdiction, the local board may be required to accept a child for a period not to exceed fourteen 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 subdivision 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. *Nothing herein shall limit the authority of the court to review and approve or deny the foster care plan filed for the child and to review the child's status in foster care in accordance with subsection G of § 16.1-281 and § 16.1-282.*

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 subdivision 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

183 United States, or any foreign jurisdiction that constitutes murder or voluntary manslaughter, or a felony
184 attempt, conspiracy, or solicitation to commit any such offense, if the victim of the offense was a child
185 of the parent, a child with whom the parent resided at the time such offense occurred, or the other
186 parent of the child; (iii) the parent has been convicted of an offense under the laws of the
187 Commonwealth or a substantially similar law of any other state, the United States, or any foreign
188 jurisdiction that constitutes felony assault resulting in serious bodily injury or felony bodily wounding
189 resulting in serious bodily injury or felony sexual assault, if the victim of the offense was a child of the
190 parent or a child with whom the parent resided at the time of such offense; or (iv) on the basis of clear
191 and convincing evidence, the parent has subjected any child to aggravated circumstances, or abandoned
192 a child under circumstances that would justify the termination of residual parental rights pursuant to
193 subsection D of § 16.1-283.

194 As used in this section:

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

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

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

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

207 7. Require the child to participate in a public service project under such conditions as the court
208 prescribes.

209 **§ 16.1-278.8. Delinquent juveniles.**

210 A. If a juvenile is found to be delinquent, except where such finding involves a refusal to take a
211 breath test in violation of § 18.2-268.2 or a similar ordinance, the juvenile court or the circuit court may
212 make any of the following orders of disposition for his supervision, care and rehabilitation:

213 1. Enter an order pursuant to the provisions of § 16.1-278;

214 2. Permit the juvenile to remain with his parent, subject to such conditions and limitations as the
215 court may order with respect to the juvenile and his parent;

216 3. Order the parent of a juvenile living with him to participate in such programs, cooperate in such
217 treatment or be subject to such conditions and limitations as the court may order and as are designed for
218 the rehabilitation of the juvenile and his parent;

219 4. Defer disposition for a specific period of time established by the court with due regard for the
220 gravity of the offense and the juvenile's history, after which time the charge may be dismissed by the
221 judge if the juvenile exhibits good behavior during the period for which disposition is deferred;

222 4a. Defer disposition and place the juvenile in the temporary custody of the Department to attend a
223 boot camp established pursuant to § 66-13 provided bed space is available for confinement and the
224 juvenile (i) has been found delinquent for an offense that would be a Class 1 misdemeanor or felony if
225 committed by an adult, (ii) has not previously been and is not currently being adjudicated delinquent or
226 found guilty of a violent juvenile felony, (iii) has not previously attended a boot camp, (iv) has not
227 previously been committed to and received by the Department, and (v) has had an assessment completed
228 by the Department or its contractor concerning the appropriateness of the candidate for a boot camp.
229 Upon the juvenile's withdrawal, removal or refusal to comply with the terms and conditions of
230 participation in the program, he shall be brought before the court for a hearing at which the court may
231 impose any other disposition as authorized by this section which could have been imposed at the time
232 the juvenile was placed in the custody of the Department;

233 5. Without entering a judgment of guilty and with the consent of the juvenile and his attorney, defer
234 disposition of the delinquency charge for a specific period of time established by the court with due
235 regard for the gravity of the offense and the juvenile's history, and place the juvenile on probation under
236 such conditions and limitations as the court may prescribe. Upon fulfillment of the terms and conditions,
237 the court shall discharge the juvenile and dismiss the proceedings against him. Discharge and dismissal
238 under these provisions shall be without adjudication of guilt;

239 6. Order the parent of a juvenile with whom the juvenile does not reside to participate in such
240 programs, cooperate in such treatment or be subject to such conditions and limitations as the court may
241 order and as are designed for the rehabilitation of the juvenile where the court determines this
242 participation to be in the best interest of the juvenile and other parties concerned and where the court
243 determines it reasonable to expect the parent to be able to comply with such order;

244 7. Place the juvenile on probation under such conditions and limitations as the court may prescribe;

7a. Place the juvenile on probation and order treatment for the abuse or dependence on alcohol or drugs in a program licensed by the Department of Behavioral Health and Developmental Services for the treatment of juveniles for substance abuse provided that (i) the juvenile has received a substance abuse screening and assessment pursuant to § 16.1-273 and that such assessment reasonably indicates that the commission of the offense was motivated by, or closely related to, the habitual use of alcohol or drugs and indicates that the juvenile is in need of treatment for this condition; (ii) the juvenile has not previously been and is not currently being adjudicated for a violent juvenile felony; and (iii) such facility is available. Upon the juvenile's withdrawal, removal, or refusal to comply with the conditions of participation in the program, he shall be brought before the court for a hearing at which the court may impose any other disposition authorized by this section. The court shall review such placements at 30-day intervals;

8. Impose a fine not to exceed \$500 upon such juvenile;

9. Suspend the motor vehicle and driver's license of such juvenile or impose a curfew on the juvenile as to the hours during which he may operate a motor vehicle. Any juvenile whose driver's license is suspended may be referred for an assessment and subsequent referral to appropriate services, upon such terms and conditions as the court may order. The court, in its discretion and upon a demonstration of hardship, may authorize the use of a restricted permit to operate a motor vehicle by any juvenile who enters such program for any of the purposes set forth in subsection E of § 18.2-271.1 or for travel to and from school. The restricted permit shall be issued in accordance with the provisions of such subsection. However, only an abstract of the court order that identifies the juvenile and the conditions under which the restricted license is to be issued shall be sent to the Department of Motor Vehicles.

If a curfew is imposed, the juvenile shall surrender his driver's license, which shall be held in the physical custody of the court during any period of curfew restriction. The court shall send an abstract of any order issued under the provisions of this section to the Department of Motor Vehicles, which shall preserve a record thereof. Notwithstanding the provisions of Article 12 (§ 16.1-299 et seq.) of this chapter or the provisions of Title 46.2, this record shall be available only to all law-enforcement officers, attorneys for the Commonwealth and courts. A copy of the court order, upon which shall be noted all curfew restrictions, shall be provided to the juvenile and shall contain such information regarding the juvenile as is reasonably necessary to identify him. The juvenile may operate a motor vehicle under the court order in accordance with its terms.

Any juvenile who operates a motor vehicle in violation of any restrictions imposed pursuant to this section is guilty of a violation of § 46.2-301.

The Department of Motor Vehicles shall refuse to issue a driver's license to any juvenile denied a driver's license until such time as is stipulated in the court order or until notification by the court of withdrawal of the order imposing the curfew;

10. Require the juvenile to make restitution or reparation to the aggrieved party or parties for actual damages or loss caused by the offense for which the juvenile was found to be delinquent;

11. Require the juvenile to participate in a public service project under such conditions as the court prescribes;

12. In case of traffic violations, impose only those penalties that are authorized to be imposed on adults for such violations. However, for those violations punishable by confinement if committed by an adult, confinement shall be imposed only as authorized by this title;

13. Transfer legal custody to any of the following:

a. A relative or other individual who, after study, is found by the court to be qualified to receive and care for the juvenile;

b. A child welfare agency, private organization or facility that is licensed or otherwise authorized by law to receive and provide care for such juvenile. The court shall not transfer legal custody of a delinquent juvenile to an agency, organization or facility outside of the Commonwealth without the approval of the Director; 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 juvenile has residence if other than the county or city in which the court has jurisdiction. The board shall accept the juvenile 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, such local board may be required to temporarily accept a juvenile 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 subdivision shall prohibit the commitment of a juvenile to any local board of social services in the Commonwealth when such local board consents to the commitment. The board to which the juvenile is committed shall have the final authority to determine the appropriate placement for the juvenile. *Nothing herein shall limit the authority of the court to review and approve or deny the foster care plan filed for*

306 *the child and to review the child's status in foster care in accordance with subsection G of § 16.1-281*
307 *and § 16.1-282. Any order authorizing removal from the home and transferring legal custody of a*
308 *juvenile to a local board of social services as provided in this subdivision shall be entered only upon a*
309 *finding by the court that reasonable efforts have been made to prevent removal and that continued*
310 *placement in the home would be contrary to the welfare of the juvenile, and the order shall so state;*

311 14. Unless waived by an agreement between the attorney for the Commonwealth and the juvenile
312 and his attorney or other legal representative, upon consideration of the results of an investigation
313 completed pursuant to § 16.1-273, commit the juvenile to the Department of Juvenile Justice, but only if
314 (i) he is 11 years of age or older and has been adjudicated delinquent of an act enumerated in
315 subsection B or C of § 16.1-269.1 or (ii) he is 14 years of age or older and the current offense is (a) an
316 offense that would be a felony if committed by an adult, (b) an offense that would be a Class 1
317 misdemeanor if committed by an adult and the juvenile has previously been found to be delinquent
318 based on an offense that would be a felony if committed by an adult, or (c) an offense that would be a
319 Class 1 misdemeanor if committed by an adult and the juvenile has previously been adjudicated
320 delinquent of three or more offenses that would be a Class 1 misdemeanor if committed by an adult,
321 and each such offense was not a part of a common act, transaction or scheme;

322 15. Impose the penalty authorized by § 16.1-284;

323 16. Impose the penalty authorized by § 16.1-284.1;

324 17. Unless waived by an agreement between the attorney for the Commonwealth and the juvenile
325 and his attorney or other legal representative, upon consideration of the results of an investigation
326 completed pursuant to § 16.1-273, impose the penalty authorized by § 16.1-285.1;

327 18. Impose the penalty authorized by § 16.1-278.9; or

328 19. Require the juvenile to participate in a gang-activity prevention program including, but not
329 limited to, programs funded under the Virginia Juvenile Community Crime Control Act pursuant to
330 § 16.1-309.7, if available, when a juvenile has been found delinquent of any of the following violations:
331 § 18.2-51, 18.2-51.1, 18.2-52, 18.2-53, 18.2-55, 18.2-56, 18.2-57, 18.2-57.2, 18.2-121, 18.2-127,
332 18.2-128, 18.2-137, 18.2-138, 18.2-146, or 18.2-147, or any violation of a local ordinance adopted
333 pursuant to § 15.2-1812.2.

334 B. If the court finds a juvenile delinquent of any of the following offenses, the court shall require the
335 juvenile to make at least partial restitution or reparation for any property damage, for loss caused by the
336 offense, or for actual medical expenses incurred by the victim as a result of the offense: § 18.2-51,
337 18.2-51.1, 18.2-52, 18.2-53, 18.2-55, 18.2-56, 18.2-57, 18.2-57.2, 18.2-121, 18.2-127, 18.2-128,
338 18.2-137, 18.2-138, 18.2-146, or 18.2-147; or for any violation of a local ordinance adopted pursuant to
339 § 15.2-1812.2. The court shall further require the juvenile to participate in a community service project
340 under such conditions as the court prescribes.

341 **§ 16.1-281. Foster care plan.**

342 A. In any case in which (i) a local board of social services places a child through an agreement with
343 the parents or guardians where legal custody remains with the parents or guardian, or (ii) legal custody
344 of a child is given to a local board of social services or a child welfare agency, the local department of
345 social services or child welfare agency shall prepare a foster care plan for such child, as described
346 hereinafter. The individual family service plan developed by the family assessment and planning team
347 pursuant to § 2.2-5208 may be accepted by the court as the foster care plan if it meets the requirements
348 of this section.

349 The representatives of such department or agency shall involve in the development of the plan the
350 child's parent(s), except when parental rights have been terminated or the local department of social
351 services or child welfare agency has made diligent efforts to locate the parent(s) and such parent(s)
352 cannot be located, relatives and fictive kin who are interested in the child's welfare, and any other
353 person or persons standing in loco parentis at the time the board or child welfare agency obtained
354 custody or the board placed the child. The representatives of such department or agency shall involve a
355 child who is 12 years of age or older in the development of the plan and, at the option of such child, up
356 to two members of the case planning team who are chosen by the child and who are not a foster parent
357 of, or caseworker for, the child. A child under 12 years of age may be involved in the development of
358 the plan if such involvement is consistent with the best interests of the child. In cases where either the
359 parent(s) or child is not involved in the development of the plan, the department or agency shall include
360 in the plan a full description of the reasons therefor.

361 The department or child welfare agency shall file the plan with the juvenile and domestic relations
362 district court within 45 days following the transfer of custody or the board's placement of the child
363 unless the court, for good cause shown, allows an extension of time, which shall not exceed an
364 additional 60 days. However, a foster care plan shall be filed in accordance with the provisions of
365 § 16.1-277.01 with a petition for approval of an entrustment agreement. A foster care plan need not be
366 prepared if the child is returned to his prior family or placed in an adoptive home within 45 days
367 following transfer of custody to the board or agency or the board's placement of the child.

B. The foster care plan shall describe in writing (i) the programs, care, services and other support which will be offered to the child and his parents and other prior custodians; (ii) the participation and conduct which will be sought from the child's parents and other prior custodians; (iii) the visitation and other contacts which will be permitted between the child and his parents and other prior custodians, and between the child and his siblings; (iv) the nature of the placement or placements which will be provided for the child, *including an assessment of the stability of each placement, the services provided or plans for services to be provided to address placement instability or to prevent disruption of the placement, and a description of other placements that were considered for the child, if any, and reasons why such other placements were not provided*; (v) for school-age children, the school placement of the child; (vi) for children 14 years of age and older, the child's needs and goals in the areas of counseling, education, housing, employment, and money management skills development, along with specific independent living services that will be provided to the child to help him reach these goals; and (vii) for children 14 years and older, an explanation of the child's rights with respect to education, health, visitation, court participation, and the right to stay safe and avoid exploitation. The foster care plan shall include all documentation specified in 42 U.S.C. § 675(5)(l) and § 63.2-905.3. If the child in foster care is placed in a qualified residential treatment program as defined in § 16.1-228, the foster care plan shall also include the report and documentation set forth in subsection A of § 63.2-906.1. If the child in foster care is pregnant or is the parent of a child, the foster care plan shall also include (a) a list of the services and programs to be provided to or on behalf of the child to ensure parental readiness or capability and (b) a description of the foster care prevention strategy for any child born to the child in foster care. In cases in which a foster care plan approved prior to July 1, 2011, identifies independent living as the goal for the child, and in cases involving children admitted to the United States as refugees or asylees who are 16 years of age or older and for whom the goal is independent living, the plan shall also describe the programs and services which will help the child prepare for the transition from foster care to independent living. If consistent with the child's health and safety, the plan shall be designed to support reasonable efforts which lead to the return of the child to his parents or other prior custodians within the shortest practicable time which shall be specified in the plan. The child's health and safety shall be the paramount concern of the court and the agency throughout the placement, case planning, service provision and review process. For a child 14 years of age and older, the plan shall include a signed acknowledgment by the child that the child has received a copy of the plan and that the rights contained therein have been explained to the child in an age-appropriate manner.

If the department or child welfare agency concludes that it is not reasonably likely that the child can be returned to his prior family within a practicable time, consistent with the best interests of the child, the department, child welfare agency or team shall (1) include a full description of the reasons for this conclusion; (2) provide information on the opportunities for placing the child with a relative or in an adoptive home; (3) design the plan to lead to the child's successful placement with a relative or fictive kin for the purpose of establishing eligibility for the Federal-Funded Kinship Guardianship Assistance program established pursuant to § 63.2-1305 or the State-Funded Kinship Guardianship Assistance program established pursuant to § 63.2-1306 or in an adoptive home within the shortest practicable time; and (4) if neither of such placements is feasible, explain why permanent foster care is the plan for the child or independent living is the plan for the child in cases involving children admitted to the United States as refugees or asylees who are 16 years of age or older and for whom the goal is independent living.

The local board or other child welfare agency having custody of the child shall not be required by the court to make reasonable efforts to reunite the child with a parent if the court finds that (A) the residual parental rights of the parent regarding a sibling of the child have previously been involuntarily terminated; (B) 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; (C) 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 (D) based on clear and convincing evidence, the parent has subjected any child to aggravated circumstances, or abandoned a child under circumstances which 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.

"Independent living" has the meaning set forth in § 63.2-100.

"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."

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

C. A copy of the entire foster care plan shall be sent by the court to the child, if he is 12 years of age or older; the guardian ad litem for the child, the attorney for the child's parents or for any other person standing in loco parentis at the time the board or child welfare agency obtained custody or the board placed the child, to the parents or other person standing in loco parentis, and such other persons as appear to the court to have a proper interest in the plan. However, a copy of the plan shall not be sent to a parent whose parental rights regarding the child have been terminated. A copy of the plan shall be sent by the court to the foster parents. A hearing shall be held for the purpose of reviewing and approving the foster care plan. The hearing shall be held within 60 days of (i) the child's initial foster care placement, if the child was placed through an agreement between the parents or guardians and the local department of social services or a child welfare agency; (ii) the original preliminary removal order hearing, if the child was placed in foster care pursuant to § 16.1-252; (iii) the hearing on the petition for relief of custody, if the child was placed in foster care pursuant to § 16.1-277.02; or (iv) the dispositional hearing at which the child was placed in foster care and an order was entered pursuant to § 16.1-278.2, 16.1-278.3, 16.1-278.4, 16.1-278.5, 16.1-278.6, or 16.1-278.8. However, the hearing shall be held in accordance with the provisions of § 16.1-277.01 with a petition for approval of an entrustment agreement. If the judge makes any revision in any part of the foster care plan, a copy of the changes shall be sent by the court to all persons who received a copy of the original of that part of the plan.

C1. Any order transferring custody of the child to a relative other than the child's prior family shall be entered only upon a finding, based upon a preponderance of the evidence, that the relative is one who, after an investigation as directed by the court, (i) is found by the court to be willing and qualified to receive and care for the child; (ii) is willing to have a positive, continuous relationship with the child; (iii) is committed to providing a permanent, suitable home for the child; and (iv) is willing and has the ability to protect the child from abuse and neglect; and the order shall so state. The court's order transferring custody to a relative should further provide 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.

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

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

E. 1. In cases in which a child is placed by the local board of social services or a licensed child-placing agency in a qualified residential treatment program as defined in § 16.1-228, a hearing shall be held within 60 days of such placement. Prior to such hearing, the qualified residential treatment program shall file with the court the assessment report prepared pursuant to clause (viii) of the definition of qualified residential treatment program set forth in § 16.1-228. The court shall (i) consider the assessment report prepared by a qualified individual pursuant to clause (viii) of the definition of qualified residential treatment program set forth in § 16.1-228 and submitted pursuant to this subsection; (ii) consider the report and documentation required under subsection A of § 63.2-906.1 and filed with

the foster care or permanency plan; (iii) determine whether the needs of the child can be met through placement in a foster home or, if not, whether placement in the qualified residential treatment program would provide the most effective and appropriate level of care for the child in the least restrictive environment and be consistent with the short-term and long-term goals established for the child in his foster care or permanency plan; and (iv) approve or deny the placement of the child in the qualified residential treatment program. The hearing required by this subsection may be held in conjunction with a dispositional hearing held pursuant to subsection C, a foster care review hearing held pursuant to § 16.1-282, a permanency planning hearing held pursuant to § 16.1-282.1, or an annual foster care review hearing held pursuant to § 16.1-282.2, provided that such hearing has already been scheduled by the court and is held within 60 days of the child's placement in the qualified residential treatment program.

2. If the child remains placed in the qualified residential treatment program during any subsequent hearings held pursuant to subsection C or § 16.1-282, 16.1-282.1, or 16.1-282.2, the local board of social services or licensed child-placing agency shall present evidence at such hearing that demonstrates (i) that the ongoing assessment of the child's strengths and needs continues to support the determination that the child's needs cannot be met through placement in a foster home and that the child's placement in the qualified residential treatment program provides the most effective and appropriate level of care for the child in the least restrictive environment and is consistent with the short-term and long-term goals established for the child in his foster care or permanency plan; (ii) the specific treatment or service needs of the child that will be met in the qualified residential treatment program and the length of time the child is expected to need such treatment or services; and (iii) the efforts made by the local board of social services to prepare the child to return home or to be placed with a fit and willing relative, legal guardian, or adoptive parent, or in a foster home. The court shall review such evidence and approve or deny the continued placement of the child in the qualified residential treatment program.

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

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

§ 16.1-282.3. Best interests of the child; foster care or prospective third-party custody placements.

In the case of a child who is in the care and custody of the local board of social services or a child welfare agency, in determining the best interests of such child for purposes of determining custody and reviewing placements of children in foster care, the court shall consider the following:

- 1. The age and physical and mental condition of the child, giving due consideration to the child's changing developmental needs;*
- 2. The physical safety and welfare of the child;*
- 3. The child's familial, cultural, and religious background and ties;*
- 4. The relationship and role that the potential custodian or caregiver has played in the upbringing and care of the child, if any;*
- 5. The propensity of the potential custodian or caregiver to actively support the child's contact and relationship with the child's parent or parents, if reunification is the goal of the child's foster care plan;*
- 6. The child's relational bonds and attachments, including the child's relationships with siblings and other relatives;*
- 7. The child's need for placement stability and the level of disruption caused by any proposed change of custody or placement;*
- 8. The preferences of the child's birth parent;*
- 9. The reasonable preference of the child, if the court deems the child to be of reasonable intelligence, understanding, age, and experience to express such a preference; and*
- 10. Such other factors as the court deems necessary and proper to the determination.*

2. That the Committee on District Courts be requested to study the Juvenile and Domestic Relations District Court system to assess whether appropriate diligence and attention is being given to child dependency court hearings and to make recommendations as to whether a separate docket or court would result in better service to children and families involved in child dependency hearings and other family law matters. The Committee on District Courts shall

552 complete its meetings by November 30, 2022, and shall submit to the Governor and General
553 Assembly an executive summary and a report of its findings and recommendations for publication
554 as a House or Senate document. The executive summary and report shall be submitted as
555 provided in the procedures of the Division of Legislative Automated Systems for the processing of
556 legislative documents and reports no later than the first day of the 2023 Regular Session of the
557 General Assembly and shall be posted on the General Assembly's website.
558 3. That the Office of the Children's Ombudsman shall convene a work group to consider issues
559 relating to the Commonwealth's model of court-appointed legal counsel in child dependency cases.
560 The work group shall include representatives from the Virginia Indigent Defense Commission, the
561 Virginia Bar Association Commission on the Needs of Children, the Commission on Youth, the
562 Office of the Executive Secretary of the Supreme Court of Virginia, and the Virginia Poverty Law
563 Center and other Virginia Legal Aid programs. The work group shall make recommendations for
564 legislative and budgetary changes to address these issues by November 1, 2022, to the Chairmen of
565 the Senate Committee on the Judiciary and the House Committee for Courts of Justice.