

VIRGINIA ACTS OF ASSEMBLY -- 1994 SESSION

CHAPTER 604

An Act to amend and reenact § 16.1-281, as it is currently in effect and as it may become effective, and § 16.1-282 of the Code of Virginia, relating to foster care.

[S 193]

Approved April 10, 1994

Be it enacted by the General Assembly of Virginia:

1. That § 16.1-281 as it is currently in effect and as it may become effective, and § 16.1-282 of the Code of Virginia are amended and reenacted as follows:

§ 16.1-281. Foster care plan.

A. In any case in which legal custody of a child is given to a local board of public welfare or social services or a child welfare agency, the department of public welfare or social services ~~or, child welfare agency or the family assessment and planning team established pursuant to § 2.1-753~~ shall prepare a foster care plan for such child, as described hereinafter. *The individual family service plan developed by the family assessment and planning team pursuant to § 2.1-754 may be accepted by the court as the foster care plan if it meets the requirements of this section.* The representatives of such department ~~or, agency, or team~~ shall consult with the child's parents, except when parental rights have been terminated, and any other person or persons standing in loco parentis at the time the board or agency obtained custody concerning the matters which should be included in such plan. The department ~~or, agency or team~~ shall file the plan with the juvenile and domestic relations district court within sixty days following the transfer of custody unless the court, for good cause shown, allows an extension of time, which shall not exceed an additional sixty days. A foster care plan need not be prepared if the child is returned to his prior family or placed in an adoptive home within sixty days following transfer of custody to the board or agency.

B. ~~Part A of~~ The foster care plan shall describe (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, (iv) the nature of the placement or placements which will be provided for the child, and (v) in writing and where appropriate for children age sixteen or over, the programs and services which will help the child prepare for the transition from foster care to independent living. The plan shall be designed to 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. However, if the department ~~or, agency or team~~ determines that it is not reasonably likely that the child can be returned to his prior family within a practicable time, consistent with the best interests of the child, in ~~Part B~~ *a separate section* of the plan the department ~~or, agency or team~~ shall (i) include a full description of the reasons for this conclusion, (ii) determine the opportunities for placing the child with a relative or in an adoptive home, (iii) design the plan to lead to the child's successful placement with a relative if a subsequent transfer of custody to the relative is planned, or in an adoptive home within the shortest practicable time, and if neither of such placements is feasible, (iv) explain why permanent foster care or continued foster care is the plan for the child. The department or agency may include with such proposed plan a proper pleading seeking the termination of residual parental rights pursuant to § 16.1-283.

C. A copy of ~~Parts A and B of~~ the *entire* foster care plan shall be sent by the court to the attorney for the child, the child's parents or any other person standing in loco parentis at the time the board or agency obtained custody 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 ~~Part A of~~ the ~~foster care~~ plan, *excluding the section of the plan describing the reasons why the child cannot be returned home and the alternative chosen*, shall be sent by the court to the foster parents. Any party receiving a copy of the plan may petition the court for a review of the plan. The judge shall review each petition so filed to determine if there is good cause shown for a hearing on the plan. 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.

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.

E. 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 public welfare or 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.

§ 16.1-281. (Delayed effective date) Foster care plan.

A. In any case in which legal custody of a child is given to a local board of public welfare or social services or a child welfare agency, the department of public welfare or social services ~~or~~, *child welfare agency or the family assessment and planning team established pursuant to § 2.1-753* shall prepare a foster care plan for such child, as described hereinafter. *The individual family service plan developed by the family assessment and planning team pursuant to § 2.1-754 may be accepted by the court as the foster care plan if it meets the requirements of this section.* The representatives of such department ~~or~~, *agency or team* shall consult with the child's parents, except when parental rights have been terminated, and any other person or persons standing in loco parentis at the time the board or agency obtained custody concerning the matters which should be included in such plan. The department, ~~or~~ *agency or team* shall file the plan with the family court within sixty days following the transfer of custody unless the court, for good cause shown, allows an extension of time, which shall not exceed an additional sixty days. A foster care plan need not be prepared if the child is returned to his prior family or placed in an adoptive home within sixty days following transfer of custody to the board or agency.

B. ~~Part A of~~ The foster care plan shall describe (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, (iv) the nature of the placement or placements which will be provided for the child, and (v) in writing and where appropriate for children age sixteen or over, the programs and services which will help the child prepare for the transition from foster care to independent living. The plan shall be designed to 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. However, if the department ~~or~~, *agency or team* determines that it is not reasonably likely that the child can be returned to his prior family within a practicable time, consistent with the best interests of the child, in ~~Part B~~ *a separate section* of the plan the department ~~or~~, *agency or team* shall (i) include a full description of the reasons for this conclusion, (ii) determine the opportunities for placing the child with a relative or in an adoptive home, (iii) design the plan to lead to the child's successful placement with a relative if a subsequent transfer of custody to the relative is planned, or in an adoptive home within the shortest practicable time, and if neither of such placements is feasible, (iv) explain why permanent foster care or continued foster care is the plan for the child. The department or agency may include with such proposed plan a proper pleading seeking the termination of residual parental rights pursuant to § 16.1-283.

C. A copy of ~~Parts A and B of~~ the *entire* foster care plan shall be sent by the court to the attorney for the child, the child's parents or any other person standing in loco parentis at the time the board or agency obtained custody 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 ~~Part A of~~ the ~~foster care~~ plan, *excluding the section of the plan describing the reasons why the child cannot be returned home and the alternative chosen*, shall be sent by the court to the foster parents. Any party receiving a copy of the plan may petition the court for a review of the plan. The judge shall review each petition so filed to determine if there is good cause shown for a hearing on the plan. 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.

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.

E. Nothing in this section shall limit the authority of the judge or the staff of the family court, upon order of the judge, to review the status of children in the custody of local boards of public welfare or 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. Foster care review.

A. This section shall apply to all children under the legal custody of a local board of public welfare or social services or a child welfare agency (i) who were the subjects of a foster care plan filed with the court pursuant to § 16.1-281 and (ii) who have not been returned to their prior family or placed in an adoptive home within sixteen months following the initial foster care placement of the child.

B. Any interested party, including the parent, guardian or person who stood in loco parentis prior to the board's or agency's assumption of legal custody, may file with the court the petition hereinafter described for each such child within sixteen months after the initial foster care placement of the child. However, if a petition is not filed by such interested party, then the board or agency having legal custody shall file the petition within sixteen months after the initial foster care placement.

The petition shall:

1. Be filed in the court in which the foster care plan was filed for the child. Upon the order of such

court, however, the petition may be filed in the court of the county or city in which the board or agency having legal custody has its principal office or where the child resides;

2. Include a copy of the foster care plan previously filed for such child;
3. State, if such is reasonably obtainable, the current address of the child's parents and, if the child was in the custody of a person or persons standing in loco parentis at the time the board or agency obtained legal custody, of such person or persons;
4. Describe the placement or placements provided for the child while in foster care and the services or programs offered to the child and his parents and, if applicable, the persons previously standing in loco parentis;
5. Describe the nature and frequency of the contacts between the child and his parents and, if applicable, the persons previously standing in loco parentis;
6. Set forth in detail the manner in which the foster care plan previously filed with the court was or was not complied with and the extent to which the goals thereof have been met; and
7. Set forth the disposition sought and the grounds therefor; however, if a continuation of foster care is recommended, a foster care plan for such period of continued foster care shall also be included and shall address (i) the role the current foster parents *or other residential care providers* will play in the future planning for the child and (ii) in the case of a child who has attained age sixteen, the services and programs needed to assist the child to make a transition from foster care to independent living.

C. Upon receipt of the petition filed by the board, agency, or any interested party as provided in subsection B of this section, the court shall schedule a hearing within sixty days and shall provide notice of the hearing and a copy of the petition to the following, each of whom shall be a party entitled to participate in the proceeding:

1. The child, if he is twelve years of age or older;
2. The attorney-at-law representing the child as guardian ad litem;
3. The child's parents and, if the child was in the custody of a person standing in loco parentis at the time the department obtained custody, such person or persons. No such notification shall be required, however, if the judge certifies on the record that the identity of the parent or guardian is not reasonably ascertainable. An affidavit of the mother that the identity of the father is not reasonably ascertainable shall be sufficient evidence of this fact, provided there is no other evidence before the court which would refute such an affidavit;
4. The foster parent or foster parents *or other residential care providers* of the child;
5. The petitioning board or agency; and
6. Such other persons as the court, in its discretion, may direct.

D. At the conclusion of the hearing, the court shall, upon the proof adduced and in accordance with the best interests of the child, enter any appropriate order of disposition consistent with the dispositional alternatives available to the court at the time of the original hearing. The court order shall state whether reasonable efforts, if applicable, have been made to reunite the child with his parents, guardian or other person standing in loco parentis to the child.

E. The court shall possess continuing jurisdiction over cases reviewed under this section for so long as a child remains in a foster care placement or, when a child is returned to his prior family subject to conditions imposed by the court, for so long as such conditions are effective. After the hearing required pursuant to subsection C hereof, the court shall schedule a hearing on the case annually thereafter, except in the case of a child placed in permanent foster care after a hearing held pursuant to § 63.1-206.1, or within thirty days upon the petition of any party entitled to notice in proceedings under this section when the judge determines there is good cause shown for such a hearing.

F. In the case of a child who has not been returned to his prior family or placed in an adoptive home or placed in permanent foster care within twenty-four months following the initial foster care placement of the child, the board or agency shall file a petition to (i) transfer the custody of the child to his prior family, (ii) transfer custody of the child to a relative other than the child's prior family, (iii) place the child in permanent foster care, (iv) terminate residual parental rights pursuant to § 16.1-283, or (v) continue custody with the board or agency. The board or agency shall petition for continued custody of the child only if the board or agency has thoroughly investigated the feasibility of the alternatives listed in (i) through (iv) of this subsection and determined that none of those alternatives is in the best interest of the child. A foster care plan shall be included and shall address the board's or agency's investigation of alternatives (i) through (iv) and why they are not in the best interest of the child. Any petition filed pursuant to this subsection shall comply with subdivisions 1 through 7 of subsection B and the procedures set out in subsection C and the continuing jurisdiction provisions of subsection E shall apply.