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SENATE BILL NO. 947

Senate Amendments in [] — February 4, 1997

A BILL to amend and reenact §§ 16.1-252, 16.1-253, 16.1-282, and 16.1-296 of the Code of Virginia, §§ 16.1-266, 16.1-278.2 and 16.1-281 of the Code of Virginia as they are currently effective and as they may become effective, and § 16.1-296.2 of the Code of Virginia as it may become effective, and to amend the Code of Virginia by adding a section numbered 16.1-282.1, relating to abused and neglected children; foster care.

Patrons—Gartlan, Colgan, Howell, Lucas, Reynolds and Saslaw; Delegates: Almand, Armstrong, Deeds, Howell and Moran

Referred to the Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-252, 16.1-253, 16.1-282, and 16.1-296 of the Code of Virginia, §§ 16.1-266, 16.1-278.2 and 16.1-281 of the Code of Virginia as they are currently effective and as they may become effective, and § 16.1-296.2 of the Code of Virginia as it may become effective are amended and reenacted, and that the Code of Virginia is amended by adding a section numbered 16.1-282.1 as follows:

§ 16.1-252. Preliminary removal order; hearing.

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

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

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

D. At the removal hearing the child and his parent, guardian, legal custodian or other person standing in loco parentis shall have the right to confront and cross-examine all adverse witnesses and evidence and to present evidence on their own behalf. If the child is twelve years of age or under, the child's attorney or guardian ad litem, or if the child has been committed to the custody of the Department of Social Services, the local department of social services, may apply for an order from the court that the child's testimony be taken in a room outside the courtroom and be televised by two-way closed-circuit television. The provisions of § 63.1-248.13:1 shall apply, mutatis mutandis, to the use of two-way closed-circuit television except that the person seeking the order shall apply for the order at least forty-eight hours before the hearing, unless the court for good cause shown allows the application to be made at a later time.

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

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

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

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

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

62 1. Order that the child be placed in the care and custody of a suitable person, with consideration
63 being given to placement in the care and custody of a nearest kin, including grandparents, or personal
64 friend or, if such placement is not available, in the care and custody of a suitable agency;

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

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

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

72 G. *At the conclusion of the preliminary removal order hearing, the court shall determine whether the*
73 *allegations of abuse or neglect have been proven by a preponderance of the evidence. Any finding of*
74 *abuse or neglect shall be stated in the court order. However, if, before such a finding is made, a person*
75 *responsible for the care and custody of the child, the child's guardian ad litem or the local department*
76 *of social services objects to a finding being made at the hearing, the court shall schedule an*
77 *adjudicatory hearing to be held within thirty days of the date of the initial preliminary removal hearing.*
78 *The adjudicatory hearing shall be held to determine whether the allegations of abuse and neglect have*
79 *been proven by a preponderance of the evidence. Parties who are present at the preliminary removal*
80 *order hearing shall be noticed to return on the date set for the adjudicatory hearing and parties who*
81 *are not present shall be summoned as provided in § 16.2-263. The hearing shall be held and an order*
82 *may be entered, although a party to the preliminary removal order hearing fails to appear and is not*
83 *represented by counsel, provided personal or substituted service was made on the person, or the court*
84 *determines that such person cannot be found, after reasonable effort, or in the case of a person who is*
85 *without the Commonwealth, the person cannot be found or his post office address cannot be ascertained*
86 *after reasonable effort.*

87 *The preliminary removal order and any preliminary protective order issued shall remain in full force*
88 *and effect pending the adjudicatory hearing.*

89 H. *If the preliminary removal order includes a finding of abuse or neglect and the child is removed*
90 *from his home or a preliminary protective order is issued, a dispositional hearing shall be held*
91 *pursuant to § 16.1-278.2. The dispositional hearing shall be scheduled at the time of the preliminary*
92 *removal order hearing and shall be held within seventy-five days of the preliminary removal order*
93 *hearing. If an adjudicatory hearing is requested pursuant to subsection G, the dispositional hearing*
94 *shall nonetheless be scheduled at the initial preliminary removal order hearing. All parties present at*
95 *the preliminary removal order hearing shall be given notice of the date scheduled for the dispositional*
96 *hearing; parties who are not present shall be summoned to appear as provided in § 16.1-263.*

97 I. A person having legal custody of a child as defined in § 16.1-228 (i) shall not be required to
98 comply with the requirements of this section in order to redetermine where and with whom the child
99 shall live, notwithstanding that the child had been placed with a natural parent.

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

101 § 16.1-253. Preliminary protective order.

102 A. Upon the motion of any person or upon the court's own motion, the court may issue a preliminary
103 protective order, after a hearing, if necessary to protect a child's life, health or normal development
104 pending the final determination of a petition filed under this law. The order may require a child's
105 parents, guardian, legal custodian, other person standing in loco parentis or other family or household
106 member of the child to observe reasonable conditions of behavior for a specified length of time. These
107 conditions shall include any one or more of the following:

108 1. To abstain from offensive conduct against the child, a family or household member of the child or
109 any person to whom custody of the child is awarded;

110 2. To cooperate in the provision of reasonable services or programs designed to protect the child's
111 life, health or normal development;

112 3. To allow persons named by the court to come into the child's home at reasonable times designated
113 by the court to visit the child or inspect the fitness of the home and to determine the physical or
114 emotional health of the child;

115 4. To allow visitation with the child by persons entitled thereto, as determined by the court;

116 5. To refrain from acts of commission or omission which tend to endanger the child's life, health or
117 normal development; or

118 6. To refrain from such contact with the child or family or household members of the child, as the
119 court may deem appropriate, including removal of such person from the residence of the child.
120 However, prior to the issuance by the court of an order removing such person from the residence of the
121 child, the petitioner must prove by a preponderance of the evidence that such person's probable future

conduct would constitute a danger to the life or health of such child, and that there are no less drastic alternatives which could reasonably and adequately protect the child's life or health pending a final determination on the petition.

B. A preliminary protective order may be issued ex parte upon a petition supported by an affidavit or by sworn testimony in person before the judge or intake officer which establishes that the child would be subjected to an imminent threat to life or health to the extent that delay for the provision of an adversary hearing would be likely to result in serious or irreparable injury to the child's life or health. Following the issuance of an ex parte order the court shall provide an adversary hearing to the affected parties within the shortest practicable time not to exceed five business days after the issuance of the order.

C. Prior to the hearing required by this section, notice of the hearing shall be given at least twenty-four hours in advance of the hearing to the guardian ad litem for the child, to the parents, guardian, legal custodian, or other person standing in loco parentis of the child, to any other family or household member of the child to whom the protective order may be directed and to the child if he or she is twelve years of age or older. The notice provided herein shall include (i) the time, date and place for the hearing and (ii) a specific statement of the factual circumstances which allegedly necessitate the issuance of a preliminary protective order.

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

E. At the hearing the child, his or her parents, guardian, legal custodian or other person standing in loco parentis and any other family or household member of the child to whom notice was given shall have the right to confront and cross-examine all adverse witnesses and evidence and to present evidence on their own behalf.

F. If a petition alleging abuse or neglect of a child has been filed, at the hearing pursuant to this section the court shall determine whether the allegations of abuse or neglect have been proven by a preponderance of the evidence. Any finding of abuse or neglect shall be stated in the court order. However, if, before such a finding is made, a person responsible for the care and custody of the child, the child's guardian ad litem or the local department of social services objects to a finding being made at the hearing, the court shall schedule an adjudicatory hearing to be held within thirty days of the date of the initial preliminary removal hearing. The adjudicatory hearing shall be held to determine whether the allegations of abuse and neglect have been proven by a preponderance of the evidence. Parties who are present at the hearing shall be noticed to return on the date set for the adjudicatory hearing and parties who are not present shall be summoned as provided in § 16.2-263. The adjudicatory hearing shall be held and an order may be entered, although a party to the hearing 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.

Any preliminary protective order issued shall remain in full force and effect pending the adjudicatory hearing.

G. If at the hearing held pursuant to this section the court makes a finding of abuse or neglect and a preliminary protective order is issued, a dispositional hearing shall be held pursuant to § 16.1-278.2. The dispositional hearing shall be scheduled at the time of the hearing pursuant to this section, and shall be held within seventy-five days of this hearing. If an adjudicatory hearing is requested pursuant to subsection F, the dispositional hearing shall nonetheless be scheduled at the hearing pursuant to this section. All parties present at the hearing shall be given notice of the date scheduled for the dispositional hearing; parties who are not present shall be summoned to appear as provided in § 16.1-263.

[~~F. H.~~] Nothing in this section enables the court to remove a child from the custody of his or her parents, guardian, legal custodian or other person standing in loco parentis, and no order hereunder shall be entered against a person over whom the court does not have jurisdiction.

[*I. Violation of any order issued pursuant to this section shall constitute contempt of court.*]

§ 16.1-266. Appointment of counsel.

A. Prior to the hearing by the court of any case involving a child who is alleged to be abused or neglected or who is the subject of an entrustment agreement or a petition terminating residual parental rights or is otherwise before the court pursuant to subdivision A 4 of § 16.1-241, the court shall appoint a discreet and competent attorney-at-law as guardian ad litem to represent the child pursuant to § 16.1-266.1.

B. Prior to the detention review hearing or the adjudicatory or transfer hearing by the court of any case involving a child who is alleged to be in need of services, in need of supervision or delinquent, such child and his or her parent, guardian, legal custodian or other person standing in loco parentis shall be informed by a judge, clerk or probation officer of the child's right to counsel and of the liability of

183 the parent, guardian, legal custodian or other person standing in loco parentis for the costs of such legal
184 services pursuant to § 16.1-267 and be given an opportunity to:

185 1. Obtain and employ counsel of the child's own choice; or

186 2. If the court determines that the child is indigent within the contemplation of the law pursuant to
187 the guidelines set forth in § 19.2-159 and his or her parent, guardian, legal custodian or other person
188 standing in loco parentis does not retain an attorney for the child, a statement of indigence substantially
189 in the form provided by § 19.2-159 and a financial statement shall be executed by such child, and the
190 court shall appoint an attorney-at-law to represent him; or

191 3. Waive the right to representation by an attorney, if the court finds the child and the parent,
192 guardian, legal custodian or other person standing in loco parentis of the child consent, in writing, to
193 such waiver and that the interests of the child and the parent, guardian, legal custodian or other person
194 standing in loco parentis in the proceeding are not adverse. Such written waiver shall be in accordance
195 with law and shall be filed with the court records of the case.

196 C. Prior to the hearing by the court of any case involving a parent, guardian or other adult charged
197 with abuse or neglect of a child or a parent or guardian who could be subjected to the loss of residual
198 parental rights and responsibilities, such parent, guardian or other adult shall be informed by a judge,
199 clerk or probation officer of his right to counsel and be given an opportunity to:

200 1. Obtain and employ counsel of the parent's, guardian's or other adult's own choice; or

201 2. If the court determines that the parent, guardian or other adult is indigent within the contemplation
202 of the law pursuant to the guidelines set forth in § 19.2-159, a statement substantially in the form
203 provided by § 19.2-159 and a financial statement shall be executed by such parent, guardian or other
204 adult and the court shall appoint an attorney-at-law to represent him; or

205 3. Waive the right to representation by an attorney in accordance with the provisions of § 19.2-160.

206 D. In all other cases which in the discretion of the court require counsel or a guardian ad litem to
207 represent the interests of the child or children or the parent or guardian, a discreet and competent
208 attorney-at-law may be appointed by the court. However, in cases where the custody of a child or
209 children is the subject of controversy or requires determination and each of the parents or other persons
210 claiming a right to custody is represented by counsel, the court shall not appoint counsel or a guardian
211 ad litem to represent the interests of the child or children unless the court finds, at any stage in the
212 proceedings in a specific case, that the interests of the child or children are not otherwise adequately
213 represented.

214 *E. Any state or local agency, department, authority or institution and any school, hospital, physician*
215 *or other health or mental health care provider shall permit a guardian ad litem appointed pursuant to*
216 *this section to inspect and copy, without the consent of the child or his parents, any records relating to*
217 *the child whom the guardian represents upon presentation by him of a copy of the court order*
218 *appointing him or a court order specifically allowing him such access. Upon request therefor by the*
219 *guardian ad litem made at least seventy-two hours in advance, a mental health care provider shall make*
220 *himself available to conduct a review and interpretation of the child's treatment records which are*
221 *specifically related to the investigation. Such a request may be made in lieu of or in addition to*
222 *inspection and copying of the records.*

223 § 16.1-266. (Delayed effective date) Appointment of counsel.

224 A. Prior to the hearing by the court of any case involving a child who is alleged to be abused or
225 neglected or who is the subject of an entrustment agreement or a petition terminating residual parental
226 rights or is otherwise before the court pursuant to subdivision A 4 of § 16.1-241, the court shall appoint
227 a discreet and competent attorney-at-law as guardian ad litem to represent the child pursuant to
228 § 16.1-266.1.

229 B. Prior to the detention review hearing or the adjudicatory or transfer hearing by the court of any
230 case involving a child who is alleged to be in need of services, in need of supervision or delinquent,
231 such child and his or her parent, guardian, legal custodian or other person standing in loco parentis shall
232 be informed by a judge, clerk or probation officer of the child's right to counsel and of the liability of
233 the parent, guardian, legal custodian or other person standing in loco parentis for the costs of such legal
234 services pursuant to § 16.1-267 and be given an opportunity to:

235 1. Obtain and employ counsel of the child's own choice; or

236 2. If the court determines that the child is indigent within the contemplation of the law pursuant to
237 the guidelines set forth in § 19.2-159 and his or her parent, guardian, legal custodian or other person
238 standing in loco parentis does not retain an attorney for the child, a statement of indigence substantially
239 in the form provided by § 19.2-159 and a financial statement shall be executed by such child, and the
240 court shall appoint an attorney-at-law to represent him; or

241 3. Waive the right to representation by an attorney, if the court finds the child and the parent,
242 guardian, legal custodian or other person standing in loco parentis of the child consent, in writing, to
243 such waiver and that the interests of the child and the parent, guardian, legal custodian or other person
244 standing in loco parentis in the proceeding are not adverse. Such written waiver shall be in accordance

with law and shall be filed with the court records of the case.

C. Prior to the hearing by the court of any case involving a parent, guardian or other adult charged with abuse or neglect of a child or a parent or guardian who could be subjected to the loss of residual parental rights and responsibilities, such parent, guardian or other adult shall be informed by a judge, clerk or probation officer of his right to counsel and be given an opportunity to:

1. Obtain and employ counsel of the parent's, guardian's or other adult's own choice; or
2. If the court determines that the parent, guardian or other adult is indigent within the contemplation of the law pursuant to the guidelines set forth in § 19.2-159, a statement substantially in the form provided by § 19.2-159 and a financial statement shall be executed by such parent, guardian or other adult and the court shall appoint an attorney-at-law to represent him; or

3. Waive the right to representation by an attorney in accordance with the provisions of § 19.2-160.

D. In all other cases which in the discretion of the court require counsel or a guardian ad litem to represent the interests of the child or children or the parent or guardian, a discreet and competent attorney-at-law may be appointed by the court. However, (i) in cases where the custody of a child or children is the subject of controversy or requires determination and each of the parents or other persons claiming a right to custody is represented by counsel, the court shall not appoint counsel or a guardian ad litem to represent the interests of the child or children unless the court finds, at any stage in the proceedings in a specific case, that the interests of the child or children are not otherwise adequately represented; and (ii) in suits for divorce, annulment or affirmation of marriage, separate maintenance, or equitable distribution based on a foreign decree; in petitions for adoption, amendment of a record of birth, and change of name; or judicial review of school board actions or hearing officer decisions, the court shall appoint counsel or a guardian ad litem to represent the interests of a party only as provided in § 8.01-9.

E. Any state or local agency, department, authority or institution and any school, hospital, physician or other health or mental health care provider shall permit a guardian ad litem appointed pursuant to this section to inspect and copy, without the consent of the child or his parents, any records relating to the child whom the guardian represents upon presentation by him of a copy of the court order appointing him or a court order specifically allowing him such access. Upon request therefor by the guardian ad litem made at least seventy-two hours in advance, a mental health care provider shall make himself available to conduct a review and interpretation of the child's treatment records which are specifically related to the investigation. Such a request may be made in lieu of or in addition to inspection and copying of the records.

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

A. *Within seventy-five 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 (i) abused or neglected, (ii) 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 (iii) 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 which 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 which places the child shall have the final authority to determine the appropriate placement for the child.

Any order allowing a local board or public agency to place a child where legal custody remains with the parents or guardians as provided in this section shall be entered only upon a finding by the court that reasonable efforts have been made to prevent placement out of the home and that continued placement in the home would be contrary to the welfare of the child, and the order shall so state.

5. After a finding that there is no less drastic alternative, transfer legal custody, subject to the provisions of § 16.1-281, to any of the following:

a. A relative or other 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 which 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 public welfare or 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 section shall prohibit the commitment of a child to any local board of public welfare or social services in the Commonwealth when the local board consents to the commitment. The board to which the child is committed shall have the final authority to determine the appropriate placement for the child.

Any order authorizing removal from the home and transferring legal custody of a child to a local board of public welfare or 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.

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.

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 by the local department of social services in accordance with § 16.1-281.

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.

§ 16.1-278.2. (Delayed effective date) Abused, neglected, or abandoned children or children without parental care.

A. Within seventy-five 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 (i) abused or neglected, (ii) 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 (iii) 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 family 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 which 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 which places the child shall have the final authority to determine the appropriate placement for the child.

Any order allowing a local board or public agency to place a child where legal custody remains with the parents or guardians as provided in this section shall be entered only upon a finding by the court that reasonable efforts have been made to prevent placement out of the home and that continued placement in the home would be contrary to the welfare of the child, and the order shall so state.

5. After a finding that there is no less drastic alternative, transfer legal custody, subject to the provisions of § 16.1-281, to any of the following:

a. A relative or other 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 which 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 public welfare or 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 section shall prohibit the commitment of a child to any local board of public welfare or social services in the Commonwealth when the local board consents to the commitment. The board to which the child is committed shall have the final authority to determine the appropriate placement for the child.

Any order authorizing removal from the home and transferring legal custody of a child to a local board of public welfare or 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.

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.

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 by the local department of social services in accordance with § 16.1-281.

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.

§ 16.1-281. Foster care plan.

A. In any case in which (i) a local board of social services or a public agency designated by the community policy and management team places a child through an agreement with the parents or guardians where legal custody remains with the parents or guardian, or (ii) 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, the public agency designated 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, 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 child welfare agency obtained custody or the board or the public agency placed the child, concerning the matters which should be included in such plan. The department, public agency, child welfare agency or team shall file the plan with the juvenile and domestic relations district court within sixty days following the transfer of custody or the board's or public agency's placement of the child 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 or the board's or public agency's placement of the child.

B. 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, child welfare 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 a separate section of the plan the department, child welfare 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 *independent living for a child sixteen years of age or older*, permanent foster care or continued foster care is the plan for the child. *"Independent living" includes the services and programs needed to assist the child in making a transition from foster care to self-sufficiency.* 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 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 child welfare agency obtained custody or the board or public agency placed the child 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, 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. A hearing shall be held for the purpose of reviewing and approving the foster care plan. The hearing shall be held within seventy-five 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, other public agency or a child welfare agency, (ii) the original preliminary removal order hearing, if the child was placed in foster care pursuant to § 16.1-253 or (iii) of the dispositional hearing at which the child was placed in foster care and an order was entered pursuant to §§ 16.1-278.4, 16.1-278.5, 16.1-278.6 or § 16.1-278.8.~~ 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 or the board or public agency placed the child.

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 or placed by local boards of social services or the public agency designated by the community policy and management team 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.

F. *At the conclusion of the hearing at which the foster care plan is reviewed, the court shall schedule a foster care review hearing to be held within six months in accordance with § 16.1-282. Parties who are present at the hearing pursuant to this section 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.*

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

A. In any case in which (i) a local board of social services or a public agency designated by the community policy and management team places a child through an agreement with the parents or guardians where legal custody remains with the parents or guardian or (ii) legal custody of a child is given to a local board of public welfare or social services, the department of public welfare or social services, the public agency designated 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, 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 child welfare agency obtained custody or the board or the public agency placed the child, concerning the matters which should be included in such plan. The department, public agency, child welfare agency or team shall file the plan with the family court within sixty days following the transfer of custody or the board's or public agency's placement of the child 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 or the board's or public agency's placement of the child.

B. 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, child welfare 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 a separate section of the plan the department, child welfare 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 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 child welfare agency obtained custody or the board or public agency placed the child 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, 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. A hearing shall be held for the purpose of reviewing and approving the foster care plan. The hearing shall be held within seventy-five 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, other public agency or a child welfare agency, (ii) the original preliminary removal order hearing, if the child was placed in foster care pursuant to § 16.1-253 or (iii) of the dispositional hearing at which the child was placed in foster care and an order was entered pursuant to §§ 16.1-278.4, 16.1-278.5, 16.1-278.6 or § 16.1-278.8.~~ 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 or the board or public agency placed the child.

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 or placed by local boards of social services or the public agency designated by the community policy and management team 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.

F. At the conclusion of the hearing at which the foster care plan is reviewed, the court shall schedule a foster care review hearing to be held within six months in accordance with § 16.1-282. Parties who are present at the hearing pursuant to this section 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.

§ 16.1-282. Foster care review.

A. This section shall apply to all children placed through an agreement between the parents or guardians and the local board of social services or a public agency designated by the community policy and management team where legal custody remains with the parents or guardians or 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 ~~ten~~ five months following the initial foster care placement of the child of the court's approval of (i) the entrustment agreement pursuant to § 16.1-278.3 which placed the child in foster care or (ii) the dispositional hearing at which the foster care plan was reviewed pursuant to § 16.1-281.

B. Any interested party, including the parent, guardian or person who stood in loco parentis prior to the board's or child welfare agency's assumption of legal custody or the board's or public agency's placement of the child, may file with the court the petition hereinafter described for each such child within ~~ten months~~ at any time after the initial foster care placement of the child. However, if a petition is not filed by such interested party, then the board or child welfare agency having legal custody or the board or public agency placing the child shall file the petition within ~~ten~~ five months after the initial foster care placement of the court's approval of (i) the entrustment agreement pursuant to § 16.1-278.3, which placed the child in foster care or (ii) the dispositional hearing at which the foster care plan was reviewed pursuant to § 16.1-281.

The petition shall:

1. Be filed in the court in which the foster care plan ~~was filed~~ for the child ~~was reviewed and approved~~. 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 child welfare agency having legal custody or having placed the child 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 child welfare agency obtained legal custody or the board or public agency placed the child, 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 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, public agency, child welfare agency, or any interested party as provided in subsection B of this section, the court shall schedule a hearing *to be held* within ~~sixty~~ thirty days ~~and if a hearing was not previously scheduled pursuant to subsection F of § 16.1-281~~. A review hearing shall be held within six months of the dispositional hearing at which the foster care plan was reviewed. The court 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; *If the parent or guardian of the child did not appear at the dispositional hearing and was not noticed to return for the foster care review hearing in accordance with subsection*

F of § 16.1-281, the parent or guardian shall be summoned to appear at the foster care review hearing in accordance with § 16.1-263. The review hearing shall be held pursuant to this section although a parent or guardian fails to appear and is not represented by counsel, provided personal or substituted service was made on the parent or guardian, 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.

4. The foster parent or foster parents or other care providers of the child;

5. The petitioning board, public agency or child welfare 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 *permanency planning* hearing on the case ~~annually to be held six months~~ thereafter in accordance with § 16.1-282.1, 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, public agency or child welfare 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 or dissolve the board's or public agency's placement agreement and return the child to his prior family, (iii) place the child in permanent foster care, (iv) terminate residual parental rights pursuant to § 16.1-283, (v) continue custody with the board or agency or placement with the board or public agency through a parental agreement or (vi) 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 retain custody. The board, public agency, or child welfare agency shall petition for alternatives (v) or (vi) of this subsection only if the board, public agency or child welfare 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, public agency'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.

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

A. In the case of a child who has not been returned to his prior family or placed in an adoptive home, an independent living arrangement or in permanent foster care within eleven months of (i) the court's approval of the entrustment agreement pursuant to § 16.1-278.3 or (ii) the dispositional hearing at which the foster care plan was reviewed pursuant to § 16.1-281, the board, public agency or child welfare 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 or dissolve the board's or public agency's placement agreement and return the child to his prior family, (iii) terminate residual parental rights pursuant to § 16.1-283, (iv) place the child in an independent living arrangement if the child has attained the age of sixteen years, (v) place the child in permanent foster care, (vi) continue custody with the board or agency or placement with the board or public agency through a parental agreement or (vii) 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.

B. The board, public agency, or child welfare agency shall petition for alternative (vi) or (vii) of this section only if the board, public agency or child welfare agency has thoroughly investigated the feasibility of the alternatives listed in clauses (i) through (v) of this section and determined that none of those alternatives is in the best interest of the child. If the board or agency petitions for alternatives (vi) or (vii), alternative (vi) or (vii) may be approved by the court for a maximum period of six months. The board or agency shall also file a foster care plan which (i) changes the permanent plan goal for the child to one of the placement alternatives specified in clauses (i) through (v) of subsection A. (ii)

includes provisions for accomplishing the new permanent plan goal within six months and (iii) summarizes the investigation conducted of the placement alternatives listed in clauses (i) through (v) of subsection A and why they are not in the best interest of the child.

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 thirty days. The permanency planning hearing shall be held within twelve months of the dispositional hearing at which the foster care plan was reviewed pursuant to § 16.1-281. The provisions of subdivisions 1 through 7 of subsection B of § 16.1-282 shall apply to the filing of such petitions. The procedures of subsection C of § 16.1-282 and the provisions of subsection E of § 16.1-282 shall apply to proceedings under this section.

C. Before approving alternative (vi) or (vii) as the plan for the child, the court shall find :

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

2. When returning home is not the plan for the child, that marked progress is being made to achieve the permanent goal identified by the board, public agency or child welfare agency and that it is premature to set an exact date for accomplishing the goal at the time of this hearing.

At the conclusion of the permanency planning hearing, if alternative (vi) or (vii) is the interim plan, the court shall schedule a hearing to be held within six months to determine that the new permanent goal is accomplished and to enter an order consistent with alternative (i), (ii), (iii) (iv) or (v). All parties present at the initial permanency planning hearing shall be noticed to return on the date scheduled for the second permanency planning hearing. Parties not present shall be summoned to appear as provided in § 16.1-263. Otherwise, this subsection shall govern the scheduling and notice for the such hearings.

D. The court shall review a foster care plan for (i) any child who is placed in an independent living arrangement but who remains in the custody of the board, public agency or child welfare agency and (ii) any child for whom a termination of parental rights petition has been filed or for whom termination of parental rights has been ordered, but who has not been placed for adoption, every twelve months from the date of the permanency planning hearing held pursuant to this section, so long as the child remains in the custody of the board, public agency or child welfare agency. The board, public agency or child welfare agency shall file such petitions for review pursuant to the provisions of § 16.1-282.

§ 16.1-296. Jurisdiction of appeals; procedure.

A. From any final order or judgment of the juvenile court affecting the rights or interests of any person coming within its jurisdiction, an appeal may be taken within ten days from the entry of a final judgment, order or conviction. However, in a case arising under the Uniform Interstate Family Support Act (§ 20-88.32 et seq.), a party may take an appeal pursuant to this section within thirty days from entry of a final order or judgment. ~~A protective order~~ Protective orders issued pursuant to § 16.1-279.1 in a ~~case~~ cases of family abuse is a ~~and orders entered pursuant to § 16.1-278.2 are final order~~ orders from which an appeal may be taken.

B. Upon receipt of notice of such appeal the juvenile court shall forthwith transmit to the attorney for the Commonwealth a report incorporating the results of any investigation conducted pursuant to § 16.1-273, which shall be confidential in nature and made available only to the court and the attorney for the defendant (i) after the guilt or innocence of the accused has been determined or (ii) after the court has made its findings on the issues subject to appeal. After final determination of the case, the report and all copies thereof shall be forthwith returned to such juvenile court.

C. Where an appeal is taken by a child on a finding that he or she is delinquent and on a disposition pursuant to § 16.1-278.8, trial by jury on the issue of guilt or innocence of the alleged delinquent act may be had on motion of the child, the attorney for the Commonwealth or the circuit court judge. If the alleged delinquent act is one which, if committed by an adult, would constitute a felony, the child shall be entitled to a jury of twelve persons. In all other cases, the jury shall consist of seven persons. If the jury in such a trial finds the child guilty, disposition shall be by the judge pursuant to the provisions of § 16.1-278.8 after taking into consideration the report of any investigation made pursuant to § 16.1-237 or § 16.1-273.

D. When an appeal is taken in a case involving termination of parental rights brought under § 16.1-283, the circuit court shall hold a hearing on the merits of the case within ninety days of the perfecting of the appeal.

E. Where an appeal is taken by an adult on a finding of guilty of an offense within the jurisdiction of the juvenile and domestic relations district court, the appeal shall be dealt with in all respects as is an appeal from a general district court pursuant to §§ 16.1-132 through 16.1-137; however, where an appeal is taken by any person on a charge of nonsupport, the procedure shall be as is provided for appeals in prosecutions under Chapter 5 (§ 20-61 et seq.) of Title 20.

F. In all other cases on appeal, proceedings in the circuit court shall conform to the equity practice

where evidence is heard ore tenus; however, an issue out of chancery may be allowed, in the discretion of the judge, upon the motion of any party. An appeal from an order of protection issued pursuant to § 16.1-279.1 shall be given precedence on the docket of the court over other civil appeals taken to the circuit court from the district courts, but shall otherwise be docketed and processed as other civil cases.

G. Costs, taxes and fees on appealed cases shall be assessed only in those cases in which a trial fee could have been assessed in the juvenile and domestic relations court and shall be collected in the circuit court.

H. No appeal bond shall be required of a party appealing from an order of a juvenile and domestic relations district court except for that portion of any order or judgment establishing a support arrearage or suspending payment of support during pendency of an appeal. In cases involving support, no appeal shall be allowed until the party applying for the same or someone for him gives bond, in an amount and with sufficient surety approved by the judge or by his clerk if there is one, to abide by such judgment as may be rendered on appeal if the appeal is perfected or, if not perfected, then to satisfy the judgment of the court in which it was rendered. An appeal will not be perfected unless such appeal bond as may be required is filed within thirty days from the entry of the final judgment or order. However, no appeal bond shall be required of the Commonwealth or when an appeal is proper to protect the estate of a decedent, an infant, a convict or an insane person, or the interest of a county, city or town.

If bond is furnished by or on behalf of any party against whom judgment has been rendered for money, the bond shall be conditioned for the performance and satisfaction of such judgment or order as may be entered against the party on appeal, and for the payment of all damages which may be awarded against him in the appellate court. If the appeal is by a party against whom there is no recovery, the bond shall be conditioned for the payment of any damages as may be awarded against him on the appeal.

This subsection shall not apply to release on bail pursuant to other subsections of this section or § 16.1-298.

I. In all cases on appeal, the circuit court in the disposition of such cases shall have all the powers and authority granted by the chapter to the juvenile and domestic relations district court. Unless otherwise specifically provided by this Code, the circuit court judge shall have the authority to appoint counsel for the parties and compensate such counsel in accordance with the provisions of Article 6 (§ 16.1-266 et seq.) of this chapter.

J. In any case which has been referred or transferred from a circuit court to a juvenile court and an appeal is taken from an order or judgment of the juvenile court, the appeal shall be taken to the circuit court in the same locality as the juvenile court to which the case had been referred or transferred.

§ 16.1-296.2. (Delayed effective date) Appeals to court of appeals.

From any final order or judgment of the family court in any case other than those specified in subsection A of § 16.1-296, an appeal may be taken to the Court of Appeals as provided in § 17-116.05:5. The provisions of Title 8.01 and Title 20 and the Rules of the Supreme Court of Virginia governing appeals in suits in equity shall apply to appeals made pursuant to this section.

~~Any order of protection~~ *Protective orders* issued pursuant to § 16.1-279.1 in a ~~case~~ *cases* of family abuse ~~is a final order~~ *and orders entered pursuant to § 16.1-278.2 are final orders* from which an appeal may be taken to the Court of Appeals pursuant to this section.

A preliminary protective order issued pursuant to § 16.1-253 or an order of protection issued pursuant to § 16.1-279.1 shall not be suspended during the pendency of an appeal to the Court of Appeals or a subsequent petition for appeal to the Supreme Court or writ of error, unless so ordered by the judge of a family court or directed in a writ of supersedeas by the Court of Appeals or the Supreme Court.