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## SENATE BILL NO. 388

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice  
on March 9, 1998)

(Patron Prior to Substitute—Senator Gartlan)

A BILL to amend and reenact §§ 16.1-253, 16.1-281, as it is currently effective and as it may become effective, 16.1-282, 16.1-282.1, 16.1-283, 16.1-296 and 16.1-298 of the Code of Virginia, and to amend the Code of Virginia by adding a section numbered 16.1-242.1, relating to foster care and adoption; termination of parental rights; appeals.

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-253, 16.1-281, as it is currently effective and as it may become effective, 16.1-282, 16.1-282.1, 16.1-283, 16.1-296 and 16.1-298 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 16.1-242.1 as follows:

§ 16.1-242.1. Retention of jurisdiction; appeals involving children in foster care.

Upon appeal to the circuit court of any case involving a child placed in foster care and in any appeal to the Court of Appeals or Supreme Court of Virginia, the juvenile court shall retain jurisdiction to continue to hear petitions filed pursuant to § 16.1-282 and 16.1-282.1. Orders of the juvenile court in such cases shall continue to be reviewed and enforced by the juvenile court until the circuit court, Court of Appeals or Supreme Court rules otherwise.

§ 16.1-253. Preliminary protective order.

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

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

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

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

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

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

6. To refrain from such contact with the child or family or household members of the child, as the court may deem appropriate, including removal of such person from the residence of the child. However, prior to the issuance by the court of an order removing such person from the residence of the 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 motion of any person or the court's own motion in any matter before the court, or upon petition. The motion or petition shall be 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. If an ex parte order is issued without an affidavit being presented, the court, in its order, shall state the basis upon which the order was entered, including a summary of the allegations made and the court's findings. 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

60 issuance of a preliminary protective order.

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

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

66 F. If a petition alleging abuse or neglect of a child has been filed, at the hearing pursuant to this  
67 section the court shall determine whether the allegations of abuse or neglect have been proven by a  
68 preponderance of the evidence. Any finding of abuse or neglect shall be stated in the court order.  
69 However, if, before such a finding is made, a person responsible for the care and custody of the child,  
70 the child's guardian ad litem or the local department of social services objects to a finding being made  
71 at the hearing, the court shall schedule an adjudicatory hearing to be held within thirty days of the date  
72 of the initial preliminary ~~removal~~ protective order hearing. The adjudicatory hearing shall be held to  
73 determine whether the allegations of abuse and neglect have been proven by a preponderance of the  
74 evidence. Parties who are present at the hearing shall be given notice of the date set for the adjudicatory  
75 hearing and parties who are not present shall be summoned as provided in § 16.1-263. The adjudicatory  
76 hearing shall be held and an order may be entered, although a party to the hearing fails to appear and is  
77 not represented by counsel, provided personal or substituted service was made on the person, or the  
78 court determines that such person cannot be found, after reasonable effort, or in the case of a person  
79 who is without the Commonwealth, the person cannot be found or his post office address cannot be  
80 ascertained after reasonable effort.

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

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

91 H. Nothing in this section enables the court to remove a child from the custody of his or her parents,  
92 guardian, legal custodian or other person standing in loco parentis, *except as provided in § 16.1-278.2*,  
93 and no order hereunder shall be entered against a person over whom the court does not have  
94 jurisdiction.

95 I. Violation of any order issued pursuant to this section shall constitute contempt of court.

96 § 16.1-281. Foster care plan.

97 A. In any case in which (i) a local board of social services or a public agency designated by the  
98 community policy and management team places a child through an agreement with the parents or  
99 guardians where legal custody remains with the parents or guardian, or (ii) legal custody of a child is  
100 given to a local board of public welfare or social services or a child welfare agency, the department of  
101 public welfare or social services, the public agency designated or child welfare agency or the family  
102 assessment and planning team established pursuant to § 2.1-753 shall prepare a foster care plan for such  
103 child, as described hereinafter. The individual family service plan developed by the family assessment  
104 and planning team pursuant to § 2.1-754 may be accepted by the court as the foster care plan if it meets  
105 the requirements of this section. The representatives of such department, agency, or team shall consult  
106 with the child's parents, except when parental rights have been terminated, and any other person or  
107 persons standing in loco parentis at the time the board or child welfare agency obtained custody or the  
108 board or the public agency placed the child, concerning the matters which should be included in such  
109 plan. The department, public agency, child welfare agency or team shall file the plan with the juvenile  
110 and domestic relations district court within sixty days following the transfer of custody or the board's or  
111 public agency's placement of the child unless the court, for good cause shown, allows an extension of  
112 time, which shall not exceed an additional sixty days. A foster care plan need not be prepared if the  
113 child is returned to his prior family or placed in an adoptive home within sixty days following transfer  
114 of custody to the board or agency or the board's or public agency's placement of the child.

115 B. The foster care plan shall describe (i) the programs, care, services and other support which will be  
116 offered to the child and his parents and other prior custodians, (ii) the participation and conduct which  
117 will be sought from the child's parents and other prior custodians, (iii) the visitation and other contacts  
118 which will be permitted between the child and his parents and other prior custodians, (iv) the nature of  
119 the placement or placements which will be provided for the child, and (v) in writing and where  
120 appropriate for children age sixteen or over, the programs and services which will help the child prepare  
121 for the transition from foster care to independent living. ~~The~~ *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. ~~However, if~~ *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.*

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.

*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 (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 this Commonwealth or a substantially similar law of any other state, the United States or any foreign jurisdiction which 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 or (iii) the parent has been convicted of an offense under the laws of this Commonwealth or a substantially similar law of any other state, the United States or any foreign jurisdiction which constitutes felony assault 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. As used in this section "serious bodily injury" means bodily injury which 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. Within thirty 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 attorney 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 or public agency 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, 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. 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, 16.1-252, or (iii) the dispositional hearing at which the child was placed in foster care and an order was entered pursuant to §§ 16.1-278.2, 16.1-278.4, 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

183 review hearing and parties who are not present shall be summoned as provided in § 16.1-263.

184 § 16.1-281. (Delayed effective date) Foster care plan.

185 A. In any case in which (i) a local board of social services or a public agency designated by the  
186 community policy and management team places a child through an agreement with the parents or  
187 guardians where legal custody remains with the parents or guardian or (ii) legal custody of a child is  
188 given to a local board of public welfare or social services, the department of public welfare or social  
189 services, the public agency designated or child welfare agency or the family assessment and planning  
190 team established pursuant to § 2.1-753 shall prepare a foster care plan for such child, as described  
191 hereinafter. The individual family service plan developed by the family assessment and planning team  
192 pursuant to § 2.1-754 may be accepted by the court as the foster care plan if it meets the requirements  
193 of this section. The representatives of such department, agency or team shall consult with the child's  
194 parents, except when parental rights have been terminated, and any other person or persons standing in  
195 loco parentis at the time the board or child welfare agency obtained custody or the board or the public  
196 agency placed the child, concerning the matters which should be included in such plan. The department,  
197 public agency, child welfare agency or team shall file the plan with the family court within sixty days  
198 following the transfer of custody or the board's or public agency's placement of the child unless the  
199 court, for good cause shown, allows an extension of time, which shall not exceed an additional sixty  
200 days. A foster care plan need not be prepared if the child is returned to his prior family or placed in an  
201 adoptive home within sixty days following transfer of custody to the board or agency or the board's or  
202 public agency's placement of the child.

203 B. The foster care plan shall describe (i) the programs, care, services and other support which will be  
204 offered to the child and his parents and other prior custodians, (ii) the participation and conduct which  
205 will be sought from the child's parents and other prior custodians, (iii) the visitation and other contacts  
206 which will be permitted between the child and his parents and other prior custodians, (iv) the nature of  
207 the placement or placements which will be provided for the child, and (v) in writing and where  
208 appropriate for children age sixteen or over, the programs and services which will help the child prepare  
209 for the transition from foster care to independent living. ~~The~~ *self consistent with the child's health and*  
210 *safety, the plan shall be designed to support reasonable efforts which lead to the return of the child to*  
211 *his parents or other prior custodians within the shortest practicable time which shall be specified in the*  
212 *plan. However, if* *The child's health and safety shall be the paramount concern of the court and the*  
213 *agency throughout the placement, case planning, service provision and review process.*

214 *If the department, child welfare agency or team determines that it is not reasonably likely that the*  
215 *child can be returned to his prior family within a practicable time, consistent with the best interests of*  
216 *the child, in a separate section of the plan the department, child welfare agency or team shall (i) include*  
217 *a full description of the reasons for this conclusion, (ii) determine the opportunities for placing the child*  
218 *with a relative or in an adoptive home, (iii) design the plan to lead to the child's successful placement*  
219 *with a relative if a subsequent transfer of custody to the relative is planned, or in an adoptive home*  
220 *within the shortest practicable time, and if neither of such placements is feasible, (iv) explain why*  
221 *permanent foster care or continued foster care is the plan for the child. The department or agency may*  
222 *include with such proposed plan a proper pleading seeking the termination of residual parental rights*  
223 *pursuant to § 16.1-283.*

224 *The local board or other child welfare agency having custody of the child shall not be required by*  
225 *the court to make reasonable efforts to reunite the child with a parent if the court finds that (i) the*  
226 *residual parental rights of the parent regarding a sibling of the child have previously been involuntarily*  
227 *terminated, (ii) the parent has been convicted of an offense under the laws of this Commonwealth or a*  
228 *substantially similar law of any other state, the United States or any foreign jurisdiction which*  
229 *constitutes murder or voluntary manslaughter, or a felony attempt, conspiracy or solicitation to commit*  
230 *any such offense, if the victim of the offense was a child of the parent, a child with whom the parent*  
231 *resided at the time such offense occurred or the other parent of the child or (iii) the parent has been*  
232 *convicted of an offense under the laws of this Commonwealth or a substantially similar law of any other*  
233 *state, the United States or any foreign jurisdiction which constitutes felony assault resulting in serious*  
234 *bodily injury or felony bodily wounding resulting in serious bodily injury or felony sexual assault, if the*  
235 *victim of the offense was a child of the parent or a child with whom the parent resided at the time of*  
236 *such offense. As used in this section "serious bodily injury" means bodily injury which involves*  
237 *substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss*  
238 *or impairment of the function of a bodily member, organ or mental faculty. Within thirty days of making*  
239 *a determination that reasonable efforts to reunite the child with the parents are not required, the court*  
240 *shall hold a permanency planning hearing pursuant to § 16.1-282.1.*

241 C. A copy of the entire foster care plan shall be sent by the court to the attorney for the child, *the*  
242 *attorney for the child's parents or for any other person standing in loco parentis at the time the board or*  
243 *child welfare agency obtained custody or the board or public agency placed the child, to the parents or*  
244 *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, 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. 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 § 16.1-253.1-252, or (iii) the dispositional hearing at which the child was placed in foster care and an order was entered pursuant to §§ 16.1-278.2, 16.1-278.4, 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 five months 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 at any time after the initial foster care placement of the child. However, the board or child welfare agency having legal custody or the board or public agency placing the child shall file the petition within five months 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 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 thirty days 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. *The local board of public welfare or social services or other child welfare agency shall identify for the court such other persons as have a legitimate interest in the hearing, including, but not limited to, preadoptive parents for a child in foster care.*

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 to be held ~~six~~five 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.

§ 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~~ten 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~~eleven 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 given notice of 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.

§ 16.1-283. Termination of residual parental rights.

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

Any order terminating residual parental rights shall be accompanied by an order continuing or granting custody to a local board of public welfare or social services, to a licensed child-placing agency or the granting of custody or guardianship to a relative or other interested individual. However, in such cases the court shall give a consideration to granting custody to relatives of the child, including grandparents. An order continuing or granting custody to a local board of public welfare or social services or to a licensed child-placing agency shall indicate whether that board or agency shall have the authority to place the child for adoption and consent thereto.

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

B. The residual parental rights of a parent or parents of a child found by the court to be neglected or abused and placed in foster care as a result of (i) court commitment, (ii) an entrustment agreement entered into by the parent or parents or (iii) other voluntary relinquishment by the parent or parents may

be terminated if the court finds, based upon clear and convincing evidence, that it is in the best interests of the child and that:

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

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

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

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

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

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

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

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

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

3. ~~Within six months after termination social service agencies will submit a written plan for finding a permanent placement for the child.~~

Proof of any of the following shall constitute prima facie evidence of the conditions set forth in subdivisions C 1 or 2 hereof:

a. The parent or parents have failed, without good cause, to communicate on a continuing or planned basis with the child for a period of twelve months; or

b. The parent or parents, without good cause, have failed or have been unable to make reasonable progress towards the elimination of the conditions which led to the child's foster care placement in accordance with their obligations under and within the time limits or goals set forth in a foster care plan filed with the court or any other plan jointly designed and agreed to by the parent or parents and a social, medical, mental health or other rehabilitative agency.

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

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

2. The child's parent or parents, guardian or relatives have not come forward to identify such child and claim a relationship to the child within ~~six~~ *three* months following the issuance of an order by the



court placing the child in foster care; and

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

E. *The residual parental rights of a parent or parents of a child who is in the custody of a local board or licensed child-placing agency may be terminated by the court if the court finds, based upon clear and convincing evidence, that it is in the best interests of the child and that (i) the residual parental rights of the parent regarding a sibling of the child have previously been involuntarily terminated, (ii) the parent has been convicted of an offense under the laws of this Commonwealth or a substantially similar law of any other state, the United States or any foreign jurisdiction which 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 or (iii) the parent has been convicted of an offense under the laws of this Commonwealth or a substantially similar law of any other state, the United States or any foreign jurisdiction which 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. As used in this section "serious bodily injury" means bodily injury which 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. The local board or other child welfare agency having custody of the child shall not be required by the court to make reasonable efforts to reunite the child with a parent who has been convicted of one of the felonies specified in this subsection.*

F. *The residual parental rights of a parent or parents of a child may be terminated by the court if the court finds, based upon clear and convincing evidence, that it is in the best interests of the child and that the residual parental rights of the parent to a sibling of the child have previously been involuntarily terminated.*

G. *The local board or licensed child-placing agency to which authority is given to place the child for adoption and consent thereto after an order terminating parental rights is entered shall file a written report with the juvenile court on the progress being made to place the child in an adoptive home. The report shall be filed with the court every six months from the date of the final order terminating parental rights until a final order of adoption is entered on behalf of the child. The court may schedule a hearing on the report with or without the request of a party.*

H. Notwithstanding any other provisions of this section, residual parental rights shall not be terminated if it is established that the child, if he is fourteen years of age or older or otherwise of an age of discretion as determined by the court, objects to such termination.

§ 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. Protective orders issued pursuant to § 16.1-279.1 in cases of family abuse and orders entered pursuant to § 16.1-278.2 are final 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.

C1. In any hearing held upon an appeal taken by a child on a finding that he is delinquent and on a disposition pursuant to § 16.1-278.8, the provisions of § 16.1-302 shall apply mutatis mutandis, except in the case of trial by jury which shall be open. If proceedings in the circuit court are closed pursuant to this subsection, any records or portions thereof relating to such closed proceedings shall remain confidential.

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. *An appeal of the case to the Court of Appeals shall take precedence on the docket of the Court.*

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. Upon appeal from a conviction for failure to support or from a finding of civil or criminal contempt involving a failure to support, the juvenile and domestic relations district court may require the party applying for the appeal or someone for him to give bond, with or without surety, to insure his appearance and may also require bond in an amount and with sufficient surety to secure the payment of prospective support accruing during the pendency of the appeal. 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.

§ 16.1-298. Effect of petition for or pendency of appeal; bail.

A. Except as provided herein, a petition for or the pendency of an appeal or writ of error shall not suspend any judgment, order or decree of the juvenile court nor operate to discharge any child concerned or involved in the case from the custody of the court or other person, institution or agency to which the child has been committed unless so ordered by the judge of the juvenile court, the judge of a circuit court or directed in a writ of supersedeas by the Court of Appeals or the Supreme Court or a judge or justice thereof.

B. The judgment, order or decree of the juvenile court shall be suspended upon a petition for or the pendency of an appeal or writ of error:

1. In cases of delinquency in which the final order of the juvenile court is pursuant to subdivision 8, 9, 10, 12, 14, or 15 of § 16.1-278.8.

2. In cases involving a child and any local ordinance.

3. In cases involving any person over the age of eighteen years.

Such suspension as is provided for in this subsection shall not apply to (i) an order for support of a spouse, parent or child or to a preliminary protective order issued pursuant to § 16.1-253, (ii) an order

614 disposing of a motion to reconsider relating to participation in continuing programs pursuant to  
615 § 16.1-289.1, (iii) a protective order in cases of family abuse issued pursuant to § 16.1-279.1 *or a*  
616 *protective order entered in conjunction with a disposition pursuant to § 16.1-278.2, 16.1-278.4,*  
617 *16.1-278.5, 16.1-278.6 or 16.1-278.8,* or (iv) a protective order issued pursuant to § 19.2-152.10, unless  
618 so ordered by the judge of a circuit court or directed in a writ of supersedeas by the Court of Appeals  
619 or the Supreme Court.  
620 C. In cases where the order of the juvenile court is suspended pursuant to subsection B hereof or by  
621 order of the juvenile court or the circuit court, bail may be required as provided for in § 16.1-135.