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SENATE BILL NO. 1014

Offered January 19, 1999

A BILL to amend and reenact §§ 16.1-278.3, 16.1-282, 16.1-282.1, 16.1-283, 63.1-56 and 63.1-204 of the Code of Virginia; to amend the Code of Virginia by adding sections numbered 16.1-277.01 and 16.1-277.02; and to repeal § 16.1-277 of the Code of Virginia, relating to the approval of entrustment agreements, petitions for relief of the care and custody of a child, permanency planning for children in foster care, termination of parental rights and acceptance and control over children.

Patrons—Gartlan, Couric, Howell, Mims and Reynolds; Delegates: Almand, Cantor, Griffith, Howell, McDonnell, Moran and Watts

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-278.3, 16.1-282, 16.1-282.1, 16.1-283, 63.1-56 and 63.1-204 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 16.1-277.01 and 16.1-277.02 as follows:

§ 16.1-277.01 Approval of entrustment agreement.

A. In any case in which a child has been entrusted pursuant to § 63.1-56 or § 63.1-204 to the local board of social services or to a child welfare agency, a petition for approval of the entrustment agreement by the board or agency:

1. Shall be filed within a reasonable period of time, no later than eighty-nine days after the execution of an entrustment agreement for less than ninety days, if the child is not returned to the caretaker from whom he was entrusted within that period;

2. Shall be filed within a reasonable period of time, not to exceed thirty days after the execution of an entrustment agreement for ninety days or longer or for an unspecified period of time, if such entrustment agreement does not provide for the termination of all parental rights and responsibilities with respect to the child; and

3. May be filed in the case of a permanent entrustment agreement which provides for the termination of all parental rights and responsibilities with respect to the child.

The board or agency shall file a foster care plan pursuant to § 16.1-281 to be heard with any petition for approval of an entrustment agreement.

B. Upon the filing of a petition for approval of an entrustment agreement pursuant to subsection A of § 16.1-241, the court shall appoint a guardian ad litem to represent the child in accordance with the provisions of § 16.1-266, and shall schedule the matter for a hearing within forty-five days of the filing of the petition. 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 local board of social services or child welfare agency;

2. The child, if he is twelve years of age or older;

3. The guardian ad litem for the child; and

4. The child's parents, guardian, legal custodian or other person standing in loco parentis to the child. 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. The hearing shall be held and an 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. However, when a petition seeks approval of a permanent entrustment agreement which provides for the termination of all parental rights and responsibilities with respect to the child, a summons shall be served upon the parent or parents and the other parties specified in § 16.1-263. 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. The remaining parent's parental rights may be terminated even though that parent has not entered into an entrustment agreement if the court finds, based upon clear and convincing evidence, that it is in the best interest of the child and that (i) the identity of the parent is not reasonably ascertainable; (ii) the identity and whereabouts of the parent are known or reasonably ascertainable, and the parent is personally served with notice of the termination proceeding pursuant to § 8.01-296 or § 8.01-320; (iii)

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60 the whereabouts of the parent are not reasonably ascertainable and the parent is given notice of the
61 termination proceedings by certified or registered mail to the last known address and such parent fails
62 to object to the proceedings within twenty-one days of the mailing of such notice; or (iv) the
63 whereabouts of the parent are not reasonably ascertainable and the parent is given notice of the
64 termination proceedings through an order of publication pursuant to §§ 8.01-316 and 8.01-317, and
65 such parent fails to object to the proceedings.

66 C. At the hearing held pursuant to this section, the court shall hear evidence on the petition filed
67 and shall review the foster care plan for the child filed by the local board or child welfare agency in
68 accordance with § 16.1-281.

69 D. At the conclusion of the hearing, the court shall make a finding, based upon a preponderance of
70 the evidence, whether approval of the entrustment agreement is in the best interest of the child.
71 However, if the petition seeks approval of a permanent entrustment agreement which provides for the
72 termination of all parental rights and responsibilities with respect to the child, the court shall make a
73 finding, based upon clear and convincing evidence, whether termination of parental rights is in the best
74 interest of the child. If the court makes either of these findings, the court may make any of the orders of
75 disposition permitted in a case involving an abused or neglected child pursuant to § 16.1-278.2. Any
76 such order transferring legal custody of the child shall be made in accordance with the provisions of
77 subdivision A5 of § 16.1-278.2. This order shall include, but need not be limited to, the following
78 findings: (i) that there is no less drastic alternative to granting the requested relief; and (ii) that
79 reasonable efforts have been made to prevent removal and that continued placement in the home would
80 be contrary to the welfare of the child, if the order transfers legal custody of the child to a local board
81 of social services.

82 The effect of the court's order approving a permanent entrustment agreement is to terminate an
83 entrusting parent's residual parental rights. Any order terminating parental rights shall be accompanied
84 by an order (i) continuing or granting custody to a local board of social services or to a licensed
85 child-placing agency, or (ii) granting custody or guardianship to a relative or other interested
86 individual. Such an order continuing or granting custody to a local board of social services or to a
87 licensed child-placing agency shall indicate whether that board or agency shall have the authority to
88 place the child for adoption and consent thereto. A final order terminating parental rights pursuant to
89 this section renders the approved entrustment agreement irrevocable. Such order may be appealed in
90 accordance with the provisions of § 16.1-296.

91 E. The local board or licensed child-placing agency to which authority is given to place the child for
92 adoption and consent thereto after an order terminating parental rights is entered pursuant to this
93 section shall file a written Adoption Progress Report with the juvenile court on the progress being made
94 to place the child in an adoptive home. The report shall be filed with the court every six months from
95 the date of the final order terminating parental rights until a final order of adoption is entered on
96 behalf of the child in the circuit court. At the conclusion of the hearing at which termination of parental
97 rights is ordered and authority is given to the local board or licensed child-placing agency to place the
98 child for adoption, the juvenile court shall schedule a date by which the board or agency shall file the
99 first Adoption Progress Report required by this section. A copy of the Adoption Progress Report shall
100 be sent by the court to the guardian ad litem for the child. The court may schedule a hearing on the
101 report with or without the request of a party.

102 § 16.1- 277.02 Petition for relief of care and custody.

103 A. Requests for petitions for relief of the care and custody of a child shall be referred initially to the
104 local department of social services for investigation and the provision of services, if appropriate, in
105 accordance with the provisions of § 63.1-55 or Chapter 12.1 (§ 63.1-248.1 et seq.) of Title 63.1. Upon
106 the filing of a petition for relief of a child's care and custody pursuant to subdivision A 4 of § 16.1-241,
107 the court shall appoint a guardian ad litem to represent the child in accordance with the provisions of
108 § 16.1-266, and shall schedule the matter for a hearing on the petition. Such hearing on the petition
109 may include partial or final disposition of the matter. The court shall provide notice of the hearing and
110 a copy of the petition to the following, each of whom shall be a party entitled to participate in the
111 proceeding:

112 1. The child, if he is twelve years of age or older;

113 2. The guardian ad litem for the child;

114 3. The child's parents, custodian or other person standing in loco parentis to the child. No such
115 notification shall be required, however, if the judge certifies on the record that the identity of the parent
116 is not reasonably ascertainable. An affidavit of the mother that the identity of the father is not
117 reasonably ascertainable shall be sufficient evidence of this fact, provided there is no other evidence
118 before the court which would refute such an affidavit. The hearing on the petition shall be held pursuant
119 to this section although a parent fails to appear and is not represented by counsel, provided personal or
120 substituted service was made on the parent, or the court determines that such person cannot be found,
121 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. However, in the case of a hearing to grant a petition for permanent relief of custody and terminate a parent's residual parental rights, notice to the parent whose rights may be affected shall be provided in accordance with the provisions of §§ 16.1-263 and 16.1-264; and

4. The local board of social services. Upon receiving notice of the hearing pursuant to this section, the local board of social services shall investigate the matter and provide services, as appropriate, in accordance with the provisions of § 63.1-55 or Chapter 12.1 (§ 63.1-248.1 et seq.) of Title 63.1.

B. At the hearing, the local board of social services, the child, the child's 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.

C. At the conclusion of the hearing on the petition, the court shall make a finding, based upon a preponderance of the evidence, whether there is good cause shown for the petitioner's desire to be relieved of the child's care and custody, unless the petition seeks permanent relief of custody and termination of parental rights. If the petition seeks permanent relief of custody and termination of parental rights, the court shall make a finding, based upon clear and convincing evidence, whether termination of parental rights is in the best interest of the child. If the court makes either of these findings, the court may enter:

1. A preliminary protective order pursuant to § 16.1-253;
2. An order that requires the local board of social services to provide services to the family as required by law;
3. An order that is consistent with any of the dispositional alternatives pursuant to § 16.1-278.3; or
4. Any combination of these orders.

Any such order transferring legal custody of the child shall be made in accordance with the provisions of subdivision A 5 of § 16.1-278.2. This order shall include, but need not be limited to, the following findings: (i) that there is no less drastic alternative to granting the requested relief; and (ii) 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, if the order transfers legal custody of the child to a local board of social services. Any order terminating residual parental rights shall be accompanied by an order continuing or granting custody to a local board of social services, to a licensed child-placing agency or the granting of custody or guardianship to a relative or other interested individual. Such an order continuing or granting custody to a local board of 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 court shall schedule a subsequent hearing within seventy-five days of the hearing held pursuant to this section: (i) to enter a final order of disposition pursuant to § 16.1-278.3; or (ii) if the child is placed in foster care, for review of the foster care plan filed pursuant to § 16.1-281. If a party is required to be present at the subsequent hearing, and (i) is present at the hearing on the petition, the party shall be given notice of the date set for the subsequent hearing; (ii) if not present, shall be summoned as provided in § 16.1-263.

D. 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 pursuant to this section shall file a written Adoption Progress 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 in the circuit court. At the conclusion of the hearing at which termination of parental rights is ordered and authority is given to the local board or licensed child-placing agency to place the child for adoption, the juvenile court shall schedule a date by which the board or agency shall file the first Adoption Progress Report required by this section. A copy of the Adoption Progress Report shall be sent by the court to the guardian ad litem for the child. The court may schedule a hearing on the report with or without the request of a party.

§ 16.1-278.3. Relief of care and custody.

When a parent or other custodian seeks to be relieved A. Within seventy-five days of a hearing on a petition for relief of the care and custody of any child pursuant to ~~subdivision A 4 of § 16.1-241 or~~ when a public or private agency seeks to gain approval of an entrustment agreement pursuant to ~~§ 63.1-56 or § 63.1-204,~~ the juvenile court or the circuit § 16.1-277.02 at which the court found (i) good cause for the petitioner's desire to be relieved of a child's care and custody, or (ii) that permanent relief of custody and termination of residual parent rights is in the best interest of the child, a dispositional hearing shall be held, if a final order disposing of the matter was not entered at the conclusion of the hearing on the petition held pursuant to § 16.1-277.02.

B. Notice of the dispositional hearing shall be provided to the local department of social services,

183 the guardian ad litem for the child, the child if he is at least twelve years of age, and the child's
184 parents, custodian or other person standing in loco parentis. However, if a parent's residual parental
185 rights were terminated at the hearing on the petition held pursuant to § 16.1-277.02, no such notice of
186 the hearing pursuant to this section shall be provided to the parent. The hearing shall be held and a
187 dispositional order may be entered, although a parent, guardian, legal custodian or person standing in
188 loco parentis fails to appear and is not represented by counsel, provided personal or substituted service
189 was made on the person, or the court determines that the person cannot be found, after reasonable
190 effort, or in the case of a person who is without the Commonwealth, the person cannot be found or his
191 post office address cannot be ascertained after reasonable effort. However, in the case of a hearing to
192 grant a petition for permanent relief of custody and terminate a parent's residual parental rights, notice
193 to the parent whose rights may be affected shall be provided in accordance with the provisions of
194 §§ 16.1-263 and 16.1-264.

195 C. The court may, after compliance with § 16.1-277, make any of the orders of disposition permitted
196 in a case involving an abused or neglected child pursuant to § 16.1-278.2. Any preliminary protective
197 orders entered on behalf of the child shall be reviewed at the dispositional hearing and may be
198 incorporated, as appropriate, in the dispositional order. If the child has been placed in foster care, at
199 the dispositional hearing the court shall review the foster care plan for the child filed by the local
200 board of social services or child welfare agency in accordance with § 16.1-281.

201 D. If the parent or other custodian seeks to be relieved permanently of the care and custody of any
202 child or when a public or private agency seeks to gain approval of a permanent entrustment agreement
203 entered into pursuant to § 63.1-56 or § 63.1-204, and the court finds by clear and convincing evidence
204 that termination of the parent's parental rights is in the best interest of the child, the juvenile court or
205 the circuit court may, after compliance with § 16.1-277, terminate the parental rights of the that parent
206 or other custodian and appoint. If the remaining parent has not petitioned for permanent relief of the
207 care and custody of the child, the remaining parent's parental rights may be terminated in accordance
208 with the provisions of § 16.1-283. Any order terminating parental rights shall be accompanied by an
209 order (i) continuing or granting custody to a local board of social services or to a licensed
210 child-placing agency, or (ii) granting custody or guardianship to a relative or other interested
211 individual. Such an order continuing or granting custody to a local board of public welfare or social
212 services or to a licensed child-placing agency as custodian of the child with shall indicate whether that
213 board or agency shall have the authority to place the child for adoption and consent thereto. The
214 remaining parent's parental rights may be terminated even though that parent has not entered into an
215 entrustment agreement if the court finds, based upon clear and convincing evidence, that it is in the best
216 interests of the child and that (i) the identity of the parent is not reasonably ascertainable; (ii) the
217 identity and whereabouts of the parent are known or reasonably ascertainable, and the parent is
218 personally served with notice of the termination proceeding pursuant to § 8.01-296 or § 8.01-320; (iii)
219 the whereabouts of the parent are not reasonably ascertainable and the parent is given notice of
220 termination proceedings by certified or registered mail to the last known address and such parent fails to
221 object to the proceedings within twenty-one days of the mailing of such notice; or (iv) the whereabouts
222 of the parent are not reasonably ascertainable and the parent is given notice of termination proceedings
223 through an order of publication, published at least once per week in a newspaper having general
224 circulation in the area for a period of four weeks, and such parent fails to object to the proceedings.
225 Proceedings under this section shall be advanced on the docket so as to provide for their earliest
226 practicable disposition. No order of disposition pursuant to this section shall be made over the objection
227 of any party, if the disposition was not provided for or requested in the entrustment agreement or in the
228 petition's prayer for relief.

229 E. The local board or licensed child-placing agency to which authority is given to place the child for
230 adoption and consent thereto after an order terminating parental rights is entered pursuant to this
231 section shall file a written Adoption Progress Report with the juvenile court on the progress being made
232 to place the child in an adoptive home. The report shall be filed with the court every six months from
233 the date of the final order terminating parental rights until a final order of adoption is entered on
234 behalf of the child in the circuit court. At the conclusion of the hearing at which termination of parental
235 rights is ordered and authority is given to the local board or licensed child-placing agency to place the
236 child for adoption, the juvenile court shall schedule a date by which the board or agency shall file the
237 first Adoption Progress Report required by this section. A copy of the Adoption Progress Report shall
238 be sent by the court to the guardian ad litem for the child. The court may schedule a hearing on the
239 report with or without the request of a party.

240 F. A dispositional order entered pursuant to this section is a final order from which an appeal may
241 be taken in accordance with § 16.1-296.

242 § 16.1-282. Foster care review.

243 A. This section shall apply to all children placed through an agreement between the parents or
244 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~~ 16.1-277.01 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~~ 16.1-277.01, 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;~~

3.2. 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;

4.3. 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;

5.4. Describe the nature and frequency of the contacts between the child and his parents and, if applicable, the persons previously standing in loco parentis;

6.5. 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

7.6. 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 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 is not receiving services to achieve~~ independent living ~~arrangement~~ status or is not in permanent foster care within ten months of (i) the court's approval of the entrustment agreement pursuant to § ~~16.1-278.3~~ 16.1-277.01 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 direct the board or agency to provide the child in an~~ with services to achieve independent living ~~arrangement~~ status, 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~~ subsection A 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~~ subsection A 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 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 76 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) of subsection A 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 enter an order that states whether reasonable efforts have been made to reunite the child with his or her family, if returning home remains the plan for the child; or whether reasonable efforts have been made to achieve the permanent goal identified by the board, when returning home is not the plan for the child. 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 receiving services to achieve independent living arrangement status 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. *The board or agency shall file a written Adoption Progress Report with the juvenile court pursuant to §§ 16.1-277.01, 16.1-277.02 or 16.1-278.3, or subsection F of § 16.1-283, if applicable, with the petition for review required pursuant to this section. The court order entered at the conclusion of the hearing held on such petition for review shall state whether reasonable efforts were made to place the child in a timely manner in accordance with the permanency plan and to complete the steps necessary to finalize the permanent placement of the child.*

§ 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, 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 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 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 of time 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.

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 three months following the issuance of an order by the court placing the child in foster care; and

3. 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~~ Adoption Progress 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 in the circuit court. At the conclusion of the hearing at which termination of parental rights is ordered and authority is given to the local board or licensed child-placing agency to place the child for adoption, the juvenile court shall schedule a date by which the board or agency shall file the first written Adoption Progress Report required by this section. A copy of the Adoption Progress Report shall be sent by the court to the guardian ad litem for the child. The court may schedule a hearing on the report with or without the request of a party.

H. G. 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.

§ 63.1-56. Accepting children for placing in homes, institutions, etc.; care and control.

A local board shall have the right to accept for placement in suitable family homes, child-caring institutions, residential facilities, group homes or independent living arrangements, subject to the supervision of the Commissioner and in accordance with rules prescribed by the State Board, such persons under eighteen years of age as may be entrusted to it by the parent, parents or guardian, committed by any court of competent jurisdiction, or placed through an agreement between it and the parent, parents or guardians where legal custody remains with the parent, parents, or guardians. The State Board of Social Services shall prescribe standards, rules and regulations for the provision of foster care services by local boards which shall be directed toward the prevention of unnecessary foster care placements and towards the immediate care of and permanent planning for children in the custody of or placed by local boards and which shall achieve, as quickly as practicable, permanent placements for such children. The local board shall, in accordance with the rules prescribed by the State Board and in accordance with the entrustment agreement or other order by which such person is entrusted or committed to its care, have custody and control of the person so entrusted or committed to it until he is lawfully discharged, has been adopted or has attained his majority. Whenever a local board places a child where legal custody remains with the parent, parents, or guardians, the board shall enter into an agreement with the parent, parents, or guardians. The agreement shall specify the responsibilities of each for the care and control of the child. The local board shall have authority to place for adoption, and to consent to the adoption of, any child properly committed or entrusted to its care when the order of commitment or entrustment agreement between the parent or parents and the agency provides for the termination of all parental rights and responsibilities with respect to the child for the purpose of placing and consenting to the adoption of the child. The local board shall also have the right to accept temporary custody of any person under eighteen years of age taken into custody pursuant to subdivision B of § 16.1-246 or § 63.1-248.9.

Whenever a local board accepts custody of a child pursuant to a ~~temporary~~ an entrustment agreement entered into under the authority of this section, ~~except when the entrustment agreement between the parent or parents and the local department provides for the termination of all parental rights and responsibilities with respect to the child, such a petition for approval of the entrustment agreement by the local board (i) shall petition be filed in the juvenile and domestic relations district court of the city or county for approval of such agreement within a reasonable period of time, not to exceed thirty eighty-nine days, after its the execution; however, such petition shall not be required when the agreement stipulates in writing that the temporary entrustment shall be for less than ninety days and of an entrustment agreement for less than ninety days, if the child is not returned to his home within that period; (ii) shall be filed within a reasonable period of time, not to exceed thirty days after the execution of an entrustment agreement for ninety days or longer or for an unspecified period of time, if such entrustment agreement does not provide for the termination of all parental rights and responsibilities with respect to the child; and (iii) may be filed in the case of a permanent entrustment agreement which provides for the termination of all parental rights and responsibilities with respect to the child.~~

Prior to placing any such child in any foster family home, child-caring institution, residential facility or group home the local board shall enter into a written agreement with the foster parents or other appropriate custodian setting forth therein the conditions under which the child is so placed. However, if a child is placed in a child-caring institution or residential facility licensed as a temporary emergency shelter, and a verbal agreement for placement is secured within eight hours of the child's arrival at the facility, the written agreement does not need to be entered into prior to placement, but shall be completed and signed by the local board and the facility representative within twenty-four hours of the child's arrival or by the end of the next business day after the child's arrival.

No child shall be placed in any foster care placement outside this Commonwealth by a local board without first complying with the appropriate provisions of Chapter 10.1 (§ 63.1-219.1 et seq.) of this

title or without first obtaining the consent of the Commissioner, given in accordance with regulations prescribed by the State Board. The local board shall also comply with all regulations of the State Board relating to resident children placed out of the Commonwealth. The State Board is authorized to prescribe such regulations for the placement of children out of the Commonwealth by local boards as are reasonably conducive to the welfare of such children and as comply with the Interstate Compact on the Placement of Children (§ 63.1-219.1 et seq.). Notwithstanding the provisions of Article II (d) of the compact which exclude from the definition of "placement" those institutions that care for the mentally ill, mentally defective or epileptic or any institution primarily educational in character and any hospital or other medical facility, the State Board shall prescribe procedures and regulations to govern such placements out of the Commonwealth by local boards. The placement of a child in a foster home, whether within or without the Commonwealth, shall not be for the purpose of adoption unless the placement agreement between the foster parents and the local board specifically so stipulates.

A parent who has not reached the age of eighteen shall have legal capacity to execute an entrustment agreement including an agreement which provides for the termination of all parental rights and responsibilities with respect to the child and shall be as fully bound thereby as if the parent had attained the age of eighteen years.

§ 63.1-204. Acceptance and control over children.

A. A licensed child-welfare agency shall have the right to accept, for any purpose not contrary to the limitations contained in its license, such children as may be entrusted or committed to it by the parents, guardians, relatives or other persons having legal custody thereof, or committed by any court of competent jurisdiction. The agency shall, within the terms of its license and the agreement or order by which such child is entrusted or committed to its care, have custody and control of every child so entrusted or committed and accepted, until he is lawfully discharged, has been adopted, or has attained his majority.

An agency which is licensed as a child-placing agency by the Department of Social Services and certified as a proprietary school for students with disabilities by the Department of Education shall not be required to take custody of any child placed in its special education program but shall enter into a placement agreement with the parents or guardian of the child concerning the respective responsibilities of the agency and the parents or guardian for the care and control of the child. Such an agency shall conform with all other legal requirements of licensed child-placing agencies including the provisions of §§ 16.1-281 and 16.1-282.

A licensed private child-placing agency may accept placement of a child through an agreement with a local department of social services where the local department of social services retains legal custody of the child or where the parents or legal guardian of the child retain legal custody but have entered into a placement agreement with the local department or the public agency designated by the community policy and management team.

Whenever a licensed child-placing agency accepts legal custody of a child, the agency shall comply with §§ 16.1-281 and 16.1-282.

A child-caring institution licensed as a temporary emergency shelter may accept a child for placement provided that verbal agreement for placement is obtained from the parents, guardians, relatives or other persons having legal custody thereof, within eight hours of the child's arrival at the facility and provided that a written placement agreement is completed and signed by the legal guardian and the facility representative within twenty-four hours of the child's arrival or by the end of the next business day after the child's arrival.

B. Whenever a licensed child-welfare agency accepts custody of a child pursuant to a ~~temporary~~ *an* entrustment agreement entered into under the authority of this section, ~~except when the entrustment agreement between the parent or parents and the licensed child-welfare agency provides for the termination of all parental rights and responsibilities with respect to the child; such~~ *a petition for approval of the entrustment agreement by the child-welfare agency, except a child-caring institution when the child is placed there by a parent or parents; (i) shall petition be filed in the juvenile and domestic relations district court of the city or county for approval of such agreement within a reasonable period of time, not to exceed thirty eighty-nine days, after its the execution; however, such petition shall not be required when the agreement stipulates in writing that the temporary entrustment shall be for less than ninety days and of an entrustment agreement for less than ninety days, if the child is not returned to his home within that period; (ii) shall be filed within a reasonable period of time, not to exceed thirty days after the execution of an entrustment agreement for ninety days or longer or for an unspecified period of time, if such entrustment agreement does not provide for the termination of all parental rights and responsibilities with respect to the child; and (iii) may be filed in the case of a permanent entrustment agreement which provides for the termination of all parental rights and responsibilities with respect to the child.*

C. A child may be placed for adoption by a licensed child-placing agency or a local board of ~~public welfare or social services~~, in accordance with the provisions of § 63.1-220.2.

For the purposes of this section, a parent who is less than eighteen years of age shall be deemed fully competent and shall have legal capacity to execute a valid entrustment agreement, including an agreement which provides for the termination of all parental rights and responsibilities, and shall be as fully bound thereby as if such parent had attained the age of eighteen years. An entrustment agreement for the termination of all parental rights and responsibilities with respect to the child shall be valid notwithstanding that it is not signed by the father of a child born out of wedlock if the identity of the father is not reasonably ascertainable, or if such father is given notice of the entrustment by registered or certified mail to his last known address and such father fails to object to the entrustment within twenty-one days of the mailing of such notice. 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 which would refute such an affidavit. The absence of such an affidavit shall not be deemed evidence that the identity of the father is reasonably ascertainable. For purposes of determining whether the identity of the father is reasonably ascertainable, the standard of what is reasonable under the circumstances shall control, taking into account the relative interests of the child, the mother and the father.

An entrustment agreement for the termination of all parental rights and responsibilities with respect to the child shall be valid notwithstanding that it is not signed by the birth father of a child when such father has been convicted of a violation of subsection A of § 18.2-61 or subsection B of § 18.2-366, and the child was conceived as the result of such violation.

2. That § 16.1-277 of the Code of Virginia is repealed.