

VIRGINIA ACTS OF ASSEMBLY -- 2013 SESSION

CHAPTER 338

An Act to amend and reenact § 9.1-151 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 16.1-283.2, relating to restoration of parental rights.

[H 1637]

Approved March 14, 2013

Be it enacted by the General Assembly of Virginia:

1. That § 9.1-151 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 16.1-283.2 as follows:

§ 9.1-151. Court-Appointed Special Advocate Program; appointment of advisory committee.

A. There is established a Court-Appointed Special Advocate Program (the "Program") that shall be administered by the Department. The Program shall provide services in accordance with this article to children who are subjects of judicial proceedings (i) involving allegations that the child is abused, neglected, in need of services, or in need of supervision; or (ii) for the restoration of parental rights pursuant to § 16.1-283.2 and for whom the juvenile and domestic relations district court judge determines such services are appropriate. The Department shall adopt regulations necessary and appropriate for the administration of the Program.

B. The Board shall appoint an Advisory Committee to the Court-Appointed Special Advocate Program, consisting of ~~fifteen~~ 15 members, knowledgeable of court matters, child welfare, and juvenile justice issues and representative of both state and local interests. The duties of the Advisory Committee shall be to advise the Board on all matters relating to the Program and the needs of the clients served by the Program, and to make such recommendations as it may deem desirable.

§ 16.1-283.2. Restoration of parental rights.

A. *If a child is in the custody of the local department of social services and a pre-adoptive parent or parents have not been identified and approved for the child, the child's guardian ad litem or the local board of social services may file a petition to restore the previously terminated parental rights of the child's parent under the following circumstances:*

- 1. The child is at least 14 years of age;*
- 2. The child was previously adjudicated to be an abused or neglected child, child in need of services, child in need of supervision, or delinquent child;*
- 3. The parent's rights were terminated under a final order pursuant to subsection B, C, or D of § 16.1-283 at least two years prior to the filing of the petition to restore parental rights;*
- 4. The child has not achieved his permanency goal or the permanency goal was achieved but not sustained; and*
- 5. The child, if he is 14 years of age or older, and the parent whose rights are to be reinstated consent to the restoration of the parental rights.*

B. *Notwithstanding the provisions of subsection A, the court may accept (i) a petition involving a child younger than 14 years of age if (a) the child is the sibling of a child for whom a petition for restoration of parental rights has been filed and the child who is younger than 14 years of age meets all other criteria for restoration of parental rights set forth in subsection A, or (b) the child's guardian ad litem and the local department of social services jointly file the petition for restoration; or (ii) a petition filed before the expiration of the two-year period following termination of parental rights if the child will turn 18 before the expiration of the two-year period, and the court finds that accepting such a petition is in the best interest of the child.*

C. *The court shall set a hearing on the petition and serve notice of the hearing along with a copy of the petition on the former parent of the child whose rights are the subject of the petition, any other parent who retains legal rights to the child, the child's court-appointed special advocate, if one has been appointed, and either the child's guardian ad litem or the local board of social services, whichever is not the petitioner.*

D. *If the court finds, based upon clear and convincing evidence, that the parent is willing and able to (i) receive and care for the child; (ii) have a positive, continuous relationship with the child; (iii) provide a permanent, suitable home for the child; and (iv) protect the child from abuse and neglect, the court may enter an order permitting the local board of social services to place the child with the former parent whose rights are the subject of the petition, subject to the requirements of the placement plan developed pursuant to subsection E and for visitation required pursuant to subsection F.*

E. *Within 60 days of the filing of the petition for restoration of parental rights and prior to the entry of an order pursuant to subsection D, the local board of social services shall develop a written placement plan for the child, which shall (i) describe the programs, services, and other supports that shall be offered to the child and the former parent with whom the child has been placed and (ii) set*

forth requirements for the participation of the former parent with whom the child has been placed in programs and services described in the placement plan and the conduct of the child's former parent with whom the child has been placed. Such plan shall be incorporated into the order entered pursuant to subsection D.

F. Following the placement of a child with his former parent following entry of an order pursuant to subsection D, the director of the local department of social services shall cause the child to be visited by an agent of such local board or local department at least three times within the six-month period immediately following placement of the child in order to evaluate the suitability of the placement and the progress of the former parent toward remedying the factors and conditions that led to or required continuation of the child's foster care placement; however, no less than 90 days shall elapse between the first visit and the last visit. At least one of the visits shall be conducted in the home of the former parent whose rights are the subject of the petition in the presence of the former parent.

G. Upon completion of the visitation required pursuant to subsection F, the director of the local department of social services shall make a written report to the court, in such form as the Commissioner of Social Services may prescribe, describing (i) findings made as a result of the visits required pursuant to subsection F and (ii) findings and information related to the former parent's compliance with requirements of the placement plan developed pursuant to subsection E.

H. Upon receipt of the report required pursuant to subsection G, the court shall set a hearing on the petition for restoration of parental rights and serve notice of the hearing, along with a copy of the report required pursuant to subsection G, on the former parent of the child whose rights are the subject of the petition, any other parent who retains legal rights to the child, the child's court-appointed special advocate, if one has been appointed, and the child's guardian ad litem.

I. If, upon consideration of the report required pursuant to subsection G, the court finds by clear and convincing evidence that the restoration of parental rights is in the child's best interest, the court shall enter an order restoring the parental rights of the child's parent. In determining whether restoration is in the best interest of the child, the court shall consider the following:

1. Whether the parent whose rights are to be reinstated agrees to the reinstatement and has substantially remedied the conditions that led to or required continuation of the child's foster care placement;

2. The age and maturity of the child and whether the child consents to the reinstatement of the former parent's rights, if the child is 14 years of age or older, or the child's preference with regard to the reinstatement of the former parent's rights, if the child is younger than 14 years of age;

3. Whether the restoration of parental rights will present a risk to the child's life, health, or development;

4. Whether the restoration of parental rights will affect benefits available to the child; and

5. Other material changes in circumstances, if any, that warrant the granting of the petition.

J. The court may revoke its order permitting the placement of a child with his former parent pursuant to subsection D at any time prior to entry of an order restoring parental rights to the former parent of the child, for good cause shown, on its own motion or on the motion of the child's guardian ad litem or the local department.

K. A petition for restoration of parental rights filed while the child is younger than 18 years of age shall not become invalid because the child reaches 18 years of age prior to the entry of an order of restoration of parental rights. Any order restoring parental rights to a parent of a child pursuant to this section entered after a child reaches 18 years of age, where the petition was filed prior to the child turning 18 years of age, shall have the same effect as if the child was under 18 years of age at the time the order was entered by the court.

L. The granting of a petition under this section does not vacate the findings of fact or conclusions of law contained in the original order that terminated the parental rights of the child's parent.