

17101355D

HOUSE BILL NO. 1604

Offered January 11, 2017

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A *BILL to amend and reenact §§ 16.1-228, 16.1-251, 16.1-252, 16.1-278.2, 16.1-278.4, 16.1-281, 16.1-282.1, and 16.1-283 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 63.2-910.2, relating to foster care; reasonable efforts to prevent removal of child.*

Patron—Bell, Richard P.

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-228, 16.1-251, 16.1-252, 16.1-278.2, 16.1-278.4, 16.1-281, 16.1-282.1, and 16.1-283 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 63.2-910.2 as follows:

§ 16.1-228. Definitions.

When used in this chapter, unless the context otherwise requires:

"Abused or neglected child" means any child:

1. Whose parents or other person responsible for his care creates or inflicts, threatens to create or inflict, or allows to be created or inflicted upon such child a physical or mental injury by other than accidental means, or creates a substantial risk of death, disfigurement or impairment of bodily or mental functions, including, but not limited to, a child who is with his parent or other person responsible for his care either (i) during the manufacture or attempted manufacture of a Schedule I or II controlled substance, or (ii) during the unlawful sale of such substance by that child's parents or other person responsible for his care, where such manufacture, or attempted manufacture or unlawful sale would constitute a felony violation of § 18.2-248;

2. Whose parents or other person responsible for his care neglects or refuses to provide care necessary for his health; however, no child who in good faith is under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination shall for that reason alone be considered to be an abused or neglected child;

3. Whose parents or other person responsible for his care abandons such child;

4. Whose parents or other person responsible for his care commits or allows to be committed any sexual act upon a child in violation of the law;

5. Who is without parental care or guardianship caused by the unreasonable absence or the mental or physical incapacity of the child's parent, guardian, legal custodian, or other person standing in loco parentis;

6. Whose parents or other person responsible for his care creates a substantial risk of physical or mental injury by knowingly leaving the child alone in the same dwelling, including an apartment as defined in § 55-79.2, with a person to whom the child is not related by blood or marriage and who the parent or other person responsible for his care knows has been convicted of an offense against a minor for which registration is required as a violent sexual offender pursuant to § 9.1-902; or

7. Who has been identified as a victim of sex trafficking or severe forms of trafficking as defined in the Trafficking Victims Protection Act of 2000, 22 U.S.C § 7102 et seq., and in the Justice for Victims of Trafficking Act of 2015, 42 U.S.C. § 5101 et seq.

If a civil proceeding under this chapter is based solely on the parent having left the child at a hospital or emergency medical services agency, it shall be an affirmative defense that such parent safely delivered the child to a hospital that provides 24-hour emergency services or to an attended emergency medical services agency that employs emergency medical services personnel, within 14 days of the child's birth. For purposes of terminating parental rights pursuant to § 16.1-283 and placement for adoption, the court may find such a child is a neglected child upon the ground of abandonment.

"Adoptive home" means the place of residence of any natural person in which a child resides as a member of the household and in which he has been placed for the purposes of adoption or in which he has been legally adopted by another member of the household.

"Adult" means a person 18 years of age or older.

"Aggravated circumstances" means torture, chronic or severe abuse, or chronic or severe sexual abuse, if the victim of such conduct was a child of the parent or a child with whom the parent resided at the time such conduct occurred, including the failure to protect such a child from such conduct, which conduct or failure to protect (i) evinces a wanton or depraved indifference to human life or (ii) has resulted in the death of such a child or in serious bodily injury to such a child.

INTRODUCED

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59 "Ancillary crime" or "ancillary charge" means any delinquent act committed by a juvenile as a part
60 of the same act or transaction as, or which constitutes a part of a common scheme or plan with, a
61 delinquent act which would be a felony if committed by an adult.

62 "Boot camp" means a short term secure or nonsecure juvenile residential facility with highly
63 structured components including, but not limited to, military style drill and ceremony, physical labor,
64 education and rigid discipline, and no less than six months of intensive aftercare.

65 "Child," "juvenile," or "minor" means a person less than 18 years of age.

66 "Child in need of services" means (i) a child whose behavior, conduct or condition presents or results
67 in a serious threat to the well-being and physical safety of the child or (ii) a child under the age of 14
68 whose behavior, conduct or condition presents or results in a serious threat to the well-being and
69 physical safety of another person; however, no child who in good faith is under treatment solely by
70 spiritual means through prayer in accordance with the tenets and practices of a recognized church or
71 religious denomination shall for that reason alone be considered to be a child in need of services, nor
72 shall any child who habitually remains away from or habitually deserts or abandons his family as a
73 result of what the court or the local child protective services unit determines to be incidents of physical,
74 emotional or sexual abuse in the home be considered a child in need of services for that reason alone.

75 However, to find that a child falls within these provisions, (i) the conduct complained of must
76 present a clear and substantial danger to the child's life or health or to the life or health of another
77 person, (ii) the child or his family is in need of treatment, rehabilitation or services not presently being
78 received, and (iii) the intervention of the court is essential to provide the treatment, rehabilitation or
79 services needed by the child or his family.

80 "Child in need of supervision" means:

81 1. A child who, while subject to compulsory school attendance, is habitually and without justification
82 absent from school, and (i) the child has been offered an adequate opportunity to receive the benefit of
83 any and all educational services and programs that are required to be provided by law and which meet
84 the child's particular educational needs, (ii) the school system from which the child is absent or other
85 appropriate agency has made a reasonable effort to effect the child's regular attendance without success,
86 and (iii) the school system has provided documentation that it has complied with the provisions of
87 § 22.1-258; or

88 2. A child who, without reasonable cause and without the consent of his parent, lawful custodian or
89 placement authority, remains away from or deserts or abandons his family or lawful custodian on more
90 than one occasion or escapes or remains away without proper authority from a residential care facility in
91 which he has been placed by the court, and (i) such conduct presents a clear and substantial danger to
92 the child's life or health, (ii) the child or his family is in need of treatment, rehabilitation or services not
93 presently being received, and (iii) the intervention of the court is essential to provide the treatment,
94 rehabilitation or services needed by the child or his family.

95 "Child welfare agency" means a child-placing agency, child-caring institution or independent foster
96 home as defined in § 63.2-100.

97 "*Chronic abuse*" or "*chronic sexual abuse*" means recurring acts of physical abuse that place the
98 child's health, safety, and well-being at risk.

99 "The court" or the "juvenile court" or the "juvenile and domestic relations court" means the juvenile
100 and domestic relations district court of each county or city.

101 "Delinquent act" means (i) an act designated a crime under the law of the Commonwealth, or an
102 ordinance of any city, county, town, or service district, or under federal law, (ii) a violation of
103 § 18.2-308.7, or (iii) a violation of a court order as provided for in § 16.1-292, but shall not include an
104 act other than a violation of § 18.2-308.7, which is otherwise lawful, but is designated a crime only if
105 committed by a child. For purposes of §§ 16.1-241 and 16.1-278.9, the term shall include a refusal to
106 take a blood or breath test in violation of § 18.2-268.2 or a similar ordinance of any county, city, or
107 town.

108 "Delinquent child" means a child who has committed a delinquent act or an adult who has committed
109 a delinquent act prior to his 18th birthday, except where the jurisdiction of the juvenile court has been
110 terminated under the provisions of § 16.1-269.6.

111 "Department" means the Department of Juvenile Justice and "Director" means the administrative head
112 in charge thereof or such of his assistants and subordinates as are designated by him to discharge the
113 duties imposed upon him under this law.

114 "Family abuse" means any act involving violence, force, or threat that results in bodily injury or
115 places one in reasonable apprehension of death, sexual assault, or bodily injury and that is committed by
116 a person against such person's family or household member. Such act includes, but is not limited to, any
117 forceful detention, stalking, criminal sexual assault in violation of Article 7 (§ 18.2-61 et seq.) of
118 Chapter 4 of Title 18.2, or any criminal offense that results in bodily injury or places one in reasonable
119 apprehension of death, sexual assault, or bodily injury.

120 "Family or household member" means (i) the person's spouse, whether or not he or she resides in the

121 same home with the person, (ii) the person's former spouse, whether or not he or she resides in the same
 122 home with the person, (iii) the person's parents, stepparents, children, stepchildren, brothers, sisters,
 123 half-brothers, half-sisters, grandparents and grandchildren, regardless of whether such persons reside in
 124 the same home with the person, (iv) the person's mother-in-law, father-in-law, sons-in-law,
 125 daughters-in-law, brothers-in-law and sisters-in-law who reside in the same home with the person, (v)
 126 any individual who has a child in common with the person, whether or not the person and that
 127 individual have been married or have resided together at any time, or (vi) any individual who cohabits
 128 or who, within the previous 12 months, cohabited with the person, and any children of either of them
 129 then residing in the same home with the person.

130 "Foster care services" means the provision of a full range of casework, treatment and community
 131 services for a planned period of time to a child who is abused or neglected as defined in § 63.2-100 or
 132 in need of services as defined in this section and his family when the child (i) has been identified as
 133 needing services to prevent or eliminate the need for foster care placement, (ii) has been placed through
 134 an agreement between the local board of social services or a public agency designated by the
 135 community policy and management team and the parents or guardians where legal custody remains with
 136 the parents or guardians, (iii) has been committed or entrusted to a local board of social services or
 137 child welfare agency, or (iv) has been placed under the supervisory responsibility of the local board
 138 pursuant to § 16.1-293.

139 "Independent living arrangement" means placement of a child at least 16 years of age who is in the
 140 custody of a local board or licensed child-placing agency and has been placed by the local board or
 141 licensed child-placing agency in a living arrangement in which he does not have daily substitute parental
 142 supervision.

143 "Independent living services" means services and activities provided to a child in foster care 14 years
 144 of age or older and who has been committed or entrusted to a local board of social services, child
 145 welfare agency, or private child-placing agency. "Independent living services" may also mean services
 146 and activities provided to a person who was in foster care on his 18th birthday and has not yet reached
 147 the age of 21 years. Such services shall include counseling, education, housing, employment, and money
 148 management skills development and access to essential documents and other appropriate services to help
 149 children or persons prepare for self-sufficiency.

150 "Intake officer" means a juvenile probation officer appointed as such pursuant to the authority of this
 151 chapter.

152 "Jail" or "other facility designed for the detention of adults" means a local or regional correctional
 153 facility as defined in § 53.1-1, except those facilities utilized on a temporary basis as a court holding
 154 cell for a child incident to a court hearing or as a temporary lock-up room or ward incident to the
 155 transfer of a child to a juvenile facility.

156 "The judge" means the judge or the substitute judge of the juvenile and domestic relations district
 157 court of each county or city.

158 "This law" or "the law" means the Juvenile and Domestic Relations District Court Law embraced in
 159 this chapter.

160 "Legal custody" means (i) a legal status created by court order which vests in a custodian the right to
 161 have physical custody of the child, to determine and redetermine where and with whom he shall live,
 162 the right and duty to protect, train and discipline him and to provide him with food, shelter, education
 163 and ordinary medical care, all subject to any residual parental rights and responsibilities or (ii) the legal
 164 status created by court order of joint custody as defined in § 20-107.2.

165 "Permanent foster care placement" means the place of residence in which a child resides and in
 166 which he has been placed pursuant to the provisions of §§ 63.2-900 and 63.2-908 with the expectation
 167 and agreement between the placing agency and the place of permanent foster care that the child shall
 168 remain in the placement until he reaches the age of majority unless modified by court order or unless
 169 removed pursuant to § 16.1-251 or 63.2-1517. A permanent foster care placement may be a place of
 170 residence of any natural person or persons deemed appropriate to meet a child's needs on a long-term
 171 basis.

172 "Residual parental rights and responsibilities" means all rights and responsibilities remaining with the
 173 parent after the transfer of legal custody or guardianship of the person, including but not limited to the
 174 right of visitation, consent to adoption, the right to determine religious affiliation and the responsibility
 175 for support.

176 "Secure facility" or "detention home" means a local, regional or state public or private locked
 177 residential facility that has construction fixtures designed to prevent escape and to restrict the movement
 178 and activities of children held in lawful custody.

179 "*Serious bodily injury*" means *bodily injury that involves substantial risk of death, extreme physical*
 180 *pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily*
 181 *member, organ, or mental faculty.*

182 "Severe abuse" or "severe sexual abuse" may include an act or omission that occurred only once but
183 that otherwise meets the definition of "aggravated circumstances."

184 "Shelter care" means the temporary care of children in physically unrestricting facilities.

185 "State Board" means the State Board of Juvenile Justice.

186 "Status offender" means a child who commits an act prohibited by law which would not be criminal
187 if committed by an adult.

188 "Status offense" means an act prohibited by law which would not be an offense if committed by an
189 adult.

190 "Violent juvenile felony" means any of the delinquent acts enumerated in subsection B or C of
191 § 16.1-269.1 when committed by a juvenile 14 years of age or older.

192 **§ 16.1-251. Emergency removal order.**

193 A. A child may be taken into immediate custody and placed in shelter care pursuant to an emergency
194 removal order in cases in which the child is alleged to have been abused or neglected. Such order may
195 be issued ex parte by the court upon a petition supported by an affidavit or by sworn testimony in
196 person before the judge or intake officer which establishes that:

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

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

207 If the petitioner fails to obtain an emergency removal order within four hours of taking custody of
208 the child, the affidavit or sworn testimony before the judge or intake officer shall state the reasons
209 therefor.

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

212 *The petitioner shall not be required by the court to make reasonable efforts to prevent removal of*
213 *the child from his home if the court finds that (i) the residual parental rights of the parent regarding a*
214 *sibling of the child have previously been involuntarily terminated; (ii) the parent has been convicted of*
215 *an offense under the laws of the Commonwealth or a substantially similar law of any other state, the*
216 *United States, or any foreign jurisdiction that constitutes murder or voluntary manslaughter, or a felony*
217 *attempt, conspiracy, or solicitation to commit any such offense, if the victim of the offense was a child*
218 *of the parent, a child with whom the parent resided at the time such offense occurred, or the other*
219 *parent of the child; (iii) the parent has been convicted of an offense under the laws of the*
220 *Commonwealth or a substantially similar law of any other state, the United States, or any foreign*
221 *jurisdiction that constitutes felony assault resulting in serious bodily injury or felony bodily wounding*
222 *resulting in serious bodily injury or felony sexual assault, if the victim of the offense was a child of the*
223 *parent or a child with whom the parent resided at the time of such offense; or (iv) on the basis of clear*
224 *and convincing evidence, the parent has subjected any child to aggravated circumstances or abandoned*
225 *a child under circumstances that would justify the termination of residual parental rights pursuant to*
226 *subsection D of § 16.1-283.*

227 *Within 30 days of making a determination that reasonable efforts to prevent removal of the child*
228 *from his home are not required, the court shall hold a permanency planning hearing pursuant to*
229 *§ 16.1-282.1.*

230 B. Whenever a child is taken into immediate custody pursuant to an emergency removal order, a
231 hearing shall be held in accordance with § 16.1-252 as soon as practicable, but in no event later than
232 five business days after the removal of the child.

233 C. In the emergency removal order the court shall give consideration to temporary placement of the
234 child with a relative or other interested individual, including grandparents, under the supervision of the
235 local department of social services, until such time as the hearing in accordance with § 16.1-252 is held.

236 D. The local department of social services having "legal custody" of a child as defined in § 16.1-228
237 (i) shall not be required to comply with the requirements of this section in order to redetermine where
238 and with whom the child shall live, notwithstanding that the child had been placed with a natural parent.

239 **§ 16.1-252. Preliminary removal order; hearing.**

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

244 B. Prior to the removal hearing, notice of the hearing shall be given at least 24 hours in advance of
 245 the hearing to the guardian ad litem for the child, to the parents, guardian, legal custodian or other
 246 person standing in loco parentis of the child and to the child if he or she is 12 years of age or older. If
 247 notice to the parents, guardian, legal custodian or other person standing in loco parentis cannot be given
 248 despite diligent efforts to do so, the hearing shall be held nonetheless, and the parents, guardian, legal
 249 custodian or other person standing in loco parentis shall be afforded a later hearing on their motion
 250 regarding a continuation of the summary removal order. The notice provided herein shall include (i) the
 251 time, date and place for the hearing; (ii) a specific statement of the factual circumstances which
 252 allegedly necessitate removal of the child; and (iii) notice that child support will be considered if a
 253 determination is made that the child must be removed from the home.

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

255 D. At the removal hearing the child and his parent, guardian, legal custodian or other person standing
 256 in loco parentis shall have the right to confront and cross-examine all adverse witnesses and evidence
 257 and to present evidence on their own behalf. If the child was 14 years of age or under on the date of
 258 the alleged offense and is 16 or under at the time of the hearing, the child's attorney or guardian ad
 259 litem, or if the child has been committed to the custody of the Department of Social Services, the local
 260 department of social services, may apply for an order from the court that the child's testimony be taken
 261 in a room outside the courtroom and be televised by two-way closed-circuit television. The provisions of
 262 § 63.2-1521 shall apply, mutatis mutandis, to the use of two-way closed-circuit television except that the
 263 person seeking the order shall apply for the order at least 48 hours before the hearing, unless the court
 264 for good cause shown allows the application to be made at a later time.

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

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

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

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

279 *The petitioner shall not be required by the court to make reasonable efforts to prevent removal of*
 280 *the child from his home if the court finds that (i) the residual parental rights of the parent regarding a*
 281 *sibling of the child have previously been involuntarily terminated; (ii) the parent has been convicted of*
 282 *an offense under the laws of the Commonwealth or a substantially similar law of any other state, the*
 283 *United States, or any foreign jurisdiction that constitutes murder or voluntary manslaughter, or a felony*
 284 *attempt, conspiracy, or solicitation to commit any such offense, if the victim of the offense was a child*
 285 *of the parent, a child with whom the parent resided at the time such offense occurred, or the other*
 286 *parent of the child; (iii) the parent has been convicted of an offense under the laws of the*
 287 *Commonwealth or a substantially similar law of any other state, the United States, or any foreign*
 288 *jurisdiction that constitutes felony assault resulting in serious bodily injury or felony bodily wounding*
 289 *resulting in serious bodily injury or felony sexual assault, if the victim of the offense was a child of the*
 290 *parent or a child with whom the parent resided at the time of such offense; or (iv) on the basis of clear*
 291 *and convincing evidence, the parent has subjected any child to aggravated circumstances, or abandoned*
 292 *a child under circumstances that would justify the termination of residual parental rights pursuant to*
 293 *subsection D of § 16.1-283.*

294 *Within 30 days of making a determination that reasonable efforts to prevent removal of the child*
 295 *from his home are not required, the court shall hold a permanency planning hearing pursuant to*
 296 *§ 16.1-282.1.*

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

299 1. Order that the child be placed in the temporary care and custody of a suitable person, subject to
 300 the provisions of subsection F1 of this section and under the supervision of the local department of
 301 social services, with consideration being given to placement in the temporary care and custody of a
 302 relative or other interested individual, including grandparents, until such time as the court enters an
 303 order of disposition pursuant to § 16.1-278.2, or, if such placement is not available, in the care and
 304 custody of a suitable agency;

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

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

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

312 F1. Prior to the entry of an order pursuant to subsection F of this section transferring temporary
313 custody of the child to a relative or other interested individual, including grandparents, the court shall
314 consider whether the relative or other interested individual is one who (i) is willing and qualified to
315 receive and care for the child; (ii) is willing to have a positive, continuous relationship with the child;
316 and (iii) is willing and has the ability to protect the child from abuse and neglect. The court's order
317 transferring temporary custody to a relative or other interested individual should provide for compliance
318 with any preliminary protective order entered on behalf of the child in accordance with the provisions of
319 § 16.1-253; initiation and completion of the investigation as directed by the court and court review of
320 the child's placement required in accordance with the provisions of § 16.1-278.2; and, as appropriate,
321 ongoing provision of social services to the child and the temporary custodian.

322 G. At the conclusion of the preliminary removal order hearing, the court shall determine whether the
323 allegations of abuse or neglect have been proven by a preponderance of the evidence. Any finding of
324 abuse or neglect shall be stated in the court order. However, if, before such a finding is made, a person
325 responsible for the care and custody of the child, the child's guardian ad litem or the local department of
326 social services objects to a finding being made at the hearing, the court shall schedule an adjudicatory
327 hearing to be held within 30 days of the date of the initial preliminary removal hearing. The
328 adjudicatory hearing shall be held to determine whether the allegations of abuse and neglect have been
329 proven by a preponderance of the evidence. Parties who are present at the preliminary removal order
330 hearing shall be given notice of the date set for the adjudicatory hearing and parties who are not present
331 shall be summoned as provided in § 16.1-263. The hearing shall be held and an order may be entered,
332 although a party to the preliminary removal order hearing fails to appear and is not represented by
333 counsel, provided personal or substituted service was made on the person, or the court determines that
334 such person cannot be found, after reasonable effort, or in the case of a person who is without the
335 Commonwealth, the person cannot be found or his post office address cannot be ascertained after
336 reasonable effort.

337 The preliminary removal order and any preliminary protective order issued shall remain in full force
338 and effect pending the adjudicatory hearing.

339 H. If the preliminary removal order includes a finding of abuse or neglect and the child is removed
340 from his home or a preliminary protective order is issued, a dispositional hearing shall be held pursuant
341 to § 16.1-278.2. The dispositional hearing shall be scheduled at the time of the preliminary removal
342 order hearing and shall be held within 60 days of the preliminary removal order hearing. If an
343 adjudicatory hearing is requested pursuant to subsection G, the dispositional hearing shall nonetheless be
344 scheduled at the initial preliminary removal order hearing. All parties present at the preliminary removal
345 order hearing shall be given notice of the date scheduled for the dispositional hearing; parties who are
346 not present shall be summoned to appear as provided in § 16.1-263.

347 I. The local department of social services having "legal custody" of a child as defined in § 16.1-228
348 (i) shall not be required to comply with the requirements of this section in order to redetermine where
349 and with whom the child shall live, notwithstanding that the child had been placed with a natural parent.

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

351 **§ 16.1-278.2. Abused, neglected, or abandoned children or children without parental care.**

352 A. Within 60 days of a preliminary removal order hearing held pursuant to § 16.1-252 or a hearing
353 on a preliminary protective order held pursuant to § 16.1-253, a dispositional hearing shall be held if the
354 court found abuse or neglect and (i) removed the child from his home or (ii) entered a preliminary
355 protective order. Notice of the dispositional hearing shall be provided to the child's parent, guardian,
356 legal custodian, or other person standing in loco parentis in accordance with § 16.1-263. The hearing
357 shall be held and a dispositional order may be entered, although a parent, guardian, legal custodian, or
358 person standing in loco parentis fails to appear and is not represented by counsel, provided personal or
359 substituted service was made on the person, or the court determines that such person cannot be found,
360 after reasonable effort, or in the case of a person who is without the Commonwealth, the person cannot
361 be found or his post office address cannot be ascertained after reasonable effort. Notice shall also be
362 provided to the local department of social services, the guardian ad litem and, if appointed, the
363 court-appointed special advocate.

364 If a child is found to be (a) abused or neglected; (b) at risk of being abused or neglected by a parent
365 or custodian who has been adjudicated as having abused or neglected another child in his care; or (c)
366 abandoned by his parent or other custodian, or without parental care and guardianship because of his

367 parent's absence or physical or mental incapacity, the juvenile court or the circuit court may make any
 368 of the following orders of disposition to protect the welfare of the child:

369 1. Enter an order pursuant to the provisions of § 16.1-278;

370 2. Permit the child to remain with his parent, subject to such conditions and limitations as the court
 371 may order with respect to such child and his parent or other adult occupant of the same dwelling;

372 3. Prohibit or limit contact as the court deems appropriate between the child and his parent or other
 373 adult occupant of the same dwelling whose presence tends to endanger the child's life, health or normal
 374 development. The prohibition may exclude any such individual from the home under such conditions as
 375 the court may prescribe for a period to be determined by the court but in no event for longer than 180
 376 days from the date of such determination. A hearing shall be held within 150 days to determine further
 377 disposition of the matter that may include limiting or prohibiting contact for another 180 days;

378 4. Permit the local board of social services or a public agency designated by the community policy
 379 and management team to place the child, subject to the provisions of § 16.1-281, in suitable family
 380 homes, child-caring institutions, residential facilities, or independent living arrangements with legal
 381 custody remaining with the parents or guardians. The local board or public agency and the parents or
 382 guardians shall enter into an agreement which shall specify the responsibilities of each for the care and
 383 control of the child. The board or public agency that places the child shall have the final authority to
 384 determine the appropriate placement for the child.

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

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

391 a. A relative or other interested individual subject to the provisions of subsection A1 of this section;

392 b. A child welfare agency, private organization or facility that is licensed or otherwise authorized by
 393 law to receive and provide care for such child; however, a court shall not transfer legal custody of an
 394 abused or neglected child to an agency, organization or facility out of the Commonwealth without the
 395 approval of the Commissioner of Social Services; or

396 c. The local board of social services of the county or city in which the court has jurisdiction or, at
 397 the discretion of the court, to the local board of the county or city in which the child has residence if
 398 other than the county or city in which the court has jurisdiction. The local board shall accept the child
 399 for care and custody, provided that it has been given reasonable notice of the pendency of the case and
 400 an opportunity to be heard. However, in an emergency in the county or city in which the court has
 401 jurisdiction, the local board may be required to accept a child for a period not to exceed 14 days
 402 without prior notice or an opportunity to be heard if the judge entering the placement order describes
 403 the emergency and the need for such temporary placement in the order. Nothing in this section shall
 404 prohibit the commitment of a child to any local board of social services in the Commonwealth when the
 405 local board consents to the commitment. The board to which the child is committed shall have the final
 406 authority to determine the appropriate placement for the child.

407 Any order authorizing removal from the home and transferring legal custody of a child to a local
 408 board of social services as provided in this section shall be entered only upon a finding by the court that
 409 reasonable efforts have been made to prevent removal and that continued placement in the home would
 410 be contrary to the welfare of the child; and the order shall so state.

411 *The court shall not be required to find that reasonable efforts were made to prevent removal of the*
 412 *child from his home if the court finds that (i) the residual parental rights of the parent regarding a*
 413 *sibling of the child have previously been involuntarily terminated; (ii) the parent has been convicted of*
 414 *an offense under the laws of the Commonwealth or a substantially similar law of any other state, the*
 415 *United States, or any foreign jurisdiction that constitutes murder or voluntary manslaughter, or a felony*
 416 *attempt, conspiracy, or solicitation to commit any such offense, if the victim of the offense was a child*
 417 *of the parent, a child with whom the parent resided at the time such offense occurred, or the other*
 418 *parent of the child; (iii) the parent has been convicted of an offense under the laws of the*
 419 *Commonwealth or a substantially similar law of any other state, the United States, or any foreign*
 420 *jurisdiction that constitutes felony assault resulting in serious bodily injury or felony bodily wounding*
 421 *resulting in serious bodily injury or felony sexual assault, if the victim of the offense was a child of the*
 422 *parent or a child with whom the parent resided at the time of such offense; or (iv) on the basis of clear*
 423 *and convincing evidence, the parent has subjected any child to aggravated circumstances, or abandoned*
 424 *a child under circumstances that would justify the termination of residual parental rights pursuant to*
 425 *subsection D of § 16.1-283.*

426 *Within 30 days of making a determination that reasonable efforts to prevent removal of the child*
 427 *from his home are not required, the court shall hold a permanency planning hearing pursuant to*

428 § 16.1-282.1.

429 6. Transfer legal custody pursuant to subdivision 5 of this section and order the parent to participate
430 in such services and programs or to refrain from such conduct as the court may prescribe; or

431 7. Terminate the rights of the parent pursuant to § 16.1-283.

432 A1. Any order transferring custody of the child to a relative or other interested individual pursuant to
433 subdivision A 5 a shall be entered only upon a finding, based upon a preponderance of the evidence,
434 that the relative or other interested individual is one who, after an investigation as directed by the court,
435 (i) is found by the court to be willing and qualified to receive and care for the child; (ii) is willing to
436 have a positive, continuous relationship with the child; (iii) is committed to providing a permanent,
437 suitable home for the child; and (iv) is willing and has the ability to protect the child from abuse and
438 neglect; and the order shall so state. The court's order transferring custody to a relative or other
439 interested individual should further provide for, as appropriate, any terms or conditions which would
440 promote the child's interest and welfare; ongoing provision of social services to the child and the child's
441 custodian; and court review of the child's placement.

442 B. If the child has been placed in foster care, at the dispositional hearing the court shall review the
443 foster care plan for the child filed in accordance with § 16.1-281 by the local department of social
444 services, a public agency designated by the community policy and management team which places a
445 child through an agreement with the parents or guardians where legal custody remains with the parents
446 or guardians, or child welfare agency.

447 C. Any preliminary protective orders entered on behalf of the child shall be reviewed at the
448 dispositional hearing and may be incorporated, as appropriate, in the dispositional order.

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

451 **§ 16.1-278.4. Children in need of services.**

452 If a child is found to be in need of services or a status offender, the juvenile court or the circuit
453 court may make any of the following orders of disposition for the supervision, care and rehabilitation of
454 the child:

455 1. Enter an order pursuant to the provisions of § 16.1-278.

456 2. Permit the child to remain with his parent subject to such conditions and limitations as the court
457 may order with respect to such child and his parent.

458 3. Order the parent with whom the child is living to participate in such programs, cooperate in such
459 treatment or be subject to such conditions and limitations as the court may order and as are designed for
460 the rehabilitation of the child and his parent.

461 4. Beginning July 1, 1992, in the case of any child fourteen years of age or older, where the court
462 finds that the child is not able to benefit appreciably from further schooling, the court may excuse the
463 child from further compliance with any legal requirement of compulsory school attendance as provided
464 under § 22.1-254 or authorize the child, notwithstanding the provisions of any other law, to be employed
465 in any occupation which is not legally declared hazardous for children under the age of eighteen.

466 5. Permit the local board of social services or a public agency designated by the community policy
467 and management team to place the child, subject to the provisions of § 16.1-281, in suitable family
468 homes, child caring-institutions, residential facilities, or independent living arrangements with legal
469 custody remaining with the parents or guardians. The local board or public agency and the parents or
470 guardians shall enter into an agreement which shall specify the responsibilities of each for the care and
471 control of the child. The board or public agency that places the child shall have the final authority to
472 determine the appropriate placement for the child.

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

477 6. Transfer legal custody to any of the following:

478 a. A relative or other individual who, after study, is found by the court to be qualified to receive and
479 care for the child;

480 b. A child welfare agency, private organization or facility that is licensed or otherwise authorized by
481 law to receive and provide care for such child. The court shall not transfer legal custody of a child in
482 need of services to an agency, organization or facility out of the Commonwealth without the approval of
483 the Commissioner of Social Services; or

484 c. The local board of social services of the county or city in which the court has jurisdiction or, at
485 the discretion of the court, to the local board of the county or city in which the child has residence if
486 other than the county or city in which the court has jurisdiction. The local board shall accept the child
487 for care and custody, provided that it has been given reasonable notice of the pendency of the case and
488 an opportunity to be heard. However, in an emergency in the county or city in which the court has
489 jurisdiction, the local board may be required to accept a child for a period not to exceed fourteen days

490 without prior notice or an opportunity to be heard if the judge entering the placement order describes
 491 the emergency and the need for such temporary placement in the order. Nothing in this subdivision shall
 492 prohibit the commitment of a child to any local board of social services in the Commonwealth when the
 493 local board consents to the commitment. The board to which the child is committed shall have the final
 494 authority to determine the appropriate placement for the child.

495 Any order authorizing removal from the home and transferring legal custody of a child to a local
 496 board of social services as provided in this subdivision shall be entered only upon a finding by the court
 497 that reasonable efforts have been made to prevent removal and that continued placement in the home
 498 would be contrary to the welfare of the child, and the order shall so state.

499 *The court shall not be required to find that reasonable efforts were made to prevent removal of the*
 500 *child from his home if the court finds that (i) the residual parental rights of the parent regarding a*
 501 *sibling of the child have previously been involuntarily terminated; (ii) the parent has been convicted of*
 502 *an offense under the laws of the Commonwealth or a substantially similar law of any other state, the*
 503 *United States, or any foreign jurisdiction that constitutes murder or voluntary manslaughter, or a felony*
 504 *attempt, conspiracy, or solicitation to commit any such offense, if the victim of the offense was a child*
 505 *of the parent, a child with whom the parent resided at the time such offense occurred, or the other*
 506 *parent of the child; (iii) the parent has been convicted of an offense under the laws of the*
 507 *Commonwealth or a substantially similar law of any other state, the United States, or any foreign*
 508 *jurisdiction that constitutes felony assault resulting in serious bodily injury or felony bodily wounding*
 509 *resulting in serious bodily injury or felony sexual assault, if the victim of the offense was a child of the*
 510 *parent or a child with whom the parent resided at the time of such offense; or (iv) on the basis of clear*
 511 *and convincing evidence, the parent has subjected any child to aggravated circumstances, or abandoned*
 512 *a child under circumstances that would justify the termination of residual parental rights pursuant to*
 513 *subsection D of § 16.1-283.*

514 *Within 30 days of making a determination that reasonable efforts to prevent removal of the child*
 515 *from his home are not required, the court shall hold a permanency planning hearing pursuant to*
 516 *§ 16.1-282.1.*

517 7. Require the child to participate in a public service project under such conditions as the court
 518 prescribes.

519 **§ 16.1-281. Foster care plan.**

520 A. In any case in which (i) a local board of social services places a child through an agreement with
 521 the parents or guardians where legal custody remains with the parents or guardian, or (ii) legal custody
 522 of a child is given to a local board of social services or a child welfare agency, the local department of
 523 social services or child welfare agency shall prepare a foster care plan for such child, as described
 524 hereinafter. The individual family service plan developed by the family assessment and planning team
 525 pursuant to § 2.2-5208 may be accepted by the court as the foster care plan if it meets the requirements
 526 of this section.

527 The representatives of such department or agency shall involve the child's parent(s) in the
 528 development of the plan, except when parental rights have been terminated or the local department of
 529 social services or child welfare agency has made diligent efforts to locate the parent(s) and such
 530 parent(s) cannot be located, and any other person or persons standing in loco parentis at the time the
 531 board or child welfare agency obtained custody or the board placed the child. The representatives of
 532 such department or agency shall involve a child who is 14 years of age or older in the development of
 533 the plan and, at the option of such child, up to two members of the case planning team who are chosen
 534 by the child and who are not a foster parent of, or caseworker for, the child. A child under 14 years of
 535 age may be involved in the development of the plan if such involvement is consistent with the best
 536 interests of the child. In cases where either the parent(s) or child is not involved in the development of
 537 the plan, the department or agency shall include in the plan a full description of the reasons therefor.

538 The department or child welfare agency shall file the plan with the juvenile and domestic relations
 539 district court within 45 days following the transfer of custody or the board's placement of the child
 540 unless the court, for good cause shown, allows an extension of time, which shall not exceed an
 541 additional 60 days. However, a foster care plan shall be filed in accordance with the provisions of
 542 § 16.1-277.01 with a petition for approval of an entrustment agreement. A foster care plan need not be
 543 prepared if the child is returned to his prior family or placed in an adoptive home within 45 days
 544 following transfer of custody to the board or agency or the board's placement of the child.

545 B. The foster care plan shall describe in writing (i) the programs, care, services and other support
 546 which will be offered to the child and his parents and other prior custodians; (ii) the participation and
 547 conduct which will be sought from the child's parents and other prior custodians; (iii) the visitation and
 548 other contacts which will be permitted between the child and his parents and other prior custodians, and
 549 between the child and his siblings; (iv) the nature of the placement or placements which will be
 550 provided for the child; (v) for school-age children, the school placement of the child; (vi) for children

551 14 years of age and older, the child's needs and goals in the areas of counseling, education, housing,
552 employment, and money management skills development, along with specific independent living services
553 that will be provided to the child to help him reach these goals; (vii) for children 14 years and older, an
554 explanation of the child's rights with respect to education, health, visitation, court participation, and the
555 right to stay safe and avoid exploitation; and (viii) all documentation specified in 42 U.S.C. § 675(5)(l)
556 and § 63.2-905.3. In cases in which a foster care plan approved prior to July 1, 2011, identifies
557 independent living as the goal for the child, and in cases involving children admitted to the United
558 States as refugees or asylees who are 16 years of age or older and for whom the goal is independent
559 living, the plan shall also describe the programs and services which will help the child prepare for the
560 transition from foster care to independent living. If consistent with the child's health and safety, the plan
561 shall be designed to support reasonable efforts which lead to the return of the child to his parents or
562 other prior custodians within the shortest practicable time which shall be specified in the plan. The
563 child's health and safety shall be the paramount concern of the court and the agency throughout the
564 placement, case planning, service provision and review process. For a child 14 years of age and older,
565 the plan shall include a signed acknowledgment by the child that the child has received a copy of the
566 plan and that the rights contained therein have been explained to the child in an age-appropriate manner.

567 If the department or child welfare agency concludes that it is not reasonably likely that the child can
568 be returned to his prior family within a practicable time, consistent with the best interests of the child,
569 the department, child welfare agency or team shall (a) include a full description of the reasons for this
570 conclusion; (b) provide information on the opportunities for placing the child with a relative or in an
571 adoptive home; (c) design the plan to lead to the child's successful placement with a relative if a
572 subsequent transfer of custody to the relative is planned, or in an adoptive home within the shortest
573 practicable time, and if neither of such placements is feasible; (d) explain why permanent foster care is
574 the plan for the child or independent living is the plan for the child in cases involving children admitted
575 to the United States as refugees or asylees who are 16 years of age or older and for whom the goal is
576 independent living.

577 "Independent living" as used in this section has the meaning set forth in § 63.2-100.

578 The local board or other child welfare agency having custody of the child shall not be required by
579 the court to make reasonable efforts to reunite the child with a parent if the court finds that (1) the
580 residual parental rights of the parent regarding a sibling of the child have previously been involuntarily
581 terminated; (2) the parent has been convicted of an offense under the laws of the Commonwealth or a
582 substantially similar law of any other state, the United States or any foreign jurisdiction that constitutes
583 murder or voluntary manslaughter, or a felony attempt, conspiracy or solicitation to commit any such
584 offense, if the victim of the offense was a child of the parent, a child with whom the parent resided at
585 the time such offense occurred or the other parent of the child; (3) the parent has been convicted of an
586 offense under the laws of the Commonwealth or a substantially similar law of any other state, the
587 United States or any foreign jurisdiction that constitutes felony assault resulting in serious bodily injury
588 or felony bodily wounding resulting in serious bodily injury or felony sexual assault, if the victim of the
589 offense was a child of the parent or a child with whom the parent resided at the time of such offense; or
590 (4) based on clear and convincing evidence, the parent has subjected any child to aggravated
591 circumstances, or abandoned a child under circumstances which would justify the termination of residual
592 parental rights pursuant to subsection D of § 16.1-283.

593 As used in this section:

594 "Aggravated circumstances" means torture, chronic or severe abuse, or chronic or severe sexual
595 abuse, if the victim of such conduct was a child of the parent or child with whom the parent resided at
596 the time such conduct occurred, including the failure to protect such a child from such conduct, which
597 conduct or failure to protect: (i) evinces a wanton or depraved indifference to human life, or (ii) has
598 resulted in the death of such a child or in serious bodily injury to such a child.

599 "Chronic abuse" or "chronic sexual abuse" means recurring acts of physical abuse that place the
600 child's health, safety and well-being at risk.

601 "Serious bodily injury" means bodily injury that involves substantial risk of death, extreme physical
602 pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily
603 member, organ or mental faculty.

604 "Severe abuse" or "severe sexual abuse" may include an act or omission that occurred only once, but
605 otherwise meets the definition of "aggravated circumstances."

606 Within 30 days of making a determination that reasonable efforts to reunite the child with the parents
607 are not required, the court shall hold a permanency planning hearing pursuant to § 16.1-282.1.

608 C. A copy of the entire foster care plan shall be sent by the court to the child, if he is 12 years of
609 age or older; the guardian ad litem for the child, the attorney for the child's parents or for any other
610 person standing in loco parentis at the time the board or child welfare agency obtained custody or the
611 board placed the child, to the parents or other person standing in loco parentis, and such other persons
612 as appear to the court to have a proper interest in the plan. However, a copy of the plan shall not be

613 sent to a parent whose parental rights regarding the child have been terminated. A copy of the plan shall
 614 be sent by the court to the foster parents. A hearing shall be held for the purpose of reviewing and
 615 approving the foster care plan. The hearing shall be held within 60 days of (i) the child's initial foster
 616 care placement, if the child was placed through an agreement between the parents or guardians and the
 617 local department of social services or a child welfare agency; (ii) the original preliminary removal order
 618 hearing, if the child was placed in foster care pursuant to § 16.1-252; (iii) the hearing on the petition for
 619 relief of custody, if the child was placed in foster care pursuant to § 16.1-277.02; or (iv) the
 620 dispositional hearing at which the child was placed in foster care and an order was entered pursuant to
 621 § 16.1-278.2, 16.1-278.3, 16.1-278.4, 16.1-278.5, 16.1-278.6, or 16.1-278.8. However, the hearing shall
 622 be held in accordance with the provisions of § 16.1-277.01 with a petition for approval of an
 623 entrustment agreement. If the judge makes any revision in any part of the foster care plan, a copy of the
 624 changes shall be sent by the court to all persons who received a copy of the original of that part of the
 625 plan.

626 C1. Any order transferring custody of the child to a relative other than the child's prior family shall
 627 be entered only upon a finding, based upon a preponderance of the evidence, that the relative is one
 628 who, after an investigation as directed by the court, (i) is found by the court to be willing and qualified
 629 to receive and care for the child; (ii) is willing to have a positive, continuous relationship with the child;
 630 (iii) is committed to providing a permanent, suitable home for the child; and (iv) is willing and has the
 631 ability to protect the child from abuse and neglect; and the order shall so state. The court's order
 632 transferring custody to a relative should further provide for, as appropriate, any terms or conditions
 633 which would promote the child's interest and welfare; ongoing provision of social services to the child
 634 and the child's custodian; and court review of the child's placement.

635 C2. Any order entered at the conclusion of the hearing that has the effect of achieving a permanent
 636 goal for the child by terminating residual parental rights pursuant to § 16.1-277.01, 16.1-277.02,
 637 16.1-278.3, or 16.1-283; by placing the child in permanent foster care pursuant to clause (iv) of
 638 subsection A of § 16.1-282.1; or, in cases in which independent living was identified as the goal for a
 639 child in a foster care plan approved prior to July 1, 2011, or in which a child has been admitted to the
 640 United States as a refugee or asylee and is over 16 years of age and independent living has been
 641 identified as the permanency goal for the child, by directing the board or agency to provide the child
 642 with services to achieve independent living status, if the child has attained the age of 16 years, pursuant
 643 to clause (v) of subsection A of § 16.1-282.1 shall state whether reasonable efforts have been made to
 644 place the child in a timely manner in accordance with the foster care plan and to complete the steps
 645 necessary to finalize the permanent placement of the child.

646 D. The court in which the foster care plan is filed shall be notified immediately if the child is
 647 returned to his parents or other persons standing in loco parentis at the time the board or agency
 648 obtained custody or the board placed the child.

649 E. At the conclusion of the hearing at which the initial foster care plan is reviewed, the court shall
 650 schedule a foster care review hearing to be held within four months in accordance with § 16.1-282.
 651 However, if an order is entered pursuant to subsection C2, the court shall schedule a foster care review
 652 hearing to be held within 12 months of the entry of such order in accordance with the provisions of
 653 § 16.1-282.2. Parties who are present at the hearing at which the initial foster care plan is reviewed shall
 654 be given notice of the date set for the foster care review hearing and parties who are not present shall
 655 be summoned as provided in § 16.1-263.

656 F. Nothing in this section shall limit the authority of the juvenile judge or the staff of the juvenile
 657 court, upon order of the judge, to review the status of children in the custody of local boards of social
 658 services or placed by local boards of social services on its own motion. The court shall appoint an
 659 attorney to act as guardian ad litem to represent the child any time a hearing is held to review the foster
 660 care plan filed for the child or to review the child's status in foster care.

661 **§ 16.1-282.1. Permanency planning hearing for children in foster care.**

662 A. In the case of a child who was the subject of a foster care plan filed with the court pursuant to
 663 § 16.1-281, a permanency planning hearing shall be held within 10 months of the dispositional hearing
 664 at which the foster care plan pursuant to § 16.1-281 was reviewed if the child (a) was placed through an
 665 agreement between the parents or guardians and the local board of social services where legal custody
 666 remains with the parents or guardians and such agreement has not been dissolved by court order; or (b)
 667 is under the legal custody of a local board of social services or a child welfare agency and has not had
 668 a petition to terminate parental rights filed on the child's behalf, has not been placed in permanent foster
 669 care, or is age 16 or over and the plan for the child is not independent living. The board or child
 670 welfare agency shall file a petition for a permanency planning hearing 30 days prior to the date of the
 671 permanency planning hearing scheduled by the court. The purpose of this hearing is to establish a
 672 permanent goal for the child and either to achieve the permanent goal or to defer such action through
 673 the approval of an interim plan for the child.

674 To achieve the permanent goal, the petition for a permanency planning hearing shall seek to (i)
675 transfer the custody of the child to his prior family, or dissolve the board's placement agreement and
676 return the child to his prior family; (ii) transfer custody of the child to a relative other than the child's
677 prior family, subject to the provisions of subsection A1; (iii) terminate residual parental rights pursuant
678 to § 16.1-277.01 or 16.1-283; (iv) place a child who is 16 years of age or older in permanent foster care
679 pursuant to § 63.2-908; (v) if the child has been admitted to the United States as a refugee or asylee and
680 has attained the age of 16 years or older and the plan is independent living, direct the board or agency
681 to provide the child with services to transition from foster care; or (vi) place a child who is 16 years of
682 age or older in another planned permanent living arrangement in accordance with the provisions of
683 subsection A2. In cases in which a foster care plan approved prior to July 1, 2011, includes independent
684 living as the goal for a child who is not admitted to the United States as an asylee or refugee, the
685 petition shall direct the board or agency to provide the child with services to transition from foster care.

686 For approval of an interim plan, the petition for a permanency planning hearing shall seek to
687 continue custody with the board or agency, or continue placement with the board through a parental
688 agreement; or transfer custody to the board or child welfare agency from the parents or guardian of a
689 child who has been in foster care through an agreement where the parents or guardian retains custody.

690 Upon receipt of the petition, if a permanency planning hearing has not already been scheduled, the
691 court shall schedule such a hearing to be held within 30 days. The permanency planning hearing shall
692 be held within 10 months of the dispositional hearing at which the foster care plan was reviewed
693 pursuant to § 16.1-281. The provisions of subsection B of § 16.1-282 shall apply to this petition. The
694 procedures of subsection C of § 16.1-282 and the provisions of subsection E of § 16.1-282 shall apply to
695 the scheduling and notice of proceedings under this section.

696 A1. The following requirements shall apply to the transfer of custody of the child to a relative other
697 than the child's prior family in accordance with the provisions of (ii) of subsection A of this section.
698 Any order transferring custody of the child to a relative other than the child's prior family shall be
699 entered only upon a finding, based upon a preponderance of the evidence, that the relative is one who,
700 after an investigation as directed by the court, (i) is found by the court to be willing and qualified to
701 receive and care for the child; (ii) is willing to have a positive, continuous relationship with the child;
702 (iii) is committed to providing a permanent, suitable home for the child; and (iv) is willing and has the
703 ability to protect the child from abuse and neglect; and the order shall so state. The court's order
704 transferring custody to a relative should further provide, as appropriate, for any terms or conditions
705 which would promote the child's interest and welfare.

706 A2. The following requirements shall apply to the selection and approval of placement in another
707 planned permanent living arrangement as the permanent goal for the child in accordance with clause (vi)
708 of subsection A of this section:

709 1. The board or child welfare agency shall petition for alternative (vi) of subsection A only if the
710 child has a severe and chronic emotional, physical or neurological disabling condition for which the
711 child requires long-term residential treatment; and the board or child welfare agency has thoroughly
712 investigated the feasibility of the alternatives listed in clauses (i) through (v) of subsection A and
713 determined that none of those alternatives is in the best interests of the child. In a foster care plan filed
714 with the petition pursuant to this section, the board or agency shall document the following: (i) the
715 investigation conducted of the placement alternatives listed in clauses (i) through (v) of subsection A
716 and why each of these is not currently in the best interest of the child; (ii) at least one compelling
717 reason why none of the alternatives listed in clauses (i) through (v) is achievable for the child at the
718 time placement in another planned permanent living arrangement is selected as the permanent goal for
719 the child; (iii) the identity of the long-term residential treatment service provider; (iv) the nature of the
720 child's disability; (v) the anticipated length of time required for the child's treatment; and (vi) the status
721 of the child's eligibility for admission and long-term treatment. The court shall ensure that the local
722 department has documentation of the intensive, ongoing, and, as of the date of the hearing, unsuccessful
723 efforts made to return the child home or secure a placement for the child with a fit and willing relative,
724 including adult siblings, or an adoptive parent, including through efforts that utilize search technology,
725 including social media, to find the child's biological family members. The court shall ask the child about
726 the child's desired permanency outcome and make a judicial determination, accompanied by an
727 explanation of the reasons that the alternatives listed in clauses (i) through (iii) of subsection A continue
728 to not be in the best interest of the child.

729 2. Before approving alternative (vi) of subsection A as the plan for the child, the court shall find (i)
730 that the child has a severe and chronic emotional, physical or neurological disabling condition; (ii) that
731 the child requires long-term residential treatment for the disabling condition; and (iii) that none of the
732 alternatives listed in clauses (i) through (v) of subsection A is achievable for the child at the time
733 placement in another planned permanent living arrangement is approved as the permanent goal for the
734 child. If the board or agency petitions for alternative (vi), alternative (vi) may be approved by the court
735 for a period of six months at a time.

736 3. At the conclusion of the permanency planning hearing, if alternative (vi) of subsection A is the
 737 permanent plan, the court shall schedule a hearing to be held within six months to review the child's
 738 placement in another planned permanent living arrangement in accordance with subdivision 4 of
 739 subsection A2. All parties present at the hearing at which clause (vi) of subsection A is approved as the
 740 permanent plan for the child shall be given notice of the date scheduled for the foster care review
 741 hearing. Parties not present shall be summoned to appear as provided in § 16.1-263. Otherwise, this
 742 subsection A2 shall govern the scheduling and notice for such hearings.

743 4. The court shall review a foster care plan for any child who is placed in another planned
 744 permanent living arrangement every six months from the date of the permanency planning hearing held
 745 pursuant to this subsection, so long as the child remains in the legal custody of the board or child
 746 welfare agency. The board or child welfare agency shall file such petitions for review pursuant to the
 747 provisions of § 16.1-282 and shall, in addition, include in the petition the information required by
 748 subdivision 1 of subsection A2 of this section. The petition for foster care review shall be filed no later
 749 than 30 days prior to the hearing scheduled in accordance with subdivision 3 of subsection A2. At the
 750 conclusion of the foster care review hearing, if alternative (vi) of subsection A remains the permanent
 751 plan, the court shall enter an order that states whether reasonable efforts have been made to place the
 752 child in a timely manner in accordance with the permanency plan and to monitor the child's status in
 753 another planned permanent living arrangement.

754 However, if at any time during the six-month approval periods permitted by this subsection, a
 755 determination is made by treatment providers that the child's need for long-term residential treatment for
 756 the child's disabling condition is eliminated, the board or agency shall immediately begin to plan for
 757 post-discharge services and shall, within 30 days of making such a determination, file a petition for a
 758 permanency planning hearing pursuant to subsection A of this section. Upon receipt of the petition, the
 759 court shall schedule a permanency planning hearing to be held within 30 days. The provisions of
 760 subsection B of § 16.1-282 shall apply to this petition. The procedures of subsection C of § 16.1-282
 761 and the provisions of subsection E of § 16.1-282 shall apply to proceedings under this section.

762 A3. The following requirements shall apply to the selection and approval of permanent foster care
 763 pursuant to clause (iv) of subsection A:

764 1. The court shall ensure that the local department has documentation of the intensive, ongoing, and,
 765 as of the date of the hearing, unsuccessful efforts made to return the child home or secure a placement
 766 for the child with a fit and willing relative, including adult siblings, or an adoptive parent, including
 767 through efforts that utilize search technology, including social media, to find the child's biological family
 768 members.

769 2. The court shall ask the child about the child's desired permanency outcome and make a judicial
 770 determination, accompanied by an explanation of the reasons that the alternatives listed in clauses (i)
 771 through (iii) of subsection A continue to not be in the best interest of the child.

772 B. The following requirements shall apply to the selection and approval of an interim plan for the
 773 child in accordance with subsection A:

774 1. The board or child welfare agency shall petition for approval of an interim plan only if the board
 775 or child welfare agency has thoroughly investigated the feasibility of the alternatives listed in clauses (i)
 776 through (v) of subsection A and determined that none of those alternatives is in the best interest of the
 777 child. If the board or agency petitions for approval of an interim plan, such plan may be approved by
 778 the court for a maximum period of six months. The board or agency shall also file a foster care plan
 779 that (i) identifies a permanent goal for the child that corresponds with one of the alternatives specified in
 780 clauses (i) through (v) of subsection A; (ii) includes provisions for accomplishing the permanent goal
 781 within six months; and (iii) summarizes the investigation conducted of the alternatives listed in clauses
 782 (i) through (v) of subsection A and why achieving each of these is not in the best interest of the child at
 783 this time. *The foster care plan shall describe the child's placement, including whether such placement is*
 784 *in state or out of state, and if out of state, provide the reason why the out-of-state placement is*
 785 *appropriate and in the best interests of the child.*

786 2. Before approving an interim plan for the child, the court shall find:

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

791 b. When returning home is not the plan for the child, that marked progress is being made to achieve
 792 the permanent goal identified by the board or child welfare agency and that it is premature to set an
 793 exact date for accomplishing the goal at the time of this hearing. *The court shall consider in-state and*
 794 *out-of-state placement options, and if the child has been placed out of state, determine whether the*
 795 *out-of-state placement is appropriate and in the best interests of the child.*

796 3. Upon approval of an interim plan, the court shall schedule a hearing to be held within six months

797 to determine that the permanent goal is accomplished and to enter an order consistent with alternative
798 (i), (ii), (iii), (iv), or (v) of subsection A. All parties present at the initial permanency planning hearing
799 shall be given notice of the date scheduled for the second permanency planning hearing. Parties not
800 present shall be summoned to appear as provided in § 16.1-263. Otherwise, subsection A shall govern
801 the scheduling and notice for such hearings.

802 *C. In each permanency planning hearing and in any hearing regarding the transition of the child*
803 *from foster care to independent living, the court shall consult with the child in an age-appropriate*
804 *manner regarding the proposed permanency plan or transition plan for the child.*

805 *D. At the conclusion of the permanency planning hearing held pursuant to this section, whether*
806 *action is taken or deferred to achieve the permanent goal for the child, the court shall enter an order that*
807 *states whether reasonable efforts have been made to reunite the child with the child's prior family, if*
808 *returning home is the permanent goal for the child; or whether reasonable efforts have been made to*
809 *achieve the permanent goal identified by the board or agency, if the goal is other than returning the*
810 *child home.*

811 In making this determination, the court shall give consideration to whether the board or agency has
812 placed the child in a timely manner in accordance with the foster care plan and completed the steps
813 necessary to finalize the permanent placement of the child.

814 **§ 16.1-283. Termination of residual parental rights.**

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

826 Any order terminating residual parental rights shall be accompanied by an order continuing or
827 granting custody to a local board of social services, to a licensed child-placing agency or the granting of
828 custody or guardianship to a relative or other interested individual, subject to the provisions of
829 subsection A1. However, in such cases the court shall give a consideration to granting custody to
830 relatives of the child, including grandparents. An order continuing or granting custody to a local board
831 of social services or to a licensed child-placing agency shall indicate whether that board or agency shall
832 have the authority to place the child for adoption and consent thereto.

833 The summons shall be served upon the parent or parents and the other parties specified in
834 § 16.1-263. Written notice of the hearing shall also be provided to the foster parents of the child, a
835 relative providing care for the child, and any preadoptive parents for the child informing them that they
836 may appear as witnesses at the hearing to give testimony and otherwise participate in the proceeding.
837 The persons entitled to notice and an opportunity to be heard need not be made parties to the
838 proceedings. The summons or notice of hearing shall clearly state the consequences of a termination of
839 residual parental rights. Service shall be made pursuant to § 16.1-264.

840 A1. Any order transferring custody of the child to a relative or other interested individual pursuant to
841 subsection A shall be entered only upon a finding, based upon a preponderance of the evidence, that the
842 relative or other interested individual is one who, after an investigation as directed by the court, (i) is
843 found by the court to be willing and qualified to receive and care for the child; (ii) is willing to have a
844 positive, continuous relationship with the child; (iii) is committed to providing a permanent, suitable
845 home for the child; and (iv) is willing and has the ability to protect the child from abuse and neglect;
846 and the order shall so state. The court's order transferring custody to a relative or other interested
847 individual should further provide, as appropriate, for any terms and conditions which would promote the
848 child's interest and welfare.

849 B. The residual parental rights of a parent or parents of a child found by the court to be neglected or
850 abused and placed in foster care as a result of (i) court commitment; (ii) an entrustment agreement
851 entered into by the parent or parents; or (iii) other voluntary relinquishment by the parent or parents
852 may be terminated if the court finds, based upon clear and convincing evidence, that it is in the best
853 interests of the child and that:

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

856 2. It is not reasonably likely that the conditions which resulted in such neglect or abuse can be
857 substantially corrected or eliminated so as to allow the child's safe return to his parent or parents within
858 a reasonable period of time. In making this determination, the court shall take into consideration the

859 efforts made to rehabilitate the parent or parents by any public or private social, medical, mental health
860 or other rehabilitative agencies prior to the child's initial placement in foster care.

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

863 a. The parent or parents have a mental or emotional illness or intellectual disability of such severity
864 that there is no reasonable expectation that such parent will be able to undertake responsibility for the
865 care needed by the child in accordance with his age and stage of development;

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

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

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

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

884 2. The parent or parents, without good cause, have been unwilling or unable within a reasonable
885 period of time not to exceed 12 months from the date the child was placed in foster care to remedy
886 substantially the conditions which led to or required continuation of the child's foster care placement,
887 notwithstanding the reasonable and appropriate efforts of social, medical, mental health or other
888 rehabilitative agencies to such end. Proof that the parent or parents, without good cause, have failed or
889 been unable to make substantial progress towards elimination of the conditions which led to or required
890 continuation of the child's foster care placement in accordance with their obligations under and within
891 the time limits or goals set forth in a foster care plan filed with the court or any other plan jointly
892 designed and agreed to by the parent or parents and a public or private social, medical, mental health or
893 other rehabilitative agency shall constitute prima facie evidence of this condition. The court shall take
894 into consideration the prior efforts of such agencies to rehabilitate the parent or parents prior to the
895 placement of the child in foster care.

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

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

901 2. The child's parent or parents, guardian or relatives have not come forward to identify such child
902 and claim a relationship to the child within three months following the issuance of an order by the court
903 placing the child in foster care; and

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

905 E. The residual parental rights of a parent or parents of a child who is in the custody of a local
906 board or licensed child-placing agency may be terminated by the court if the court finds, based upon
907 clear and convincing evidence, that it is in the best interests of the child and that (i) the residual
908 parental rights of the parent regarding a sibling of the child have previously been involuntarily
909 terminated; (ii) the parent has been convicted of an offense under the laws of the Commonwealth or a
910 substantially similar law of any other state, the United States or any foreign jurisdiction that constitutes
911 murder or voluntary manslaughter, or a felony attempt, conspiracy or solicitation to commit any such
912 offense, if the victim of the offense was a child of the parent, a child with whom the parent resided at
913 the time such offense occurred or the other parent of the child; (iii) the parent has been convicted of an
914 offense under the laws of the Commonwealth or a substantially similar law of any other state, the
915 United States or any foreign jurisdiction that constitutes felony assault resulting in serious bodily injury
916 or felony bodily wounding resulting in serious bodily injury or felony sexual assault, if the victim of the
917 offense was a child of the parent or a child with whom the parent resided at the time of such offense; or
918 (iv) the parent has subjected any child to aggravated circumstances.

919 As used in this section:

920 "Aggravated circumstances" means torture, chronic or severe abuse, or chronic or severe sexual
 921 abuse, if the victim of such conduct was a child of the parent or a child with whom the parent resided
 922 at the time such conduct occurred, including the failure to protect such a child from such conduct,
 923 which conduct or failure to protect: (i) evinces a wanton or depraved indifference to human life, or (ii)
 924 has resulted in the death of such a child or in serious bodily injury to such a child.

925 "Chronic abuse" or "chronic sexual abuse" means recurring acts of physical abuse which place the
 926 child's health, safety and well-being at risk.

927 "Serious bodily injury" means bodily injury that involves substantial risk of death, extreme physical
 928 pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily
 929 member, organ or mental faculty.

930 "Severe abuse" or "severe sexual abuse" may include an act or omission that occurred only once, but
 931 otherwise meets the definition of "aggravated circumstances."

932 The local board or other child welfare agency having custody of the child shall not be required by
 933 the court to make reasonable efforts to reunite the child with a parent who has been convicted of one of
 934 the felonies specified in this subsection or who has been found by the court to have subjected any child
 935 to aggravated circumstances.

936 F. The local board or licensed child-placing agency to which authority is given to place the child for
 937 adoption and consent thereto after an order terminating parental rights is entered shall file a written
 938 Adoption Progress Report with the juvenile court on the progress being made to place the child in an
 939 adoptive home. The report shall be filed with the court every six months from the date of the final order
 940 terminating parental rights until a final order of adoption is entered on behalf of the child in the circuit
 941 court. At the conclusion of the hearing at which termination of parental rights is ordered and authority is
 942 given to the local board or licensed child-placing agency to place the child for adoption, the juvenile
 943 court shall schedule a date by which the board or agency shall file the first written Adoption Progress
 944 Report required by this section. A copy of the Adoption Progress Report shall be sent by the court to
 945 the guardian ad litem for the child. The court may schedule a hearing on the report with or without the
 946 request of a party.

947 G. Notwithstanding any other provisions of this section, residual parental rights shall not be
 948 terminated if it is established that the child, if he is 14 years of age or older or otherwise of an age of
 949 discretion as determined by the court, objects to such termination. However, residual parental rights of a
 950 child 14 years of age or older may be terminated over the objection of the child, if the court finds that
 951 any disability of the child reduces the child's developmental age and that the child is not otherwise of an
 952 age of discretion.

953 **§ 63.2-910.2. Termination of residual parental rights.**

954 *If a child has been in foster care under the responsibility of a local board for 15 of the most recent*
 955 *22 months or if the parent of a child in foster care has been convicted of an offense under the laws of*
 956 *the Commonwealth or a substantially similar law of any other state, the United States, or any foreign*
 957 *jurisdiction that constitutes (i) murder or voluntary manslaughter, or a felony attempt, conspiracy, or*
 958 *solicitation to commit any such offense, if the victim of the offense was a child of the parent, a child*
 959 *with whom the parent resided at the time such offense occurred, or the other parent of the child; or (ii)*
 960 *felony assault resulting in serious bodily injury or felony bodily wounding resulting in serious bodily*
 961 *injury or felony sexual assault, if the victim of the offense was a child of the parent or a child with*
 962 *whom the parent resided at the time of such offense, the local board shall file a petition to terminate the*
 963 *parental rights of the child's parents and concurrently identify, recruit, process, and approve a qualified*
 964 *family for adoption of the child, unless:*

965 1. *At the option of the local board, the child is being cared for by a relative;*

966 2. *The local board has determined that the filing of such a petition would not be in the best interests*
 967 *of the child and has documented a compelling reason for such determination in the child's foster care*
 968 *plan; or*

969 3. *The local board has not provided to the family of the child, within the time period established in*
 970 *the child's foster care plan, services deemed necessary for the child's safe return home or has not*
 971 *otherwise made reasonable efforts to return the child home, if required under § 473(a)(15)(B)(ii) of Title*
 972 *IV-E of the Social Security Act (42 U.S.C. § 673).*