

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

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An Act to amend and reenact §§ 16.1-251, 16.1-252, 16.1-278.2, 16.1-278.4, and 16.1-282.1 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.

[H 1604]

Approved

Be it enacted by the General Assembly of Virginia:
1. That §§ 16.1-251, 16.1-252, 16.1-278.2, 16.1-278.4, and 16.1-282.1 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:

§ 16.1-251. Emergency removal order.

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

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

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

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

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

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

As used in this section:

"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 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.

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

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

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

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

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

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

68 **§ 16.1-252. Preliminary removal order; hearing.**

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

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

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

84 D. At the removal hearing the child and his parent, guardian, legal custodian or other person standing
 85 in loco parentis shall have the right to confront and cross-examine all adverse witnesses and evidence
 86 and to present evidence on their own behalf. If the child was 14 years of age or under on the date of
 87 the alleged offense and is 16 or under at the time of the hearing, the child's attorney or guardian ad
 88 litem, or if the child has been committed to the custody of the Department of Social Services, the local
 89 department of social services, may apply for an order from the court that the child's testimony be taken
 90 in a room outside the courtroom and be televised by two-way closed-circuit television. The provisions of
 91 § 63.2-1521 shall apply, mutatis mutandis, to the use of two-way closed-circuit television except that the
 92 person seeking the order shall apply for the order at least 48 hours before the hearing, unless the court
 93 for good cause shown allows the application to be made at a later time.

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

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

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

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

108 *The petitioner shall not be required by the court to make reasonable efforts to prevent removal of*
 109 *the child from his home if the court finds that (i) the residual parental rights of the parent regarding a*
 110 *sibling of the child have previously been involuntarily terminated; (ii) the parent has been convicted of*
 111 *an offense under the laws of the Commonwealth or a substantially similar law of any other state, the*
 112 *United States, or any foreign jurisdiction that constitutes murder or voluntary manslaughter, or a felony*
 113 *attempt, conspiracy, or solicitation to commit any such offense, if the victim of the offense was a child*
 114 *of the parent, a child with whom the parent resided at the time such offense occurred, or the other*
 115 *parent of the child; (iii) the parent has been convicted of an offense under the laws of the*
 116 *Commonwealth or a substantially similar law of any other state, the United States, or any foreign*
 117 *jurisdiction that constitutes felony assault resulting in serious bodily injury or felony bodily wounding*

118 *resulting in serious bodily injury or felony sexual assault, if the victim of the offense was a child of the*
 119 *parent or a child with whom the parent resided at the time of such offense; or (iv) on the basis of clear*
 120 *and convincing evidence, the parent has subjected any child to aggravated circumstances, or abandoned*
 121 *a child under circumstances that would justify the termination of residual parental rights pursuant to*
 122 *subsection D of § 16.1-283.*

123 *As used in this section:*

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

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

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

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

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

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

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

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

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

151 F1. Prior to the entry of an order pursuant to subsection F of this section transferring temporary
 152 custody of the child to a relative or other interested individual, including grandparents, the court shall
 153 consider whether the relative or other interested individual is one who (i) is willing and qualified to
 154 receive and care for the child; (ii) is willing to have a positive, continuous relationship with the child;
 155 and (iii) is willing and has the ability to protect the child from abuse and neglect. The court's order
 156 transferring temporary custody to a relative or other interested individual should provide for compliance
 157 with any preliminary protective order entered on behalf of the child in accordance with the provisions of
 158 § 16.1-253; initiation and completion of the investigation as directed by the court and court review of
 159 the child's placement required in accordance with the provisions of § 16.1-278.2; and, as appropriate,
 160 ongoing provision of social services to the child and the temporary custodian.

161 G. At the conclusion of the preliminary removal order hearing, the court shall determine whether the
 162 allegations of abuse or neglect have been proven by a preponderance of the evidence. Any finding of
 163 abuse or neglect shall be stated in the court order. However, if, before such a finding is made, a person
 164 responsible for the care and custody of the child, the child's guardian ad litem or the local department of
 165 social services objects to a finding being made at the hearing, the court shall schedule an adjudicatory
 166 hearing to be held within 30 days of the date of the initial preliminary removal hearing. The
 167 adjudicatory hearing shall be held to determine whether the allegations of abuse and neglect have been
 168 proven by a preponderance of the evidence. Parties who are present at the preliminary removal order
 169 hearing shall be given notice of the date set for the adjudicatory hearing and parties who are not present
 170 shall be summoned as provided in § 16.1-263. The hearing shall be held and an order may be entered,
 171 although a party to the preliminary removal order hearing fails to appear and is not represented by
 172 counsel, provided personal or substituted service was made on the person, or the court determines that
 173 such person cannot be found, after reasonable effort, or in the case of a person who is without the
 174 Commonwealth, the person cannot be found or his post office address cannot be ascertained after
 175 reasonable effort.

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

178 H. If the preliminary removal order includes a finding of abuse or neglect and the child is removed

179 from his home or a preliminary protective order is issued, a dispositional hearing shall be held pursuant
 180 to § 16.1-278.2. The dispositional hearing shall be scheduled at the time of the preliminary removal
 181 order hearing and shall be held within 60 days of the preliminary removal order hearing. If an
 182 adjudicatory hearing is requested pursuant to subsection G, the dispositional hearing shall nonetheless be
 183 scheduled at the initial preliminary removal order hearing. All parties present at the preliminary removal
 184 order hearing shall be given notice of the date scheduled for the dispositional hearing; parties who are
 185 not present shall be summoned to appear as provided in § 16.1-263.

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

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

190 **§ 16.1-278.2. Abused, neglected, or abandoned children or children without parental care.**

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

203 If a child is found to be (a) abused or neglected; (b) at risk of being abused or neglected by a parent
 204 or custodian who has been adjudicated as having abused or neglected another child in his care; or (c)
 205 abandoned by his parent or other custodian, or without parental care and guardianship because of his
 206 parent's absence or physical or mental incapacity, the juvenile court or the circuit court may make any
 207 of the following orders of disposition to protect the welfare of the child:

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

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

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

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

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

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

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

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

235 c. The local board of social services of the county or city in which the court has jurisdiction or, at
 236 the discretion of the court, to the local board of the county or city in which the child has residence if
 237 other than the county or city in which the court has jurisdiction. The local board shall accept the child
 238 for care and custody, provided that it has been given reasonable notice of the pendency of the case and
 239 an opportunity to be heard. However, in an emergency in the county or city in which the court has

240 jurisdiction, the local board may be required to accept a child for a period not to exceed 14 days
 241 without prior notice or an opportunity to be heard if the judge entering the placement order describes
 242 the emergency and the need for such temporary placement in the order. Nothing in this section shall
 243 prohibit the commitment of a child to any local board of social services in the Commonwealth when the
 244 local board consents to the commitment. The board to which the child is committed shall have the final
 245 authority to determine the appropriate placement for the child.

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

250 *A finding by the court that reasonable efforts were made to prevent removal of the child from his*
 251 *home shall not be required if the court finds that (i) the residual parental rights of the parent regarding*
 252 *a sibling of the child have previously been involuntarily terminated; (ii) the parent has been convicted*
 253 *of an offense under the laws of the Commonwealth or a substantially similar law of any other state, the*
 254 *United States, or any foreign jurisdiction that constitutes murder or voluntary manslaughter, or a felony*
 255 *attempt, conspiracy, or solicitation to commit any such offense, if the victim of the offense was a child*
 256 *of the parent, a child with whom the parent resided at the time such offense occurred, or the other*
 257 *parent of the child; (iii) the parent has been convicted of an offense under the laws of the*
 258 *Commonwealth or a substantially similar law of any other state, the United States, or any foreign*
 259 *jurisdiction that constitutes felony assault resulting in serious bodily injury or felony bodily wounding*
 260 *resulting in serious bodily injury or felony sexual assault, if the victim of the offense was a child of the*
 261 *parent or a child with whom the parent resided at the time of such offense; or (iv) on the basis of clear*
 262 *and convincing evidence, the parent has subjected any child to aggravated circumstances, or abandoned*
 263 *a child under circumstances that would justify the termination of residual parental rights pursuant to*
 264 *subsection D of § 16.1-283.*

265 *As used in this section:*

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

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

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

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

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

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

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

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

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

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

300 **§ 16.1-278.4. Children in need of services.**

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

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

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

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

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

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

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

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

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

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

333 c. The local board of social services of the county or city in which the court has jurisdiction or, at
334 the discretion of the court, to the local board of the county or city in which the child has residence if
335 other than the county or city in which the court has jurisdiction. The local board shall accept the child
336 for care and custody, provided that it has been given reasonable notice of the pendency of the case and
337 an opportunity to be heard. However, in an emergency in the county or city in which the court has
338 jurisdiction, the local board may be required to accept a child for a period not to exceed fourteen days
339 without prior notice or an opportunity to be heard if the judge entering the placement order describes
340 the emergency and the need for such temporary placement in the order. Nothing in this subdivision shall
341 prohibit the commitment of a child to any local board of social services in the Commonwealth when the
342 local board consents to the commitment. The board to which the child is committed shall have the final
343 authority to determine the appropriate placement for the child.

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

348 *A finding by the court that reasonable efforts were made to prevent removal of the child from his*
349 *home shall not be required if the court finds that (i) the residual parental rights of the parent regarding*
350 *a sibling of the child have previously been involuntarily terminated; (ii) the parent has been convicted*
351 *of an offense under the laws of the Commonwealth or a substantially similar law of any other state, the*
352 *United States, or any foreign jurisdiction that constitutes murder or voluntary manslaughter, or a felony*
353 *attempt, conspiracy, or solicitation to commit any such offense, if the victim of the offense was a child*
354 *of the parent, a child with whom the parent resided at the time such offense occurred, or the other*
355 *parent of the child; (iii) the parent has been convicted of an offense under the laws of the*
356 *Commonwealth or a substantially similar law of any other state, the United States, or any foreign*
357 *jurisdiction that constitutes felony assault resulting in serious bodily injury or felony bodily wounding*
358 *resulting in serious bodily injury or felony sexual assault, if the victim of the offense was a child of the*
359 *parent or a child with whom the parent resided at the time of such offense; or (iv) on the basis of clear*
360 *and convincing evidence, the parent has subjected any child to aggravated circumstances, or abandoned*
361 *a child under circumstances that would justify the termination of residual parental rights pursuant to*

362 subsection D of § 16.1-283.

363 As used in this section:

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

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

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

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

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

378 **§ 16.1-282.1. Permanency planning hearing for children in foster care.**

379 A. In the case of a child who was the subject of a foster care plan filed with the court pursuant to
380 § 16.1-281, a permanency planning hearing shall be held within 10 months of the dispositional hearing
381 at which the foster care plan pursuant to § 16.1-281 was reviewed if the child (a) was placed through an
382 agreement between the parents or guardians and the local board of social services where legal custody
383 remains with the parents or guardians and such agreement has not been dissolved by court order; or (b)
384 is under the legal custody of a local board of social services or a child welfare agency and has not had
385 a petition to terminate parental rights filed on the child's behalf, has not been placed in permanent foster
386 care, or is age 16 or over and the plan for the child is not independent living. The board or child
387 welfare agency shall file a petition for a permanency planning hearing 30 days prior to the date of the
388 permanency planning hearing scheduled by the court. The purpose of this hearing is to establish a
389 permanent goal for the child and either to achieve the permanent goal or to defer such action through
390 the approval of an interim plan for the child.

391 To achieve the permanent goal, the petition for a permanency planning hearing shall seek to (i)
392 transfer the custody of the child to his prior family, or dissolve the board's placement agreement and
393 return the child to his prior family; (ii) transfer custody of the child to a relative other than the child's
394 prior family, subject to the provisions of subsection A1; (iii) terminate residual parental rights pursuant
395 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
396 pursuant to § 63.2-908; (v) if the child has been admitted to the United States as a refugee or asylee and
397 has attained the age of 16 years or older and the plan is independent living, direct the board or agency
398 to provide the child with services to transition from foster care; or (vi) place a child who is 16 years of
399 age or older in another planned permanent living arrangement in accordance with the provisions of
400 subsection A2. In cases in which a foster care plan approved prior to July 1, 2011, includes independent
401 living as the goal for a child who is not admitted to the United States as an asylee or refugee, the
402 petition shall direct the board or agency to provide the child with services to transition from foster care.

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

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

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

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

426 1. The board or child welfare agency shall petition for alternative (vi) of subsection A only if the
427 child has a severe and chronic emotional, physical or neurological disabling condition for which the
428 child requires long-term residential treatment; and the board or child welfare agency has thoroughly
429 investigated the feasibility of the alternatives listed in clauses (i) through (v) of subsection A and
430 determined that none of those alternatives is in the best interests of the child. In a foster care plan filed
431 with the petition pursuant to this section, the board or agency shall document the following: (i) the
432 investigation conducted of the placement alternatives listed in clauses (i) through (v) of subsection A
433 and why each of these is not currently in the best interest of the child; (ii) at least one compelling
434 reason why none of the alternatives listed in clauses (i) through (v) is achievable for the child at the
435 time placement in another planned permanent living arrangement is selected as the permanent goal for
436 the child; (iii) the identity of the long-term residential treatment service provider; (iv) the nature of the
437 child's disability; (v) the anticipated length of time required for the child's treatment; and (vi) the status
438 of the child's eligibility for admission and long-term treatment. The court shall ensure that the local
439 department has documentation of the intensive, ongoing, and, as of the date of the hearing, unsuccessful
440 efforts made to return the child home or secure a placement for the child with a fit and willing relative,
441 including adult siblings, or an adoptive parent, including through efforts that utilize search technology,
442 including social media, to find the child's biological family members. The court shall ask the child about
443 the child's desired permanency outcome and make a judicial determination, accompanied by an
444 explanation of the reasons that the alternatives listed in clauses (i) through (iii) of subsection A continue
445 to not be in the best interest of the child.

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

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

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

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

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

481 1. The court shall ensure that the local department has documentation of the intensive, ongoing, and,
482 as of the date of the hearing, unsuccessful efforts made to return the child home or secure a placement
483 for the child with a fit and willing relative, including adult siblings, or an adoptive parent, including

484 through efforts that utilize search technology, including social media, to find the child's biological family
485 members.

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

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

491 1. The board or child welfare agency shall petition for approval of an interim plan only if the board
492 or child welfare agency has thoroughly investigated the feasibility of the alternatives listed in clauses (i)
493 through (v) of subsection A and determined that none of those alternatives is in the best interest of the
494 child. If the board or agency petitions for approval of an interim plan, such plan may be approved by
495 the court for a maximum period of six months. The board or agency shall also file a foster care plan
496 that (i) identifies a permanent goal for the child that corresponds with one of the alternatives specified in
497 clauses (i) through (v) of subsection A; (ii) includes provisions for accomplishing the permanent goal
498 within six months; and (iii) summarizes the investigation conducted of the alternatives listed in clauses
499 (i) through (v) of subsection A and why achieving each of these is not in the best interest of the child at
500 this time. *The foster care plan shall describe the child's placement, including the in-state and*
501 *out-of-state placement options and whether the child's placement is in state or out of state. If the child's*
502 *placement is out of state, the foster care plan shall provide the reason why the out-of-state placement is*
503 *appropriate and in the best interests of the child.*

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

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

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

514 3. Upon approval of an interim plan, the court shall schedule a hearing to be held within six months
515 to determine that the permanent goal is accomplished and to enter an order consistent with alternative
516 (i), (ii), (iii), (iv), or (v) of subsection A. All parties present at the initial permanency planning hearing
517 shall be given notice of the date scheduled for the second permanency planning hearing. Parties not
518 present shall be summoned to appear as provided in § 16.1-263. Otherwise, subsection A shall govern
519 the scheduling and notice for such hearings.

520 C. *In each permanency planning hearing and in any hearing regarding the transition of the child*
521 *from foster care to independent living, the court shall consult with the child in an age-appropriate*
522 *manner regarding the proposed permanency plan or transition plan for the child, unless the court finds*
523 *that such consultation is not in the best interests of the child.*

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

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

533 **§ 63.2-910.2. Petition to terminate parental rights.**

534 A. *If a child has been in foster care under the responsibility of a local board for 15 of the most*
535 *recent 22 months or if the parent of a child in foster care has been convicted of an offense under the*
536 *laws of the Commonwealth or a substantially similar law of any other state, the United States, or any*
537 *foreign jurisdiction that constitutes (i) murder or voluntary manslaughter, or a felony attempt,*
538 *conspiracy, or solicitation to commit any such offense, if the victim of the offense was a child of the*
539 *parent, a child with whom the parent resided at the time such offense occurred, or the other parent of*
540 *the child; or (ii) felony assault resulting in serious bodily injury or felony bodily wounding resulting in*
541 *serious bodily injury or felony sexual assault, if the victim of the offense was a child of the parent or a*
542 *child with whom the parent resided at the time of such offense, the local board shall file a petition to*
543 *terminate the parental rights of the child's parents and concurrently identify, recruit, process, and*
544 *approve a qualified family for adoption of the child, unless:*

- 545 1. *At the option of the local board, the child is being cared for by a relative;*
546 2. *The local board has determined that the filing of such a petition would not be in the best interests*
547 *of the child and has documented a compelling reason for such determination in the child's foster care*
548 *plan; or*
549 3. *The local board has not provided to the family of the child, within the time period established in*
550 *the child's foster care plan, services deemed necessary for the child's safe return home or has not*
551 *otherwise made reasonable efforts to return the child home, if required under § 473(a)(15)(B)(ii) of Title*
552 *IV-E of the Social Security Act (42 U.S.C. § 673).*
- 553 B. *As used in this section, "serious bodily injury" means bodily injury that involves substantial risk*
554 *of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment*
555 *of the function of a bodily member, organ, or mental faculty.*