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## HOUSE BILL NO. 1604

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice  
on January 20, 2017)

(Patron Prior to Substitute—Delegate Bell, Richard P.)

A BILL 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.

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.

"Severe abuse" or "severe sexual abuse" may include an act or omission that occurred only once but

60 otherwise meets the definition of "aggravated circumstances."

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

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

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

70 **§ 16.1-252. Preliminary removal order; hearing.**

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

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

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

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

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

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

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

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

110 *The petitioner shall not be required by the court to make reasonable efforts to prevent removal of*  
111 *the child from his home if the court finds that (i) the residual parental rights of the parent regarding a*  
112 *sibling of the child have previously been involuntarily terminated; (ii) the parent has been convicted of*  
113 *an offense under the laws of the Commonwealth or a substantially similar law of any other state, the*  
114 *United States, or any foreign jurisdiction that constitutes murder or voluntary manslaughter, or a felony*  
115 *attempt, conspiracy, or solicitation to commit any such offense, if the victim of the offense was a child*  
116 *of the parent, a child with whom the parent resided at the time such offense occurred, or the other*  
117 *parent of the child; (iii) the parent has been convicted of an offense under the laws of the*  
118 *Commonwealth or a substantially similar law of any other state, the United States, or any foreign*  
119 *jurisdiction that constitutes felony assault resulting in serious bodily injury or felony bodily wounding*  
120 *resulting in serious bodily injury or felony sexual assault, if the victim of the offense was a child of the*  
121 *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.

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

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

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

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

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

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

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

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

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

H. If the preliminary removal order includes a finding of abuse or neglect and the child is removed from his home or a preliminary protective order is issued, a dispositional hearing shall be held pursuant to § 16.1-278.2. The dispositional hearing shall be scheduled at the time of the preliminary removal

183 order hearing and shall be held within 60 days of the preliminary removal order hearing. If an  
184 adjudicatory hearing is requested pursuant to subsection G, the dispositional hearing shall nonetheless be  
185 scheduled at the initial preliminary removal order hearing. All parties present at the preliminary removal  
186 order hearing shall be given notice of the date scheduled for the dispositional hearing; parties who are  
187 not present shall be summoned to appear as provided in § 16.1-263.

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

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

192 **§ 16.1-278.2. Abused, neglected, or abandoned children or children without parental care.**

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

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

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

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

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

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

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

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

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

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

237 c. The local board of social services of the county or city in which the court has jurisdiction or, at  
238 the discretion of the court, to the local board of the county or city in which the child has residence if  
239 other than the county or city in which the court has jurisdiction. The local board shall accept the child  
240 for care and custody, provided that it has been given reasonable notice of the pendency of the case and  
241 an opportunity to be heard. However, in an emergency in the county or city in which the court has  
242 jurisdiction, the local board may be required to accept a child for a period not to exceed 14 days  
243 without prior notice or an opportunity to be heard if the judge entering the placement order describes  
244 the emergency and the need for such temporary placement in the order. Nothing in this section shall

prohibit the commitment of a child to any local board of social services in the Commonwealth when the local board consents to the commitment. The board to which the child is committed shall have the final authority to determine the appropriate placement for the child.

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

*A finding by the court that reasonable efforts were made to prevent removal of the child from his home shall not be required 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.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6. Transfer legal custody to any of the following:

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

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

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

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

*A finding by the court that reasonable efforts were made to prevent removal of the child from his home shall not be required 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.

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

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

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

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

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

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

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

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

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

1. The board or child welfare agency shall petition for alternative (vi) of subsection A only if the

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

A. *If a child has been in foster care under the responsibility of a local board for 15 of the most recent 22 months or if the parent of a child in foster care 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 (i) murder or voluntary manslaughter, or a felony attempt, conspiracy, or solicitation to commit any such offense, if the victim of the offense was a child of the parent, a child with whom the parent resided at the time such offense occurred, or the other parent of the child; or (ii) 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, the local board shall file a petition to terminate the parental rights of the child's parents and concurrently identify, recruit, process, and approve a qualified family for adoption of the child, unless:*

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

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

3. *The local board has not provided to the family of the child, within the time period established in*

552 *the child's foster care plan, services deemed necessary for the child's safe return home or has not*  
553 *otherwise made reasonable efforts to return the child home, if required under § 473(a)(15)(B)(ii) of Title*  
554 *IV-E of the Social Security Act (42 U.S.C. § 673).*

555 *B. As used in this section, "serious bodily injury" means bodily injury that involves substantial risk*  
556 *of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment*  
557 *of the function of a bodily member, organ, or mental faculty.*