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HOUSE BILL NO. 1962

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Health, Welfare and Institutions
on January 28, 2021)

(Patron Prior to Substitute—Delegate Gooditis)

A BILL to amend and reenact §§ 16.1-281, 16.1-283, 63.2-906, and 63.2-910.2 of the Code of Virginia, relating to foster care; termination of parental rights; relatives and fictive kin.

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-281, 16.1-283, 63.2-906, and 63.2-910.2 of the Code of Virginia are amended and reenacted as follows:

§ 16.1-281. Foster care plan.

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

The representatives of such department or agency shall involve in the development of the plan the child's parent(s) in the development of the plan, except when parental rights have been terminated or the local department of social services or child welfare agency has made diligent efforts to locate the parent(s) and such parent(s) cannot be located, relatives and fictive kin who are interested in the child's welfare, and any other person or persons standing in loco parentis at the time the board or child welfare agency obtained custody or the board placed the child. The representatives of such department or agency shall involve a child who is 14 12 years of age or older in the development of the plan and, at the option of such child, up to two members of the case planning team who are chosen by the child and who are not a foster parent of, or caseworker for, the child. A child under 14 12 years of age may be involved in the development of the plan if such involvement is consistent with the best interests of the child. In cases where either the parent(s) or child is not involved in the development of the plan, the department or agency shall include in the plan a full description of the reasons therefor.

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

B. The foster care plan shall describe in writing (i) the programs, care, services and other support which will be offered to the child and his parents and other prior custodians; (ii) the participation and conduct which will be sought from the child's parents and other prior custodians; (iii) the visitation and other contacts which will be permitted between the child and his parents and other prior custodians, and between the child and his siblings; (iv) the nature of the placement or placements which will be provided for the child; (v) for school-age children, the school placement of the child; (vi) for children 14 years of age and older, the child's needs and goals in the areas of counseling, education, housing, employment, and money management skills development, along with specific independent living services that will be provided to the child to help him reach these goals; and (vii) for children 14 years and older, an explanation of the child's rights with respect to education, health, visitation, court participation, and the right to stay safe and avoid exploitation. The foster care plan shall include all documentation specified in 42 U.S.C. § 675(5)(1) and § 63.2-905.3. If the child in foster care is placed in a qualified residential treatment program as defined in § 16.1-228, the foster care plan shall also include the report and documentation set forth in subsection A of § 63.2-906.1. If the child in foster care is pregnant or is the parent of a child, the foster care plan shall also include (a) a list of the services and programs to be provided to or on behalf of the child to ensure parental readiness or capability and (b) a description of the foster care prevention strategy for any child born to the child in foster care. In cases in which a foster care plan approved prior to July 1, 2011, identifies independent living as the goal for the child, and in cases involving children admitted to the United States as refugees or asylees who are 16 years of age or older and for whom the goal is independent living, the plan shall also describe the programs and services which will help the child prepare for the transition from foster care to independent living. If consistent with the child's health and safety, the plan shall be designed to support reasonable efforts

60 which lead to the return of the child to his parents or other prior custodians within the shortest
61 practicable time which shall be specified in the plan. The child's health and safety shall be the
62 paramount concern of the court and the agency throughout the placement, case planning, service
63 provision and review process. For a child 14 years of age and older, the plan shall include a signed
64 acknowledgment by the child that the child has received a copy of the plan and that the rights contained
65 therein have been explained to the child in an age-appropriate manner.

66 If the department or child welfare agency concludes that it is not reasonably likely that the child can
67 be returned to his prior family within a practicable time, consistent with the best interests of the child,
68 the department, child welfare agency or team shall (1) include a full description of the reasons for this
69 conclusion; (2) provide information on the opportunities for placing the child with a relative or in an
70 adoptive home; (3) design the plan to lead to the child's successful placement with a relative if a
71 ~~subsequent transfer of custody to the relative is planned, or fictive kin for the purpose of establishing~~
72 *eligibility for the Kinship Guardianship Assistance program established pursuant to § 63.2-1305* or in an
73 adoptive home within the shortest practicable time; and (4) if neither of such placements is feasible,
74 explain why permanent foster care is the plan for the child or independent living is the plan for the
75 child in cases involving children admitted to the United States as refugees or asylees who are 16 years
76 of age or older and for whom the goal is independent living.

77 The local board or other child welfare agency having custody of the child shall not be required by
78 the court to make reasonable efforts to reunite the child with a parent if the court finds that (A) the
79 residual parental rights of the parent regarding a sibling of the child have previously been involuntarily
80 terminated; (B) the parent has been convicted of an offense under the laws of the Commonwealth or a
81 substantially similar law of any other state, the United States or any foreign jurisdiction that constitutes
82 murder or voluntary manslaughter, or a felony attempt, conspiracy or solicitation to commit any such
83 offense, if the victim of the offense was a child of the parent, a child with whom the parent resided at
84 the time such offense occurred or the other parent of the child; (C) the parent has been convicted of an
85 offense under the laws of the Commonwealth or a substantially similar law of any other state, the
86 United States or any foreign jurisdiction that constitutes felony assault resulting in serious bodily injury
87 or felony bodily wounding resulting in serious bodily injury or felony sexual assault, if the victim of the
88 offense was a child of the parent or a child with whom the parent resided at the time of such offense; or
89 (D) based on clear and convincing evidence, the parent has subjected any child to aggravated
90 circumstances, or abandoned a child under circumstances which would justify the termination of residual
91 parental rights pursuant to subsection D of § 16.1-283.

92 As used in this section:

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

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

100 "Independent living" has the meaning set forth in § 63.2-100.

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

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

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

108 C. A copy of the entire foster care plan shall be sent by the court to the child, if he is 12 years of
109 age or older; the guardian ad litem for the child, the attorney for the child's parents or for any other
110 person standing in loco parentis at the time the board or child welfare agency obtained custody or the
111 board placed the child, to the parents or other person standing in loco parentis, and such other persons
112 as appear to the court to have a proper interest in the plan. However, a copy of the plan shall not be
113 sent to a parent whose parental rights regarding the child have been terminated. A copy of the plan shall
114 be sent by the court to the foster parents. A hearing shall be held for the purpose of reviewing and
115 approving the foster care plan. The hearing shall be held within 60 days of (i) the child's initial foster
116 care placement, if the child was placed through an agreement between the parents or guardians and the
117 local department of social services or a child welfare agency; (ii) the original preliminary removal order
118 hearing, if the child was placed in foster care pursuant to § 16.1-252; (iii) the hearing on the petition for
119 relief of custody, if the child was placed in foster care pursuant to § 16.1-277.02; or (iv) the
120 dispositional hearing at which the child was placed in foster care and an order was entered pursuant to
121 § 16.1-278.2, 16.1-278.3, 16.1-278.4, 16.1-278.5, 16.1-278.6, or 16.1-278.8. However, the hearing shall

be held in accordance with the provisions of § 16.1-277.01 with a petition for approval of an entrustment agreement. If the judge makes any revision in any part of the foster care plan, a copy of the changes shall be sent by the court to all persons who received a copy of the original of that part of the plan.

C1. 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 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.

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

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

E. 1. In cases in which a child is placed by the local board of social services or a licensed child-placing agency in a qualified residential treatment program as defined in § 16.1-228, a hearing shall be held within 60 days of such placement. Prior to such hearing, the qualified residential treatment program shall file with the court the assessment report prepared pursuant to clause (viii) of the definition of qualified residential treatment program set forth in § 16.1-228. The court shall (i) consider the assessment report prepared by a qualified individual pursuant to clause (viii) of the definition of qualified residential treatment program set forth in § 16.1-228 and submitted pursuant to this subsection; (ii) consider the report and documentation required under subsection A of § 63.2-906.1 and filed with the foster care or permanency plan; (iii) determine whether the needs of the child can be met through placement in a foster home or, if not, whether placement in the qualified residential treatment program would provide the most effective and appropriate level of care for the child in the least restrictive environment and be consistent with the short-term and long-term goals established for the child in his foster care or permanency plan; and (iv) approve or deny the placement of the child in the qualified residential treatment program. The hearing required by this subsection may be held in conjunction with a dispositional hearing held pursuant to subsection C, a foster care review hearing held pursuant to § 16.1-282, a permanency planning hearing held pursuant to § 16.1-282.1, or an annual foster care review hearing held pursuant to § 16.1-282.2, provided that such hearing has already been scheduled by the court and is held within 60 days of the child's placement in the qualified residential treatment program.

2. If the child remains placed in the qualified residential treatment program during any subsequent hearings held pursuant to subsection C or § 16.1-282, 16.1-282.1, or 16.1-282.2, the local board of social services or licensed child-placing agency shall present evidence at such hearing that demonstrates (i) that the ongoing assessment of the child's strengths and needs continues to support the determination that the child's needs cannot be met through placement in a foster home and that the child's placement in the qualified residential treatment program provides the most effective and appropriate level of care for the child in the least restrictive environment and is consistent with the short-term and long-term goals established for the child in his foster care or permanency plan; (ii) the specific treatment or service needs of the child that will be met in the qualified residential treatment program and the length of time the child is expected to need such treatment or services; and (iii) the efforts made by the local board of social services to prepare the child to return home or to be placed with a fit and willing relative, legal guardian, or adoptive parent, or in a foster home. The court shall review such evidence and approve or deny the continued placement of the child in the qualified residential treatment program.

F. At the conclusion of the hearing at which the initial foster care plan is reviewed, the court shall schedule a foster care review hearing to be held within four months in accordance with § 16.1-282.

183 However, if an order is entered pursuant to subsection C2, the court shall schedule a foster care review
184 hearing to be held within 12 months of the entry of such order in accordance with the provisions of
185 § 16.1-282.2. Parties who are present at the hearing at which the initial foster care plan is reviewed shall
186 be given notice of the date set for the foster care review hearing and parties who are not present shall
187 be summoned as provided in § 16.1-263.

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

193 **§ 16.1-283. Termination of residual parental rights.**

194 A. The residual parental rights of a parent or parents may be terminated by the court as hereinafter
195 provided in a separate proceeding if the petition specifically requests such relief. No petition seeking
196 termination of residual parental rights shall be accepted by the court prior to the filing of a foster care
197 plan, pursuant to § 16.1-281, which documents termination of residual parental rights as being in the
198 best interests of the child. The court may hear and adjudicate a petition for termination of parental rights
199 in the same proceeding in which the court has approved a foster care plan which documents that
200 termination is in the best interests of the child. The court may terminate the residual parental rights of
201 one parent without affecting the rights of the other parent. The local board of social services or a
202 licensed child-placing agency need not have identified an available and eligible family to adopt a child
203 for whom termination of parental rights is being sought prior to the entry of an order terminating
204 parental rights.

205 Any order terminating residual parental rights shall be accompanied by an order continuing or
206 granting custody to a local board of social services or to a licensed child-placing agency or ~~granting~~
207 ~~transferring~~ custody or guardianship to a person with a legitimate interest, ~~subject to the provisions of~~
208 ~~subsection A1.~~ However, in such cases the court shall give a consideration to granting custody to a
209 person with a legitimate interest, *and if custody is not granted to a person with a legitimate interest, the*
210 *judge shall communicate to the parties the basis for such decision either orally or in writing.* An order
211 continuing or granting custody to a local board of social services or to a licensed child-placing agency
212 shall indicate whether that board or agency shall have the authority to place the child for adoption and
213 consent thereto.

214 The summons shall be served upon the parent or parents and the other parties specified in
215 § 16.1-263. Written notice of the hearing shall also be provided to the foster parents of the child, a
216 relative providing care for the child, and any preadoptive parents for the child informing them that they
217 may appear as witnesses at the hearing to give testimony and otherwise participate in the proceeding.
218 The persons entitled to notice and an opportunity to be heard need not be made parties to the
219 proceedings. The summons or notice of hearing shall clearly state the consequences of a termination of
220 residual parental rights. Service shall be made pursuant to § 16.1-264.

221 A1. Any order transferring custody of the child to a person with a legitimate interest pursuant to
222 subsection A shall be entered only upon a finding, based upon a preponderance of the evidence, that
223 such person is one who, after an investigation as directed by the court, (i) is found by the court to be
224 willing and qualified to receive and care for the child; (ii) is willing to have a positive, continuous
225 relationship with the child; (iii) is committed to providing a permanent, suitable home for the child; and
226 (iv) is willing and has the ability to protect the child from abuse and neglect; and the order shall so
227 state. The court's order transferring custody to a person with a legitimate interest should further provide,
228 as appropriate, for any terms and conditions ~~which~~ *that* would promote the child's interest and welfare.

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

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

236 2. It is not reasonably likely that the conditions which resulted in such neglect or abuse can be
237 substantially corrected or eliminated so as to allow the child's safe return to his parent or parents within
238 a reasonable period of time. In making this determination, the court shall take into consideration the
239 efforts made to rehabilitate the parent or parents by any public or private social, medical, mental health
240 or other rehabilitative agencies prior to the child's initial placement in foster care.

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

243 a. The parent or parents have a mental or emotional illness or intellectual disability of such severity
244 that there is no reasonable expectation that such parent will be able to undertake responsibility for the

care needed by the child in accordance with his age and stage of development;

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

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

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

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

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

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

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

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

3. Diligent efforts have been made to locate the child's parent or parents, *guardian, or relatives* without avail.

E. The residual parental rights of a parent or parents of a child who is in the custody of a local board or licensed child-placing agency may be terminated by the court if the court finds, based upon clear and convincing evidence, that it is in the best interests of the child and that (i) the residual parental rights of the parent regarding a sibling of the child have previously been involuntarily terminated; (ii) the parent has been convicted of an offense under the laws of 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) the parent has subjected any child to aggravated circumstances.

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 a child with whom the parent resided at the time such conduct occurred, including the failure to protect such a child from such conduct, which conduct or failure to protect: (i) evinces a wanton or depraved indifference to human life, or (ii) has resulted in the death of such a child or in serious bodily injury to such a child.

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

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

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

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

317 F. The local board or licensed child-placing agency to which authority is given to place the child for
318 adoption and consent thereto after an order terminating parental rights is entered shall file a written
319 Adoption Progress Report with the juvenile court on the progress being made to place the child in an
320 adoptive home. The report shall be filed with the court every six months from the date of the final order
321 terminating parental rights until a final order of adoption is entered on behalf of the child in the circuit
322 court. At the conclusion of the hearing at which termination of parental rights is ordered and authority is
323 given to the local board or licensed child-placing agency to place the child for adoption, the juvenile
324 court shall schedule a date by which the board or agency shall file the first written Adoption Progress
325 Report required by this section. A copy of the Adoption Progress Report shall be sent by the court to
326 the guardian ad litem for the child. The court may schedule a hearing on the report with or without the
327 request of a party.

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

334 **§ 63.2-906. Foster care plans; permissible plan goals; court review of foster children.**

335 A. Each child who is committed or entrusted to the care of a local board or to a licensed
336 child-placing agency or who is placed through an agreement between a local board and the parent,
337 parents or guardians, where legal custody remains with the parent, parents or guardians, shall have a
338 foster care plan prepared by the local department, the child welfare agency, or the family assessment
339 and planning team established pursuant to § 2.2-5207, as specified in § 16.1-281. The representatives of
340 such local department, child welfare agency, or team shall (i) *involve in the development of the plan* the
341 child's parent(s) ~~in the development of the plan~~, except when parental rights have been terminated or the
342 local department or child welfare agency has made diligent efforts to locate the parent(s) and such
343 parent(s) cannot be located, *relatives and fictive kin who are interested in the child's welfare*, and any
344 other person or persons standing in loco parentis at the time the board or child welfare agency obtained
345 custody or the board or the child welfare agency placed the child and (ii) for any child for whom
346 reunification remains the goal, meet and consult with the child's parent(s) or other person standing in
347 loco parentis, provided that the parent(s) or other person has been located and parental rights have not
348 been terminated, no less than once every two months and at all critical decision-making points
349 throughout the child's foster care case. If reunification is not the goal for the child, the local board, child
350 welfare agency, or team shall provide information to the child's parents regarding the parents' option to
351 voluntarily terminate parental rights, unless a parent's parental rights have been terminated. The
352 representatives of such department, child welfare agency, or team shall involve the child in the
353 development of the plan; if (a) *the child is 12 years of age or older or (b) the child is younger than 12*
354 *years of age* and such involvement is consistent with the best interests of the child. In cases where
355 either the parent(s) or child is not involved in the development of the plan, the department, child welfare
356 agency, or team shall include in the plan a full description of the reasons therefor in accordance with
357 § 16.1-281.

358 A court may place a child in the care and custody of ~~(a)~~ (1) a public agency in accordance with
359 § 16.1-251 or 16.1-252; ~~and (b)~~ or (2) a public or licensed private child-placing agency in accordance
360 with § 16.1-278.2, 16.1-278.4, 16.1-278.5, 16.1-278.6, or 16.1-278.8. Children may be placed by
361 voluntary relinquishment in the care and custody of a public or private agency in accordance with
362 § 16.1-277.01 or §§ 16.1-277.02 and 16.1-278.3. Children may be placed through an agreement where
363 legal custody remains with the parent, parents or guardians in accordance with §§ 63.2-900 and
364 63.2-903, or § 2.2-5208.

365 B. Each child in foster care shall be assigned a permanent plan goal to be reviewed and approved by
366 the juvenile and domestic relations district court having jurisdiction of the child's case. Permissible plan
367 goals are to:

1. Transfer custody of the child to his prior family;
 2. Transfer custody of the child to a relative other than his prior family or to fictive kin for the purpose of establishing eligibility for the Kinship Guardianship Assistance program pursuant to § 63.2-1305;
 3. Finalize an adoption of the child;
 4. Place a child who is 16 years of age or older in permanent foster care;
 5. Transition to independent living if, and only if, the child is admitted to the United States as a refugee or asylee; or
 6. Place a child who is 16 years of age or older in another planned permanent living arrangement in accordance with subsection A2 of § 16.1-282.1.
- C. Each child in foster care shall be subject to the permanency planning and review procedures established in §§ 16.1-281, 16.1-282, and 16.1-282.1.
- § 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, *such as (i) a relative has shown the will and ability to care for the child or (ii) the parent's incarceration or participation in a court-ordered residential substance abuse treatment program constitutes the primary factor in the child's placement in foster care, and termination of parental rights is not in the child's best interests;* or
 3. The local board has not provided to the family of the child, within the time period established in the child's foster care plan, services deemed necessary for the child's safe return home or has not otherwise made reasonable efforts to return the child home, if required under § 473(a)(15)(B)(ii) of Title IV-E of the Social Security Act (42 U.S.C. § 673).
- B. As used in this section, "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.