

VIRGINIA ACTS OF ASSEMBLY -- 1994 SESSION

CHAPTER 865

An Act to amend and reenact § 2.1-757 as it is currently effective and as it may become effective, §§ 2.1-758, 16.1-228 as it is currently effective and as it may become effective, § 16.1-278.2 as it is currently effective and as it may become effective, § 16.1-278.4 as it is currently effective and as it may become effective, § 16.1-281 as it is currently effective and as it may become effective, §§ 16.1-282, 63.1-55.8, 63.1-56 as it is currently effective and as it may become effective, §§ 63.1-56.2, 63.1-56.3, 63.1-57, 63.1-67.2, 63.1-195, and 63.1-204 as it is currently effective and as it may become effective, of the Code of Virginia, relating to placement of children.

[S 557]

Approved April 20, 1994

Be it enacted by the General Assembly of Virginia:

1. That § 2.1-757 as it is currently effective and as it may become effective, §§ 2.1-758, 16.1-228 as it is currently effective and as it may become effective, § 16.1-278.2 as it is currently effective and as it may become effective, § 16.1-278.4 as it is currently effective and as it may become effective, § 16.1-281 as it is currently effective and as it may become effective, §§ 16.1-282, 63.1-55.8, 63.1-56 as it is currently effective and as it may become effective, §§ 63.1-56.2, 63.1-56.3, 63.1-57, 63.1-67.2, 63.1-195, and 63.1-204 as it is currently effective and as it may become effective, of the Code of Virginia are amended and reenacted as follows:

§ 2.1-757. State pool of funds.

A. Effective July 1, 1993, there is established a state pool of funds to be allocated to community policy and management teams in accordance with the appropriations act and appropriate state regulations. These funds, as made available by the General Assembly, shall be expended for public or private nonresidential or residential services for troubled youths and families.

The purposes of this system of funding are:

1. To place authority for making program and funding decisions at the community level;
2. To consolidate categorical agency funding and institute community responsibility for the provision of services;
3. To provide greater flexibility in the use of funds to purchase services based on the strengths and needs of youths and families; and
4. To reduce disparity in accessing services and to reduce inadvertent fiscal incentives for serving children according to differing required local match rates for funding streams.

B. The state pool shall consist of funds which serve the target populations identified in subdivisions 1 through 5 below in the purchase of residential and nonresidential services for children. References to funding sources and current placement authority for the targeted populations of children are for the purpose of accounting for the funds in the pool. It is not intended that children be categorized by individual funding streams in order to access services. The target population shall be the following:

1. Children placed for purposes of special education in approved private school educational programs, previously funded by the Department of Education through private tuition assistance;
2. Handicapped children placed by local social services agencies or the Department of Youth and Family Services in private residential facilities or across jurisdictional lines in private, special education day schools, if the individualized education program indicates such school is the appropriate placement while living in foster homes or child-caring facilities, previously funded by the Department of Education through the Interagency Assistance Fund for Noneducational Placements of Handicapped Children;
3. Children for whom foster care services, as defined by § 63.1-55.8, are being provided to prevent foster care placements, and children *placed through parental agreements*, entrusted to local social service agencies by their parents or guardians or committed to the agencies by any court of competent jurisdiction for purposes of placement in suitable family homes, child-caring institutions, residential facilities or independent living arrangements, as authorized by § 63.1-56;
4. Children placed by a juvenile and domestic relations district court, in accordance with the provisions of § 16.1-286, in a private or locally operated public facility or nonresidential program; and
5. Children committed to the Department of Youth and Family Services and placed by it in a private home or in a public or private facility in accordance with § 66-14.

C. The General Assembly and the governing body of each county and city shall annually appropriate such sums of money as shall be sufficient (i) to provide special education services and foster care services for children identified in subdivisions B 1, B 2 and B 3 of this section and (ii) to meet relevant federal mandates for the provision of these services. The community policy and management team shall anticipate to the best of its ability the number of children for whom such services will be required and reserve funds from its state pool allocation to meet these needs.

D. When a community services board established pursuant to § 37.1-195, local school division, local

social service agency, court service unit, or the Department of Youth and Family Services has referred a child and family to a family assessment and planning team and that team has recommended the proper level of treatment and services needed by that child and family and has determined the child's eligibility for funding for services through the state pool of funds, then the community services board, the local school division, local social services agency, court service unit or Department of Youth and Family Services has met its fiscal responsibility for that child for the services funded through the pool. Each agency shall continue to be responsible for providing services identified in individual family service plans which are within the agency's scope of responsibility and which are funded separately from the state pool.

E. In any matter properly before a court wherein the family assessment and planning team has recommended a level of treatment and services needed by the child and family, the court shall consider the recommendations of the family assessment and planning team. However, the court may make such other disposition as is authorized or required by law, and services ordered pursuant to such disposition shall qualify for funding under this section.

§ 2.1-757. (Delayed effective date) State pool of funds.

A. Effective July 1, 1993, there is established a state pool of funds to be allocated to community policy and management teams in accordance with the appropriations act and appropriate state regulations. These funds, as made available by the General Assembly, shall be expended for public or private nonresidential or residential services for troubled youths and families.

The purposes of this system of funding are:

1. To place authority for making program and funding decisions at the community level;
2. To consolidate categorical agency funding and institute community responsibility for the provision of services;
3. To provide greater flexibility in the use of funds to purchase services based on the strengths and needs of youths and families; and
4. To reduce disparity in accessing services and to reduce inadvertent fiscal incentives for serving children according to differing required local match rates for funding streams.

B. The state pool shall consist of funds which serve the target populations identified in subdivisions 1 through 5 below in the purchase of residential and nonresidential services for children. References to funding sources and current placement authority for the targeted populations of children are for the purpose of accounting for the funds in the pool. It is not intended that children be categorized by individual funding streams in order to access services. The target population shall be the following:

1. Children placed for purposes of special education in approved private school educational programs, previously funded by the Department of Education through private tuition assistance;
2. Handicapped children placed by local social services agencies or the Department of Youth and Family Services in private residential facilities or across jurisdictional lines in private, special education day schools, if the individualized education program indicates such school is the appropriate placement while living in foster homes or child-caring facilities, previously funded by the Department of Education through the Interagency Assistance Fund for Noneducational Placements of Handicapped Children;
3. Children for whom foster care services, as defined by § 63.1-55.8, are being provided to prevent foster care placements, and children *placed through parental agreements*, entrusted to local social service agencies by their parents or guardians or committed to the agencies by any court of competent jurisdiction for purposes of placement in suitable family homes, child-caring institutions, residential facilities or independent living arrangements, as authorized by § 63.1-56;
4. Children placed by a family court, in accordance with the provisions of § 16.1-286, in a private or locally operated public facility or nonresidential program; and
5. Children committed to the Department of Youth and Family Services and placed by it in a private home or in a public or private facility in accordance with § 66-14.

C. The General Assembly and the governing body of each county and city shall annually appropriate such sums of money as shall be sufficient (i) to provide special education services and foster care services for children identified in subdivisions B 1, B 2 and B 3 of this section and (ii) to meet relevant federal mandates for the provision of these services. The community policy and management team shall anticipate to the best of its ability the number of children for whom such services will be required and reserve funds from its state pool allocation to meet these needs.

D. When a community services board established pursuant to § 37.1-195, local school division, local social service agency, court service unit, or the Department of Youth and Family Services has referred a child and family to a family assessment and planning team and that team has recommended the proper level of treatment and services needed by that child and family and has determined the child's eligibility for funding for services through the state pool of funds, then the community services board, the local school division, local social services agency, court service unit or Department of Youth and Family Services has met its fiscal responsibility for that child for the services funded through the pool. Each agency shall continue to be responsible for providing services identified in individual family service plans which are within the agency's scope of responsibility and which are funded separately from the state pool.

E. In any matter properly before a court wherein the family assessment and planning team has recommended a level of treatment and services needed by the child and family, the court shall consider the recommendations of the family assessment and planning team. However, the court may make such other disposition as is authorized or required by law, and services ordered pursuant to such disposition shall qualify for funding under this section.

§ 2.1-758. Eligibility for state pool of funds.

A. In order to be eligible for funding for services through the state pool of funds, a youth, or family with a child, shall meet one or more of the criteria specified in subdivisions 1 through 4 below and shall be determined by policies of the community policy and management team to have access to these funds.

1. The child or youth has emotional or behavior problems which:

a. Have persisted over a significant period of time or, though only in evidence for a short period of time, are of such a critical nature that intervention is warranted;

b. Are significantly disabling and are present in several community settings, such as at home, in school or with peers; and

c. Require services or resources that are unavailable or inaccessible, or that are beyond the normal agency services or routine collaborative processes across agencies, or require coordinated interventions by at least two agencies.

2. The child or youth has emotional or behavior problems, or both, and currently is in, or is at imminent risk of entering, purchased residential care. In addition, the child or youth requires services or resources that are beyond normal agency services or routine collaborative processes across agencies, and requires coordinated services by at least two agencies.

3. The child or youth requires placement for purposes of special education in approved private school educational programs.

4. The child or youth has been *placed in foster care through a parental agreement between a local social services agency or public agency designated by the community policy and management team and his parents or guardians*, entrusted to a local social services agency by his parents or guardian or has been committed to the agency by a court of competent jurisdiction for the purposes of placement as authorized by § 63.1-56.

B. For purposes of determining eligibility for the state pool of funds, "child" or "youth" means (i) a person less than eighteen years of age and (ii) any individual through twenty-one years of age who is otherwise eligible for mandated services of the participating state agencies including special education and foster care services.

§ 16.1-228. Definitions.

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

"Abused or neglected child" means any child:

1. Whose parents or other person responsible for his care creates or inflicts, threatens to create or inflict, or allows to be created or inflicted upon such child a physical or mental injury by other than accidental means, or creates a substantial risk of death, disfigurement or impairment of bodily or mental functions;

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

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

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

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

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

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

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

"Child welfare agency" means a child-placing agency, child-caring institution or independent foster home as defined in § 63.1-195.

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

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

"Child in need of supervision" means:

1. A child who, while subject to compulsory school attendance, is habitually and without justification absent from school, and (i) the child has been offered an adequate opportunity to receive the benefit of any and all educational services and programs that are required to be provided by law and which meet the child's particular educational needs, and (ii) the school system from which the child is absent or other appropriate agency has made a reasonable effort to effect the child's regular attendance without success; or

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

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

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

"Delinquent child" means a child who has committed a delinquent act or an adult who has committed a delinquent act prior to his eighteenth birthday.

"Department" means the Department of Youth and Family Services and "Director" means the administrative head in charge thereof or such of his assistants and subordinates as are designated by him to discharge the duties imposed upon him under this law.

"Family abuse" means any act of violence, including any forceful detention, which results in physical injury or places one in reasonable apprehension of serious bodily injury and which is committed by a person against such person's family or household member.

"Family or household member" means (i) the person's spouse, whether or not he or she resides in the same home with the person, (ii) the person's former spouse, whether or not he or she resides in the same home with the person, (iii) the person's parents, stepparents, children, stepchildren, brothers, sisters, grandparents and grandchildren who reside in the same home with the person, (iv) the person's mother-in-law, father-in-law, sons-in-law, daughters-in-law, brothers-in-law and sisters-in-law who reside in the same home with the person, (v) any individual who has a child in common with the person, whether or not the person and that individual have been married or have resided together at any time, or (vi) any individual who cohabits or who, within the previous twelve months, cohabited with the person, and any children of either of them then residing in the same home with the person.

~~"Foster care services" or "temporary foster care" means the provision of services or substitute care and supervision, for a child identified as needing services to prevent or eliminate the need for foster care placement or who has been committed or entrusted to a local board of public welfare or child welfare agency or for whom the board or child welfare agency has accepted supervision, in a temporary living situation until the child can return to his family or be placed in a permanent foster care placement or in an adoptive home a full range of casework, treatment and community services for a planned period of time to a child who is abused or neglected as defined in § 63.1-248.2 or in need of services as defined in this section and his family when the child (i) has been identified as needing services to prevent or eliminate the need for foster care placement, (ii) has been placed through an agreement between the local board of social services or a public agency designated by the community policy and management team and the parents or guardians where legal custody remains with the parents or guardians, (iii) has been committed or entrusted to a local board of social services or child welfare agency, or (iv) has been placed under the supervisory responsibility of the local board pursuant to § 16.1-293.~~

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

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

"The judge" means the judge or the substitute judge of the juvenile and domestic relations district

court of each county or city.

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

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

"Permanent foster care placement" means the place of residence in which a child resides and in which he has been placed pursuant to the provisions of §§ 63.1-56 and 63.1-206.1 with the expectation and agreement between the placing agency and the place of permanent foster care that the child shall remain in the placement until he reaches the age of majority unless modified by court order or unless removed pursuant to § 16.1-251 or § 63.1-248.9. A permanent foster care placement may be a place of residence of any natural person or persons deemed appropriate to meet a child's needs on a long-term basis.

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

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

"State Board" means the State Board of Youth and Family Services.

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

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

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

§ 16.1-228. (Delayed effective date) Definitions.

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

"Abused or neglected child" means any child:

1. Whose parents or other person responsible for his care creates or inflicts, threatens to create or inflict, or allows to be created or inflicted upon such child a physical or mental injury by other than accidental means, or creates a substantial risk of death, disfigurement or impairment of bodily or mental functions;

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

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

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

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

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

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

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

"Child welfare agency" means a child-placing agency, child-caring institution or independent foster home as defined in § 63.1-195.

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

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

"Child in need of supervision" means:

1. A child who, while subject to compulsory school attendance, is habitually and without justification absent from school, and (i) the child has been offered an adequate opportunity to receive the benefit of any and all educational services and programs that are required to be provided by law and which meet the child's particular educational needs, and (ii) the school system from which the child is absent or other appropriate agency has made a reasonable effort to effect the child's regular attendance without success; or

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

"The court" or the "family court" means the family court of each county or city.

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

"Delinquent child" means a child who has committed a delinquent act or an adult who has committed a delinquent act prior to his eighteenth birthday.

"Department" means the Department of Youth and Family Services and "Director" means the administrative head in charge thereof or such of his assistants and subordinates as are designated by him to discharge the duties imposed upon him under this law.

"Family abuse" means any act of violence, including any forceful detention, which results in physical injury or places one in reasonable apprehension of serious bodily injury and which is committed by a person against such person's family or household member.

"Family or household member" means (i) the person's spouse, whether or not he or she resides in the same home with the person, (ii) the person's former spouse, whether or not he or she resides in the same home with the person, (iii) the person's parents, stepparents, children, stepchildren, brothers, sisters, grandparents and grandchildren who reside in the same home with the person, (iv) the person's mother-in-law, father-in-law, sons-in-law, daughters-in-law, brothers-in-law and sisters-in-law who reside in the same home with the person, (v) any individual who has a child in common with the person, whether or not the person and that individual have been married or have resided together at any time, or (vi) any individual who cohabits or who, within the previous twelve months, cohabited with the person, and any children of either of them residing in the same home with the person.

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

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

"The judge" means the judge or the substitute judge of the family court of each county or city.

"This law" or "the law" means the Family Court Law embraced in this chapter.

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

status created by court order of joint custody as defined in § 20-107.2.

"Permanent foster care placement" means the place of residence in which a child resides and in which he has been placed pursuant to the provisions of §§ 63.1-56 and 63.1-206.1 with the expectation and agreement between the placing agency and the place of permanent foster care that the child shall remain in the placement until he reaches the age of majority unless modified by court order or unless removed pursuant to § 16.1-251 or § 63.1-248.9. A permanent foster care placement may be a place of residence of any natural person or persons deemed appropriate to meet a child's needs on a long-term basis.

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

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

"State Board" means the State Board of Youth and Family Services.

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

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

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

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

If a child is found to be (i) abused or neglected, (ii) at risk of being abused or neglected by a parent or custodian who has been adjudicated as having abused or neglected another child in his care, or (iii) abandoned by his parent or other custodian, or without parental care and guardianship because of his parent's absence or physical or mental incapacity, the juvenile court or the circuit court may make any of the following orders of disposition to protect the welfare 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 or other adult occupant of the same dwelling;
3. Prohibit or limit contact as the court deems appropriate between the child and his parent or other adult occupant of the same dwelling whose presence tends to endanger the child's life, health or normal development. The prohibition may exclude any such individual from the home under such conditions as the court may prescribe for a period to be determined by the court but in no event for longer than 180 days from the date of such determination. A hearing shall be held within 150 days to determine further disposition of the matter which may include limiting or prohibiting contact for another 180 days;
4. *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 which 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.

4. 5. After a finding that there is no less drastic alternative, transfer legal custody, subject to the provisions of § 16.1-281, 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 which is licensed or otherwise authorized by law to receive and provide care for such child; however, a court shall not transfer legal custody of an abused or neglected child 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 public welfare or 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 section shall prohibit the commitment of a child to any local board of public welfare or 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 public welfare or 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.

~~5.~~ 6. Transfer legal custody pursuant to subdivision 4 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

~~6.~~ 7. Terminate the rights of the parent pursuant to § 16.1-283.

§ 16.1-278.2. (Delayed effective date) Abused, neglected, or abandoned children or children without parental care.

If a child is found to be (i) abused or neglected, (ii) at risk of being abused or neglected by a parent or custodian who has been adjudicated as having abused or neglected another child in his care, or (iii) abandoned by his parent or other custodian, or without parental care and guardianship because of his parent's absence or physical or mental incapacity, the family court may make any of the following orders of disposition to protect the welfare 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 or other adult occupant of the same dwelling;

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

4. *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 which 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.

~~4.~~ 5. After a finding that there is no less drastic alternative, transfer legal custody, subject to the provisions of § 16.1-281, 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 which is licensed or otherwise authorized by law to receive and provide care for such child; however, a court shall not transfer legal custody of an abused or neglected child 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 public welfare or 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 section shall prohibit the commitment of a child to any local board of public welfare or 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 public welfare or 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.

~~5.~~ 6. Transfer legal custody pursuant to subdivision 4 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

~~6.~~ 7. Terminate the rights of the parent pursuant to § 16.1-283.

§ 16.1-278.4. Children in need of services.

If a child is found to be in need of services, 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 § 22.1-257 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 which 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.

5- 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 which 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 public welfare or 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 public welfare or 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 public welfare or 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.

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

§ 16.1-278.4. (Delayed effective date) Children in need of services.

If a child is found to be in need of services, the family 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. 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 § 22.1-257 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 which 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.

5- 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 which 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 public welfare or 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 public welfare or 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 public welfare or 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.

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

§ 16.1-281. Foster care plan.

A. In any case in which (i) *a local board of social services or a public agency designated by the community policy and management team 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 public welfare or social services or a child welfare agency, the department of public welfare or social services, the public agency designated or child welfare agency shall prepare a foster care plan for such child, as described hereinafter. The representatives of such department or agency shall consult with the child's parents, except when parental rights have been terminated, and any other person or persons standing in loco parentis at the time the board or child welfare agency obtained custody or the board or the public agency placed the child, concerning the matters which should be included in such plan. The department, public agency or child welfare agency shall file the plan with the juvenile and domestic relations district court within sixty days following the transfer of custody or the board's or public agency's placement of the child unless the court, for good cause shown, allows an extension of time, which shall not exceed an additional sixty days. A foster care plan need not be prepared if the child is returned to his prior family or placed in an adoptive home within sixty days following transfer of custody to the board or agency or the board's or public agency's placement of the child.*

B. Part A of the foster care plan shall describe (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, (iv) the nature of the placement or placements which will be provided for the child, and (v) in writing and where appropriate for children age sixteen or over, the programs and services which will help the child prepare for the transition from foster care to independent living. The plan shall be designed to lead to the return of the child to his parents or other prior custodians within the shortest practicable time which shall be specified in the plan. However, if the department or child welfare agency determines that it is not reasonably likely that the child can be returned to his prior family within a practicable time, consistent with the best interests of the child, in Part B of the plan the department or child welfare agency shall (i) include a full description of the reasons for this conclusion, (ii) determine the opportunities for placing the child with a relative or in an adoptive home, (iii) design the plan to lead to

the child's successful placement with a relative if a subsequent transfer of custody to the relative is planned, or in an adoptive home within the shortest practicable time, and if neither of such placements is feasible, (iv) explain why permanent foster care or continued foster care is the plan for the child. The department or agency may include with such proposed plan a proper pleading seeking the termination of residual parental rights pursuant to § 16.1-283.

C. A copy of Parts A and B of the foster care plan shall be sent by the court to the attorney for the child, the child's parents or any other person standing in loco parentis at the time the board or *child welfare* agency obtained custody *or the board or public agency placed the child* and such other persons as appear to the court to have a proper interest in the plan. However, a copy of the plan shall not be sent to a parent whose parental rights regarding the child have been terminated. A copy of Part A of the foster care plan shall be sent by the court to the foster parents. Any party receiving a copy of the plan may petition the court for a review of the plan. The judge shall review each petition so filed to determine if there is good cause shown for a hearing on the plan. 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.

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 or public agency placed the child*.

E. Nothing in this section shall limit the authority of the juvenile judge or the staff of the juvenile court, upon order of the judge, to review the status of children in the custody of local boards of public welfare or social services *or placed by local boards of social services or the public agency designated by the community policy and management team* on its own motion. The court shall appoint an attorney to act as guardian ad litem to represent the child any time a hearing is held to review the foster care plan filed for the child or to review the child's status in foster care.

§ 16.1-281. (Delayed effective date) Foster care plan.

A. In any case in which (i) *a local board of social services or a public agency designated by the community policy and management team 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 public welfare or social services or a child welfare agency, the department of public welfare or social services, *the public agency designated or child welfare* agency shall prepare a foster care plan for such child, as described hereinafter. The representatives of such department or agency shall consult with the child's parents, except when parental rights have been terminated, and any other person or persons standing in loco parentis at the time the board or *child welfare* agency obtained custody *or the board or the public agency placed the child*, concerning the matters which should be included in such plan. The department, *public agency or child welfare* agency shall file the plan with the family court within sixty days following the transfer of custody *or the board's or public agency's placement of the child* unless the court, for good cause shown, allows an extension of time, which shall not exceed an additional sixty days. A foster care plan need not be prepared if the child is returned to his prior family or placed in an adoptive home within sixty days following transfer of custody to the board or agency *or the board's or public agency's placement of the child*.

B. Part A of the foster care plan shall describe (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, (iv) the nature of the placement or placements which will be provided for the child, and (v) in writing and where appropriate for children age sixteen or over, the programs and services which will help the child prepare for the transition from foster care to independent living. The plan shall be designed to lead to the return of the child to his parents or other prior custodians within the shortest practicable time which shall be specified in the plan. However, if the department or *child welfare* agency determines that it is not reasonably likely that the child can be returned to his prior family within a practicable time, consistent with the best interests of the child, in Part B of the plan the department or *child welfare* agency shall (i) include a full description of the reasons for this conclusion, (ii) determine the opportunities for placing the child with a relative or in an adoptive home, (iii) design the plan to lead to the child's successful placement with a relative if a subsequent transfer of custody to the relative is planned, or in an adoptive home within the shortest practicable time, and if neither of such placements is feasible, (iv) explain why permanent foster care or continued foster care is the plan for the child. The department or agency may include with such proposed plan a proper pleading seeking the termination of residual parental rights pursuant to § 16.1-283.

C. A copy of Parts A and B of the foster care plan shall be sent by the court to the attorney for the child, the child's parents or any other person standing in loco parentis at the time the board or *child welfare* agency obtained custody *or the board or public agency placed the child* and such other persons as appear to the court to have a proper interest in the plan. However, a copy of the plan shall not be sent to a parent whose parental rights regarding the child have been terminated. A copy of Part A of the foster care plan shall be sent by the court to the foster parents. Any party receiving a copy of the plan

may petition the court for a review of the plan. The judge shall review each petition so filed to determine if there is good cause shown for a hearing on the plan. 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.

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 or public agency placed the child*.

E. Nothing in this section shall limit the authority of the judge or the staff of the family court, upon order of the judge, to review the status of children in the custody of local boards of public welfare or social services *or placed by local boards of social services or the public agency designated by the community policy and management team* on its own motion. The court shall appoint an attorney to act as guardian ad litem to represent the child any time a hearing is held to review the foster care plan filed for the child or to review the child's status in foster care.

§ 16.1-282. Foster care review.

A. This section shall apply to all children *placed through an agreement between the parents or guardians and the local board of social services or a public agency designated by the community policy and management team where legal custody remains with the parents or guardians* or under the legal custody of a local board of public welfare or social services or a child welfare agency (i) who were the subjects of a foster care plan filed with the court pursuant to § 16.1-281 and (ii) who have not been returned to their prior family or placed in an adoptive home within sixteen months following the initial foster care placement of the child.

B. Any interested party, including the parent, guardian or person who stood in loco parentis prior to the board's or *child welfare* agency's assumption of legal custody *or the board's or public agency's placement of the child*, may file with the court the petition hereinafter described for each such child within sixteen months after the initial foster care placement of the child. However, if a petition is not filed by such interested party, then the board or *child welfare* agency having legal custody *or the board or public agency placing the child* shall file the petition within sixteen months after the initial foster care placement.

The petition shall:

1. Be filed in the court in which the foster care plan was filed for the child. Upon the order of such court, however, the petition may be filed in the court of the county or city in which the board or *child welfare* agency having legal custody *or having placed the child* has its principal office or where the child resides;

2. Include a copy of the foster care plan previously filed for such child;

3. State, if such is reasonably obtainable, the current address of the child's parents and, if the child was in the custody of a person or persons standing in loco parentis at the time the board or *child welfare* agency obtained legal custody *or the board or public agency placed the child*, of such person or persons;

4. Describe the placement or placements provided for the child while in foster care and the services or programs offered to the child and his parents and, if applicable, the persons previously standing in loco parentis;

5. Describe the nature and frequency of the contacts between the child and his parents and, if applicable, the persons previously standing in loco parentis;

6. Set forth in detail the manner in which the foster care plan previously filed with the court was or was not complied with and the extent to which the goals thereof have been met; and

7. Set forth the disposition sought and the grounds therefor; however, if a continuation of foster care is recommended, a foster care plan for such period of continued foster care shall also be included and shall address (i) the role the current foster parents *or other care providers* will play in the future planning for the child and (ii) in the case of a child who has attained age sixteen, the services and programs needed to assist the child to make a transition from foster care to independent living.

C. Upon receipt of the petition filed by the board, *public agency*, *child welfare* agency, or any interested party as provided in subsection B of this section, the court shall schedule a hearing within sixty days and shall provide notice of the hearing and a copy of the petition to the following, each of whom shall be a party entitled to participate in the proceeding:

1. The child, if he is twelve years of age or older;

2. The attorney-at-law representing the child as guardian ad litem;

3. The child's parents and, if the child was in the custody of a person standing in loco parentis at the time the department obtained custody, such person or persons. No such notification shall be required, however, if the judge certifies on the record that the identity of the parent or guardian is not reasonably ascertainable. An affidavit of the mother that the identity of the father is not reasonably ascertainable shall be sufficient evidence of this fact, provided there is no other evidence before the court which would refute such an affidavit;

4. The foster parent or foster parents *or other care providers* of the child;

5. The petitioning board, *public agency* or *child welfare* agency; and

6. Such other persons as the court, in its discretion, may direct.

D. At the conclusion of the hearing, the court shall, upon the proof adduced and in accordance with the best interests of the child, enter any appropriate order of disposition consistent with the dispositional alternatives available to the court at the time of the original hearing. The court order shall state whether reasonable efforts, if applicable, have been made to reunite the child with his parents, guardian or other person standing in loco parentis to the child.

E. The court shall possess continuing jurisdiction over cases reviewed under this section for so long as a child remains in a foster care placement or, when a child is returned to his prior family subject to conditions imposed by the court, for so long as such conditions are effective. After the hearing required pursuant to subsection C hereof, the court shall schedule a hearing on the case annually thereafter, except in the case of a child placed in permanent foster care after a hearing held pursuant to § 63.1-206.1, or within thirty days upon the petition of any party entitled to notice in proceedings under this section when the judge determines there is good cause shown for such a hearing.

F. In the case of a child who has not been returned to his prior family or placed in an adoptive home or placed in permanent foster care within twenty-four months following the initial foster care placement of the child, the board, *public agency* or *child welfare* agency shall file a petition to (i) transfer the custody of the child to his prior family, (ii) transfer custody of the child to a relative other than the child's prior family *or dissolve the board's or public agency's placement agreement and return the child to his prior family*, (iii) place the child in permanent foster care, (iv) terminate residual parental rights pursuant to § 16.1-283, ~~or~~ (v) continue custody with the board or agency *or placement with the board or public agency through a parental agreement or* (vi) *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 retain custody*. The board, *public agency*, or *child welfare* agency shall petition for ~~continued custody of the child~~ *alternatives (v) or (vi) of this subsection* only if the board, *public agency* or *child welfare* agency has thoroughly investigated the feasibility of the alternatives listed in (i) through (iv) of this subsection and determined that none of those alternatives is in the best interest of the child. A foster care plan shall be included and shall address the board's, *public agency's* or agency's investigation of alternatives (i) through (iv) and why they are not in the best interest of the child. Any petition filed pursuant to this subsection shall comply with subdivisions 1 through 7 of subsection B and the procedures set out in subsection C and the continuing jurisdiction provisions of subsection E shall apply.

§ 63.1-55.8. Foster care services and placement defined.

For the purposes of this article "foster care services" means services which are provided for a planned period of time in order to prevent foster care placement and to provide a full range of casework and other treatment and community services for a child entrusted or committed or for whom supervisory responsibility has been delegated pursuant to § 16.1-293 to a local board of public welfare or social services and for his family. *"Foster care services" means the provision of a full range of casework, treatment and community services for a planned period of time to a child who is abused or neglected as defined in § 63.1-248.2 or in need of services as defined in § 16.1-228 and his family when the child (i) has been identified as needing services to prevent or eliminate the need for foster care placement, (ii) has been placed through an agreement between the local board of social services or the public agency designated by the community policy and management team and the parents or guardian where legal custody remains with the parents or guardian, (iii) has been committed or entrusted to a local board of social services or child welfare agency, or (iv) has been placed under the supervisory responsibility of a local board pursuant to § 16.1-293.*

"Foster care placement" means placement of a child through (i) an agreement between the parents or guardians and the local board or public agency designated by the community policy and management team where legal custody remains with the parents or guardians, or (ii) an entrustment or commitment of the child to the local board or child welfare agency.

§ 63.1-56. Accepting children for placing in homes, institutions, etc.; care and control.

A local board shall have the right to accept for placement in suitable family homes, child-caring institutions, residential facilities, group homes or independent living arrangements, subject to the supervision of the Commissioner and in accordance with rules prescribed by the State Board, such persons under eighteen years of age as may be entrusted to it by the parent, parents or guardian, ~~or~~ committed by any court of competent jurisdiction, *or placed through an agreement between it and the parent, parents or guardians where legal custody remains with the parent, parents, or guardians*. The State Board of Social Services shall prescribe standards, rules and regulations for the provision of foster care services by local boards which shall be directed toward the prevention of unnecessary foster care placements and towards the immediate care of and permanent planning for children in the custody of *or placed by* local boards and which shall achieve, as quickly as practicable, permanent placements for such children. The local board shall, in accordance with the rules prescribed by the State Board and in accordance with the ~~parental~~ *parental* entrustment agreement or other order by which such person is entrusted or committed to its care, have custody and control of the person so entrusted or committed to it until he is lawfully discharged, has been adopted or has attained his majority. *Whenever a local board places a*

child where legal custody remains with the parent, parents, or guardians, the board shall enter into an agreement with the parent, parents, or guardians. The agreement shall specify the responsibilities of each for the care and control of the child. The local board shall have authority to place for adoption, and to consent to the adoption of, any child properly committed or entrusted to its care when the order of commitment or entrustment agreement between the parent or parents and the agency provides for the termination of all parental rights and responsibilities with respect to the child for the purpose of placing and consenting to the adoption of the child. The local board shall also have the right to accept temporary custody of any person under eighteen years of age taken into custody pursuant to § 16.1-246 B or § 63.1-248.9.

Whenever a local board accepts custody of a child pursuant to a temporary entrustment agreement entered into under the authority of this section, except when the entrustment agreement between the parent or parents and the local department provides for the termination of all parental rights and responsibilities with respect to the child, such local board shall petition the juvenile and domestic relations district court of the city or county for approval of such agreement within a reasonable time, not to exceed thirty days, after its execution; however, such petition shall not be required when the agreement stipulates in writing that the temporary entrustment shall be for less than ninety days and the child is returned to his home within that period.

Prior to placing any such child in any foster family home, child-caring institution, residential facility or group home the local board shall enter into a written agreement with the foster parents or other appropriate custodian setting forth therein the conditions under which the child is so placed. However, if a child is placed in a child-caring institution or residential facility licensed as a temporary emergency shelter, and a verbal agreement for placement is secured within eight hours of the child's arrival at the facility, the written agreement does not need to be entered into prior to placement, but shall be completed and signed by the local board and the facility representative within twenty-four hours of the child's arrival or by the end of the next business day after the child's arrival.

No child shall be placed in any foster care placement outside this Commonwealth by a local board without first complying with the appropriate provisions of Chapter 10.1 (§ 63.1-219.1 et seq.) of this title or without first obtaining the consent of the Commissioner, given in accordance with regulations prescribed by the State Board. The local board shall also comply with all regulations of the State Board relating to resident children placed out of the Commonwealth. The State Board is authorized to prescribe such regulations for the placement of children out of the Commonwealth by local boards as are reasonably conducive to the welfare of such children and as comply with the Interstate Compact on the Placement of Children (§ 63.1-219.1 et seq.). Notwithstanding the provisions of Article II (d) of the compact which exclude from the definition of "placement" those institutions that care for the mentally ill, mentally defective or epileptic or any institution primarily educational in character and any hospital or other medical facility, the State Board shall prescribe procedures and regulations to govern such placements out of the Commonwealth by local boards. The placement of a child in a foster home, whether within or without the Commonwealth, shall not be for the purpose of adoption unless the placement agreement between the foster parents and the local board specifically so stipulates.

A parent who has not reached the age of eighteen shall have legal capacity to execute an entrustment agreement including an agreement which provides for the termination of all parental rights and responsibilities with respect to the child and shall be as fully bound thereby as if the parent had attained the age of eighteen years.

§ 63.1-56. (Delayed effective date) Accepting children for placing in homes, institutions, etc.; care and control.

A local board shall have the right to accept for placement in suitable family homes, child-caring institutions, residential facilities, group homes or independent living arrangements, subject to the supervision of the Commissioner and in accordance with rules prescribed by the State Board, such persons under eighteen years of age as may be entrusted to it by the parent, parents or guardian, or committed by any court of competent jurisdiction, *or placed through an agreement between it and the parent, parents or guardians where legal custody remains with the parent, parents, or guardians..* The State Board of Social Services shall prescribe standards, rules and regulations for the provision of foster care services by local boards which shall be directed toward the prevention of unnecessary foster care placements and towards the immediate care of and permanent planning for children in the custody of *or placed by* local boards and which shall achieve, as quickly as practicable, permanent placements for such children. The local board shall, in accordance with the rules prescribed by the State Board and in accordance with the ~~parental~~ *entrustment* agreement or other order by which such person is entrusted or committed to its care, have custody and control of the person so entrusted or committed to it until he is lawfully discharged, has been adopted or has attained his majority. *Whenever a local board places a child where legal custody remains with the parent, parents, or guardians, the board shall enter into an agreement with the parent, parents, or guardians. The agreement shall specify the responsibilities of each for the care and control of the child.* The local board shall have authority to place for adoption, and to consent to the adoption of, any child properly committed or entrusted to its care when the order of commitment or entrustment agreement between the parent or parents and the agency provides for the

termination of all parental rights and responsibilities with respect to the child for the purpose of placing and consenting to the adoption of the child. The local board shall also have the right to accept temporary custody of any person under eighteen years of age taken into custody pursuant to § 16.1-246 B or § 63.1-248.9.

Whenever a local board accepts custody of a child pursuant to a temporary entrustment agreement entered into under the authority of this section, except when the entrustment agreement between the parent or parents and the local department provides for the termination of all parental rights and responsibilities with respect to the child, such local board shall petition the family court of the city or county for approval of such agreement within a reasonable time, not to exceed thirty days, after its execution; however, such petition shall not be required when the agreement stipulates in writing that the temporary entrustment shall be for less than ninety days and the child is returned to his home within that period.

Prior to placing any such child in any foster family home, child-caring institution, residential facility or group home the local board shall enter into a written agreement with the foster parents or other appropriate custodian setting forth therein the conditions under which the child is so placed. However, if a child is placed in a child-caring institution or residential facility licensed as a temporary emergency shelter, and a verbal agreement for placement is secured within eight hours of the child's arrival at the facility, the written agreement does not need to be entered into prior to placement, but shall be completed and signed by the local board and the facility representative within twenty-four hours of the child's arrival or by the end of the next business day after the child's arrival.

No child shall be placed in any foster care placement outside this Commonwealth by a local board without first complying with the appropriate provisions of Chapter 10.1 (§ 63.1-219.1 et seq.) of this title or without first obtaining the consent of the Commissioner, given in accordance with regulations prescribed by the State Board. The local board shall also comply with all regulations of the State Board relating to resident children placed out of the Commonwealth. The State Board is authorized to prescribe such regulations for the placement of children out of the Commonwealth by local boards as are reasonably conducive to the welfare of such children and as comply with the Interstate Compact on the Placement of Children (§ 63.1-219.1 et seq.). Notwithstanding the provisions of Article II (d) of the compact which exclude from the definition of "placement" those institutions that care for the mentally ill, mentally defective or epileptic or any institution primarily educational in character and any hospital or other medical facility, the State Board shall prescribe procedures and regulations to govern such placements out of the Commonwealth by local boards. The placement of a child in a foster home, whether within or without the Commonwealth, shall not be for the purpose of adoption unless the placement agreement between the foster parents and the local board specifically so stipulates.

A parent who has not reached the age of eighteen shall have legal capacity to execute an entrustment agreement including an agreement which provides for the termination of all parental rights and responsibilities with respect to the child and shall be as fully bound thereby as if the parent had attained the age of eighteen years.

§ 63.1-56.2. Administrative review of children in foster care.

Each local board shall establish and keep current a social service plan with service objectives and shall provide the necessary social services for achievement of a permanent home for each child for whom it has care and custody *or has an agreement with the parents or guardians to place* in accordance with rules and regulations prescribed by the State Board. *Each local board shall review the cases of children placed through an agreement or in its custody in accordance with the rules and regulations prescribed by the State Board.* Each local board shall review the cases of children *placed through an agreement or* in its custody on a planned basis to evaluate the current status and effectiveness (i) of the service plan's objectives and (ii) of the services being provided for each child in custody, which are directed toward the immediate care of and planning for permanency for the child, in accordance with policies of the State Board.

The Department shall establish and maintain (i) a system to review and monitor compliance by local boards with the policies promulgated by the State Board pursuant to this section and (ii) a tracking system of every child in the care and custody of *or placed by* local boards in order to monitor the effectiveness of service planning, service objectives and service delivery by the local boards which shall be directed toward the achievement of permanency for children in foster care.

The State Board shall prescribe rules and regulations necessary to implement the procedures and policies set out in this section which shall be binding on the local boards. The State Board shall establish as a goal that at any point in time the number of children who are in foster care for longer than twenty-four months shall not exceed 5,500 children.

§ 63.1-56.3. Liability insurance for foster parents.

The Department may provide liability insurance for civil matters for persons providing basic foster care services in foster homes, as defined in § 63.1-195, which are approved by local boards of public welfare or social services for children in their custody *or children who the board has entered into an agreement to place where legal custody remains with the parents or guardians.*

§ 63.1-57. Accepting and expending certain funds on behalf of children placed by or entrusted to

board when no guardian appointed; disposition of funds when children discharged.

A local board is authorized and empowered to accept and expend on behalf of and for the benefit of any child or children *placed by it where legal custody remains with the parents or guardians*, committed or entrusted to its care under § 63.1-56, when no guardian has been appointed, funds or money paid or tendered as pension, compensation, insurance or other benefit from the Veterans' Administration or under the Railroad Retirement Act or the old age and survivors' insurance provisions of the federal Social Security Act, as amended, or funds contributed or paid by parents or other persons for the support of such child, and the local board may, from any such funds received, provide for the current or future maintenance of such child.

Whenever any child shall be discharged by the local board all such funds held by the local board shall be paid to the child's guardian if such funds exceed \$1000 upon such guardian posting bond as may be required by law, or disbursed in accordance with § 8.01-606, if the sum does not exceed \$1000.

§ 63.1-67.2. Supervision of placement of children in homes.

The local superintendent shall supervise the placement in suitable homes of children *placed through an agreement with the parents or guardians* or entrusted or committed to the local board pursuant to § 63.1-56.

§ 63.1-195. Definitions.

As used in this chapter:

"Adoptive home" means any family home selected and approved by a parent, local board of public welfare or social services or a licensed child-placing agency for the placement of a child with the intent of adoption.

"Adoptive placement" means arranging for the care of a child who is in the custody of a child-placing agency in an approved home for the purpose of adoption.

"Child" means any natural person under eighteen years of age.

"Child-caring institution" means any institution maintained for the purpose of receiving children for full-time care, maintenance, protection and guidance separated from their parents or guardians, except:

1. A bona fide educational institution whose pupils, in the ordinary course of events, return annually to the homes of their parents or guardians for not less than two months of summer vacation;
2. An establishment required to be licensed as a summer camp by Title 35.1; and
3. A bona fide hospital legally maintained as such.

"Child day center" means a child day program offered to (i) two or more children under the age of thirteen in a facility that is not the residence of the provider or of any of the children in care or (ii) thirteen or more children at any location.

"Child day center system" means any person who is voluntarily licensed as such who operates, manages, or accredits as members of its system, fifty or more child day center sites in the Commonwealth.

"Child day program" means a regularly operating service arrangement for children where, during the absence of a parent or guardian, a person or organization has agreed to assume responsibility for the supervision, protection, and well-being of a child under the age of thirteen for less than a twenty-four-hour period.

"Child-placing agency" means any person who places children in foster homes, adoptive homes or independent living arrangements pursuant to § 63.1-205 or a local board of public welfare or social services that places children in foster homes or adoptive homes pursuant to §§ 63.1-56, 63.1-204 and 63.1-220.2.

"Child-welfare agency" means a child day center, child day center system, child-placing agency, child-caring institution, family day home, family day system, or independent foster home.

"Family day home" means a child day program offered in the residence of the provider or the home of any of the children in care for one through twelve children under the age of thirteen, exclusive of the provider's own children and any children who reside in the home, when at least one child receives care for compensation. From July 1, 1993, until July 1, 1996, family day homes serving nine through twelve children, exclusive of the provider's own children and any children who reside in the home, shall be licensed. Effective July 1, 1996, family day homes serving six through twelve children, exclusive of the provider's own children and any children who reside in the home, shall be licensed. However, no family day home shall care for more than four children under the age of two, including the provider's own children and any children who reside in the home, unless the family day home is licensed or voluntarily registered. However, a family day home where the children in care are all grandchildren of the provider shall not be required to be licensed.

"Family day system" means any person who approves family day homes as members of its system; who refers children to available family day homes in that system; and who, through contractual arrangement, may provide central administrative functions including, but not limited to, training of operators of member homes; technical assistance and consultation to operators of member homes; inspection, supervision, monitoring, and evaluation of member homes; and referral of children to available health and social services.

"Foster care services" means the provision of services or substitute care and supervision for a child

(i) who has been identified as needing services to prevent or eliminate the need for foster care placement; (ii) who has been committed or entrusted to a local board of public welfare or social services or child welfare agency; or (iii) for whom the board or child welfare agency has accepted supervision, in a temporary living situation until the child can return to his or her family or be placed in a permanent foster care placement or in an adoptive home of a full range of casework, treatment and community services for a planned period of time to a child who is abused or neglected as defined in § 63.1-248.2 or in need of services as defined in § 16.1-228 and his family when the child (i) has been identified as needing services to prevent or eliminate the need for foster care placement, (ii) has been placed through an agreement between the local board of social services or the public agency designated by the community policy and management team and the parents or guardians, (iii) has been committed or entrusted to a local board of social services or child welfare agency, or (iv) has been placed under the supervisory responsibility of a local board pursuant to § 16.1-293.

"Foster care placement" means placement of a child in the custody of a child-placing agency in suitable foster family homes, child-caring institutions, residential facilities or group homes through (i) an agreement between the parents or guardians and the local board or the public agency designated by the community policy and management team where legal custody remains with the parents or guardians, or (ii) an entrustment or commitment of the child to the local board or child welfare agency.

"Foster home" means the place of residence of any natural person in which any child, other than a child by birth or adoption of such person, resides as a member of the household.

"Group home" means a child-caring institution which is operated by any person at any place other than in an individual's family home or residence and which does not care for more than twelve children.

"Independent foster home" means a private family home in which any child, other than a child by birth or adoption of such person, resides as a member of the household and has been placed therein independently of a child-placing agency except (i) a home in which are received only children related by birth or adoption of the person who maintains such home and children of personal friends of such person and (ii) a home in which is received a child or children committed under the provisions of subdivision 4 of § 16.1-278.2, subdivision 5 6 of § 16.1-278.4, or subdivision 13 of § 16.1-278.8.

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

"Intercountry placement" means the arrangement for the care of a child in an adoptive home or foster care placement into or out of the Commonwealth by a licensed child-placing agency, court, or other entity authorized to make such placements in accordance with the laws of the foreign country under which it operates.

"Interstate placement" includes the arrangement for the care of a child in an adoptive home, foster care placement or in the home of the child's parent or with a relative or nonagency guardian, into or out of the Commonwealth, by a child-placing agency or court when the full legal right of the child's parent or nonagency guardian to plan for the child has been voluntarily terminated or limited or severed by the action of any court.

"Permanent foster care placement" means the place of residence in which a child resides and in which he has been placed pursuant to the provisions of §§ 63.1-56 and 63.1-206.1 with the expectation and agreement between the placing agency and the place of permanent foster care that the child shall remain in the placement until he reaches the age of majority unless modified by court order or unless removed pursuant to § 16.1-251 or § 63.1-248.9. A permanent foster care placement may be a place of residence of any natural person or persons deemed appropriate to meet a child's needs on a long-term basis.

"Person" means any natural person, or any association, partnership or corporation.

"Registered family day home" means any family day home which has met the standards for voluntary registration for such homes pursuant to regulations promulgated by the State Board of Social Services and which has obtained a certificate of registration from the Commissioner.

§ 63.1-204. Acceptance and control over children.

A. A licensed child-welfare agency shall have the right to accept, for any purpose not contrary to the limitations contained in its license, such children as may be entrusted or committed to it by the parents, guardians, relatives or other persons having legal custody thereof, or committed by any court of competent jurisdiction. The agency shall, within the terms of its license and the agreement or order by which such child is entrusted or committed to its care, have custody and control of every child so entrusted or committed and accepted, until he is lawfully discharged, has been adopted, or has attained his majority.

An agency which is licensed as a child-placing agency by the Department of Social Services and certified as a proprietary school for the handicapped by the Department of Education shall not be required to take custody of any child placed in its special education program but shall enter into a placement agreement with the parents or guardian of the child concerning the respective responsibilities of the agency and the parents or guardian for the care and control of the child. Such an agency shall conform with all other legal requirements of licensed child-placing agencies including the provisions of

§§ 16.1-281 and 16.1-282.

A licensed private child-placing agency may accept placement of a child through an agreement with a local department of social services where the local department of social services retains legal custody of the child or where the parents or legal guardian of the child retain legal custody but have entered into a placement agreement with the local department or the public agency designated by the community policy and management team.

Whenever a licensed child-placing agency accepts legal custody of a child, the agency shall comply with §§ 16.1-281 and 16.1-282.

A child-caring institution licensed as a temporary emergency shelter may accept a child for placement provided that verbal agreement for placement is obtained from the parents, guardians, relatives or other persons having legal custody thereof, within eight hours of the child's arrival at the facility and provided that a written placement agreement is completed and signed by the legal guardian and the facility representative within twenty-four hours of the child's arrival or by the end of the next business day after the child's arrival.

B. Whenever a licensed child-welfare agency accepts custody of a child pursuant to a temporary entrustment agreement entered into under the authority of this section, except when the entrustment agreement between the parent or parents and the licensed child-welfare agency provides for the termination of all parental rights and responsibilities with respect to the child, such child-welfare agency, except a child-caring institution when the child is placed there by a parent or parents, shall petition the juvenile and domestic relations district court of the city or county for approval of such agreement within a reasonable time, not to exceed thirty days, after its execution; however, such petition shall not be required when the agreement stipulates in writing that the temporary entrustment shall be for less than ninety days and the child is returned to his home within that period.

C. A child may be placed for adoption by a licensed child-placing agency or a local board of public welfare or social services, in accordance with the provisions of § 63.1-220.2.

For the purposes of this section, a parent who is less than eighteen years of age shall be deemed fully competent and shall have legal capacity to execute a valid entrustment agreement, including an agreement which provides for the termination of all parental rights and responsibilities, and shall be as fully bound thereby as if such parent had attained the age of eighteen years. An entrustment agreement for the termination of all parental rights and responsibilities with respect to the child shall be valid notwithstanding that it is not signed by the father of a child born out of wedlock if the identity of the father is not reasonably ascertainable, or if such father is given notice of the entrustment by registered or certified mail to his last known address and such father fails to object to the entrustment within twenty-one days of the mailing of such notice. An affidavit of the mother that the identity of the father is not reasonably ascertainable shall be sufficient evidence of this fact, provided there is no other evidence which would refute such an affidavit. The absence of such an affidavit shall not be deemed evidence that the identity of the father is reasonably ascertainable. For purposes of determining whether the identity of the father is reasonably ascertainable, the standard of what is reasonable under the circumstances shall control, taking into account the relative interests of the child, the mother and the father.

§ 63.1-204. (Delayed effective date) Acceptance and control over children.

A. A licensed child-welfare agency shall have the right to accept, for any purpose not contrary to the limitations contained in its license, such children as may be entrusted or committed to it by the parents, guardians, relatives or other persons having legal custody thereof, or committed by any court of competent jurisdiction. The agency shall, within the terms of its license and the agreement or order by which such child is entrusted or committed to its care, have custody and control of every child so entrusted or committed and accepted, until he is lawfully discharged, has been adopted, or has attained his majority.

An agency which is licensed as a child-placing agency by the Department of Social Services and certified as a proprietary school for the handicapped by the Department of Education shall not be required to take custody of any child placed in its special education program but shall enter into a placement agreement with the parents or guardian of the child concerning the respective responsibilities of the agency and the parents or guardian for the care and control of the child. Such an agency shall conform with all other legal requirements of licensed child-placing agencies including the provisions of §§ 16.1-281 and 16.1-282.

A licensed private child-placing agency may accept placement of a child through an agreement with a local department of social services where the local department of social services retains legal custody of the child or where the parents or legal guardian of the child retain legal custody but have entered into a placement agreement with the local department or the public agency designated by the community policy and management team.

Whenever a licensed child-placing agency accepts legal custody of a child, the agency shall comply with §§ 16.1-281 and 16.1-282.

A child-caring institution licensed as a temporary emergency shelter may accept a child for placement provided that verbal agreement for placement is obtained from the parents, guardians,

relatives or other persons having legal custody thereof, within eight hours of the child's arrival at the facility and provided that a written placement agreement is completed and signed by the legal guardian and the facility representative within twenty-four hours of the child's arrival or by the end of the next business day after the child's arrival.

B. Whenever a licensed child-welfare agency accepts custody of a child pursuant to a temporary entrustment agreement entered into under the authority of this section, except when the entrustment agreement between the parent or parents and the licensed child-welfare agency provides for the termination of all parental rights and responsibilities with respect to the child, such child-welfare agency, except a child-caring institution when the child is placed there by a parent or parents, shall petition the family court of the city or county for approval of such agreement within a reasonable time, not to exceed thirty days, after its execution; however, such petition shall not be required when the agreement stipulates in writing that the temporary entrustment shall be for less than ninety days and the child is returned to his home within that period.

C. A child may be placed for adoption by a licensed child-placing agency or a local board of public welfare or social services, in accordance with the provisions of § 63.1-220.2.

For the purposes of this section, a parent who is less than eighteen years of age shall be deemed fully competent and shall have legal capacity to execute a valid entrustment agreement, including an agreement which provides for the termination of all parental rights and responsibilities, and shall be as fully bound thereby as if such parent had attained the age of eighteen years. An entrustment agreement for the termination of all parental rights and responsibilities with respect to the child shall be valid notwithstanding that it is not signed by the father of a child born out of wedlock if the identity of the father is not reasonably ascertainable, or if such father is given notice of the entrustment by registered or certified mail to his last known address and such father fails to object to the entrustment within twenty-one days of the mailing of such notice. An affidavit of the mother that the identity of the father is not reasonably ascertainable shall be sufficient evidence of this fact, provided there is no other evidence which would refute such an affidavit. The absence of such an affidavit shall not be deemed evidence that the identity of the father is reasonably ascertainable. For purposes of determining whether the identity of the father is reasonably ascertainable, the standard of what is reasonable under the circumstances shall control, taking into account the relative interests of the child, the mother and the father.