

VIRGINIA ACTS OF ASSEMBLY - 2025 SESSION

CHAPTER 138

An Act to amend and reenact § 16.1-277.02 of the Code of Virginia, relating to petitions for relief of care and custody of a child; investigation by local department of social services; Office of the Children's Ombudsman work group; report.

[H 1733]

Approved March 19, 2025

Be it enacted by the General Assembly of Virginia:

1. That § 16.1-277.02 of the Code of Virginia is amended and reenacted as follows:

§ 16.1-277.02. Petition for relief of care and custody.

A. Requests for petitions for relief of the care and custody of a child shall be referred initially to the local department of social services for investigation and the provision of services, if appropriate, in accordance with the provisions of § 63.2-319 or Chapter 15 (§ 63.2-1500 et seq.) of Title 63.2. *The local department of social services shall, as part of its investigation, (i) refer the parent to the local family assessment and planning team and (ii) create a written report regarding the history of the child and family. A referral to the local family assessment and planning team in accordance with clause (i) shall not interfere with or delay any proceeding or hearing related to the petition unless the court determines that any recommendations made by or information gathered from the family assessment and planning team is necessary for the court to make a final disposition in the matter.* Upon the filing of a petition for relief of a child's care and custody pursuant to subdivision A 4 of § 16.1-241, the court shall appoint a guardian ad litem to represent the child in accordance with the provisions of § 16.1-266, and shall schedule the matter for a hearing on the petition. Such hearing on the petition may include partial or final disposition of the matter. The court 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 12 years of age or older;
2. The guardian ad litem for the child;
3. The child's parents, custodian or other person standing in loco parentis to the child. No such notification shall be required, however, if the judge certifies on the record that the identity of the parent 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. The hearing on the petition shall be held pursuant to this section although a parent fails to appear and is not represented by counsel, provided personal or substituted service was made on the parent, or the court determines that such person cannot be found, after reasonable effort, or in the case of a person who is without the Commonwealth, the person cannot be found or his post office address cannot be ascertained after reasonable effort. However, in the case of a hearing to grant a petition for permanent relief of custody and terminate a parent's residual parental rights, notice to the parent whose rights may be affected shall be provided in accordance with the provisions of §§ 16.1-263 and 16.1-264; and
4. The local board of social services. Upon receiving notice of the hearing pursuant to this section, the local board of social services shall investigate the matter and provide services, as appropriate, in accordance with the provisions of § 63.2-319 or Chapter 15 (§ 63.2-1500 et seq.) of Title 63.2.

B. At the hearing, the local board of social services, the child, the child's parents, guardian, legal custodian or other person standing in loco parentis and any other family or household member of the child to whom notice was given shall have the right to confront and cross-examine all adverse witnesses and evidence and to present evidence on their own behalf.

C. At the conclusion of the hearing on the petition, the court shall make a finding, based upon a preponderance of the evidence, whether there is good cause shown for the petitioner's desire to be relieved of the child's care and custody, unless the petition seeks permanent relief of custody and termination of parental rights. If the petition seeks permanent relief of custody and termination of parental rights, the court shall make a finding, based upon clear and convincing evidence, whether termination of parental rights is in the best interest of the child. If the court makes either of these findings, the court may enter:

1. A preliminary protective order pursuant to § 16.1-253;
2. An order that requires the local board of social services to provide services to the family as required by law;
3. An order that is consistent with any of the dispositional alternatives pursuant to § 16.1-278.3; or
4. Any combination of these orders.

Any such order transferring legal custody of the child shall be made in accordance with the provisions of subdivision A 5 of § 16.1-278.2 and shall be subject to the provisions of subsection C1. This order shall include, but need not be limited to, the following findings: (i) that there is no less drastic alternative to

granting the requested relief; and (ii) 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, if the order transfers legal custody of the child to a local board of social services. Any order terminating residual parental rights shall be accompanied by an order continuing or granting custody to a local board of social services or to a licensed child-placing agency or granting custody or guardianship to a person with a legitimate interest. Such an order continuing or granting custody to a local board of social services or to a licensed child-placing agency shall indicate whether that board or agency shall have the authority to place the child for adoption and consent thereto. At any time subsequent to the transfer of legal custody of the child pursuant to this section, a birth parent or parents of the child and the pre-adoptive parent or parents may enter into a written post-adoption contact and communication agreement in accordance with the provisions of § 16.1-283.1 and Article 1.1 (§ 63.2-1220.2 et seq.) of Chapter 12 of Title 63.2. The court shall not require a written post-adoption contact and communication agreement as a precondition to entry of an order in any case involving the child.

The court shall schedule a subsequent hearing within 60 days of the hearing held pursuant to this section: (a) to enter a final order of disposition pursuant to § 16.1-278.3 or (b) if the child is placed in foster care, for review of the foster care plan filed pursuant to § 16.1-281. If a party is required to be present at the subsequent hearing, and (1) is present at the hearing on the petition, the party shall be given notice of the date set for the subsequent hearing; (2) if not present, shall be summoned as provided in § 16.1-263.

C1. Any order transferring temporary custody of the child to a person with a legitimate interest pursuant to subsection C shall be entered only upon a finding, based upon a preponderance of the evidence, that such person is one who (i) is found by the court to be willing and qualified to receive and care for the child; (ii) is willing to have a positive, continuous relationship with the child; and (iii) is willing and has the ability to protect the child from abuse and neglect. The court's order transferring temporary custody to a person with a legitimate interest should further provide for compliance with any preliminary protective order entered on behalf of the child in accordance with the provisions of § 16.1-253; and, as appropriate, ongoing provision of social services to the child and the child's custodian; and court review of the child's placement with such person with a legitimate interest. Any final order transferring custody of the child to a person with a legitimate interest pursuant to this section shall, in addition, be entered only after an investigation as directed by the court and upon a finding, stated in the court's order, that such person is one who satisfies clauses (i), (ii), and (iii) and is committed to providing a permanent, suitable home for the child.

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

2. That the Department of Social Services shall, in collaboration with the Virginia League of Social Services Executives, create a template for the written report that the local department of social services is required to create pursuant to § 16.1-277.02 of the Code of Virginia, as amended by this act, as a part of its investigation prior to a proceeding. The template for the written report shall include (i) a complete background of the child and family, including medical and mental health history, legal history, educational history, and any information from providers in these fields; (ii) the exploration of all relatives and fictive kin; and (iii) information on what services are being or have been offered or provided to the child and the family, including the potential effectiveness of a family partnership meeting.

3. That the Office of the Children's Ombudsman shall convene a work group to determine the factors a court should consider for good cause shown to grant a petitioner's petition for relief of care and custody of a child. The work group shall also explore the potential benefits and considerations of raising the standard of evidence for granting temporary relief of custody from the current standard of preponderance of the evidence to clear and convincing evidence. The work group shall be composed of judges of juvenile and domestic relations district courts, a representative from the Office of the Executive Secretary of the Supreme Court of Virginia, one or more representatives from the Department of Social Services, representatives from local departments of social services and court services units, and other relevant stakeholders. The Office of the Children's Ombudsman shall submit a report of the work group's findings and recommendations to the Chairs of the House and Senate Committees for Courts of Justice and the Virginia Commission on Youth by November 1, 2025.

4. That the provisions of § 16.1-277.02 of the Code of Virginia, as amended by this act, shall become effective on January 1, 2026.