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HOUSE BILL NO. 775
AMENDMENT IN THE NATURE OF A SUBSTITUTE
 (Proposed by the House Committee for Courts of Justice
 on _____)

(Patron Prior to Substitute—Delegate Thornton)

A BILL to amend and reenact §§ 16.1-252, 16.1-278.1, 16.1-281, 16.1-282, 16.1-282.1, 16.1-282.2, 16.1-283, and 63.2-910.2 of the Code of Virginia, relating to removal hearings; foster care; termination of parental rights; reasonable efforts; definition.

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-252, 16.1-278.1, 16.1-281, 16.1-282, 16.1-282.1, 16.1-282.2, 16.1-283, and 63.2-910.2 of the Code of Virginia are amended and reenacted as follows:

§ 16.1-252. Preliminary removal order; hearing.

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

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

B1. If the petitioner intends to introduce any evidence at such hearing, he shall provide such evidence to the parent, guardian, legal custodian or other person standing in loco parentis, or his attorney at least 24 hours prior to such hearing.

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

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

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

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

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

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

The petitioner shall not be required by the court to make reasonable efforts to prevent removal of the child from his home if the court finds that (i) the residual parental rights of the parent regarding a sibling of the child have previously been involuntarily terminated; (ii) the parent has been convicted of an offense under the laws of the Commonwealth or a substantially similar law of any other state, the United States, or any foreign jurisdiction that constitutes murder or voluntary manslaughter, or a felony attempt, conspiracy, or solicitation to commit any such offense, if the victim of the offense was a child of the parent, a child with whom the

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parent resided at the time such offense occurred, or the other parent of the child; (iii) the parent has been convicted of an offense under the laws of the Commonwealth or a substantially similar law of any other state, the United States, or any foreign jurisdiction that constitutes felony assault resulting in serious bodily injury or felony bodily wounding resulting in serious bodily injury or felony sexual assault, if the victim of the offense was a child of the parent or a child with whom the parent resided at the time of such offense; ~~or~~ (iv) on the basis of clear and convincing evidence, the parent has subjected any child to aggravated circumstances; or (v) *the parent has* abandoned a child under circumstances that would justify the termination of residual parental rights pursuant to subsection D of § 16.1-283.

As used in this section:

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

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

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

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

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

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

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

3. *Order reasonable visitation, including in-person and virtual visitation, between a child and an incarcerated parent, guardian, or legal custodian or other person standing in loco parentis, unless such person was incarcerated for harming the child or other parent, or such visitation would endanger the child's life or health; and*

4. Order that the parent or other legally obligated person pay child support pursuant to § 16.1-290, *but consider the extent to which such payment may interfere with such person's ability to comply with any court-ordered or family reunification services or case plan.*

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

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

G. At the conclusion of the preliminary removal order hearing, the court shall determine whether the allegations of abuse or neglect have been proven by a preponderance of the evidence. Any finding of abuse or neglect shall be stated in the court order. However, if, before such a finding is made, a person responsible for the care and custody of the child, the child's guardian ad litem or the local department of social services objects to a finding being made at the hearing, the court shall schedule an adjudicatory hearing to be held within 30 days of the date of the initial preliminary removal hearing. The adjudicatory hearing shall be held to determine whether the allegations of abuse and neglect have been proven by a preponderance of the evidence. Parties who are present at the preliminary removal order hearing shall be given notice of the date set for the adjudicatory hearing and parties who are not present shall be summoned as provided in § 16.1-263. The hearing shall be held and an order may be entered, although a party to the preliminary removal order hearing fails to appear and is not represented by counsel, provided personal or substituted service was made

on the person, or the court determines that such person cannot be found, after reasonable effort, or in the case of a person who is without the Commonwealth, the person cannot be found or his post office address cannot be ascertained after reasonable effort.

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

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

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

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

§ 16.1-278.1. Definitions.

As used in this article, unless the context clearly indicates otherwise:

"Reasonable efforts" means activities and timely efforts intended primarily to maintain or reunite a child with his family. Reasonable efforts shall involve assisting the parent or custodian through the steps of a case plan and with accessing the resources and developing the conditions necessary to address or mitigate the safety concerns that led to removal. To the maximum extent possible, reasonable efforts shall be provided in a manner consistent with the prevailing social and cultural conditions and way of life of the child's family and shall be conducted in partnership with the child and the child's parents, and in consultation when appropriate with extended family members and custodians. Reasonable efforts shall be tailored to the facts and circumstances of the case. Reasonable efforts shall include:

1. Conducting a comprehensive assessment of the circumstances of the child's family, with a focus on safe reunification as the most desirable goal and recommending a different goal only when there is no less drastic alternative;

2. Identifying appropriate services and helping the parents to overcome barriers, including actively assisting the parents in obtaining such services;

3. Addressing the parent's and child's financial needs that are barriers to reunification or completing the case plan, including providing financial assistance to meet immediate family financial needs, funding services, and providing transportation;

4. Offering and employing all available and culturally appropriate family preservation strategies;

5. Taking steps to keep siblings together whenever possible;

6. Facilitating regular visits with parents or custodians in the most natural setting possible as well as trial home visits of the child during any period of removal, consistent with the need to ensure the safety of the child;

7. Assisting in obtaining community resources including housing, financial, transportation, mental health, substance abuse, and peer support services and actively assisting the child's parents and, when appropriate, the child's family, in utilizing and accessing those resources;

8. Considering alternative ways to address the needs of the child's parents and, where appropriate, the family, if the optimum services do not exist or are not available; and

9. Providing post-reunification services as needed or requested.

"Parent" includes parent, guardian, legal custodian, or other person standing in loco parentis.

"Public service project" means any governmental or quasi-governmental agency project or any project of a nonprofit corporation or association operated exclusively for charitable or community purposes.

§ 16.1-281. Foster care plan.

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

The representatives of such department or agency shall involve in the development of the plan the child's parent(s), except when parental rights have been terminated or the local department of social services or child welfare agency has made diligent efforts to locate the parent(s) and such parent(s) cannot be located, relatives and fictive kin who are interested in the child's welfare, and any other person or persons standing in loco parentis at the time the board or child welfare agency obtained custody or the board placed the child. The representatives of such department or agency shall involve a child who is 12 years of age or older in the

development of the plan and, at the option of such child, up to two members of the case planning team who are chosen by the child and who are not a foster parent of, or caseworker for, the child. A child under 12 years of age may be involved in the development of the plan if such involvement is consistent with the best interests of the child. In cases where either the parent(s) or child is not involved in the development of the plan, the department or agency shall include in the plan a full description of the reasons therefor.

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

B. The foster care plan shall describe in writing (i) the programs, care, services and other support which will be offered to the child and his parents and other prior custodians; (ii) the participation and conduct which will be sought from the child's parents and other prior custodians; (iii) the visitation and other contacts which will be permitted between the child and his parents and other prior custodians, and between the child and his siblings; (iv) the nature of the placement or placements which will be provided for the child, including an assessment of the stability of each placement, the services provided or plans for services to be provided to address placement instability or to prevent disruption of the placement, and a description of other placements that were considered for the child, if any, and reasons why such other placements were not provided; (v) for school-age children, the school placement of the child; (vi) for children 14 years of age and older, the child's needs and goals in the areas of counseling, education, housing, employment, and money management skills development, along with specific independent living services that will be provided to the child to help him reach these goals; and (vii) for children 14 years and older, an explanation of the child's rights with respect to education, health, visitation, court participation, and the right to stay safe and avoid exploitation. The foster care plan shall include all documentation specified in 42 U.S.C. § 675(5)(l) and § 63.2-905.3. If the child in foster care is placed in a qualified residential treatment program as defined in § 16.1-228, the foster care plan shall also include the report and documentation set forth in subsection A of § 63.2-906.1. If the child in foster care is pregnant or is the parent of a child, the foster care plan shall also include (a) a list of the services and programs to be provided to or on behalf of the child to ensure parental readiness or capability and (b) a description of the foster care prevention strategy for any child born to the child in foster care. In cases in which a foster care plan approved prior to July 1, 2011, identifies independent living as the goal for the child, and in cases involving children admitted to the United States as refugees or asylees who are 16 years of age or older and for whom the goal is independent living, the plan shall also describe the programs and services which will help the child prepare for the transition from foster care to independent living. If consistent with the child's health and safety, the plan shall be designed to support reasonable efforts which 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. The child's health and safety shall be the paramount concern of the court and the agency throughout the placement, case planning, service provision and review process. For a child 14 years of age and older, the plan shall include a signed acknowledgment by the child that the child has received a copy of the plan and that the rights contained therein have been explained to the child in an age-appropriate manner.

If the department or child welfare agency concludes 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, the department, child welfare agency or team shall (1) include a full description of the reasons for this conclusion; (2) provide information on the opportunities for placing the child with a relative or in an adoptive home; (3) design the plan to lead to the child's successful placement with a relative or fictive kin for the purpose of establishing eligibility for the Federal-Funded Kinship Guardianship Assistance program established pursuant to § 63.2-1305 or the State-Funded Kinship Guardianship Assistance program established pursuant to § 63.2-1306 or in an adoptive home within the shortest practicable time; and (4) if neither of such placements is feasible, explain why permanent foster care is the plan for the child or independent living is the plan for the child in cases involving children admitted to the United States as refugees or asylees who are 16 years of age or older and for whom the goal is independent living. *Any order authorizing a plan that does not include the goal of returning the child to his prior family shall be entered only upon a finding by the court that reasonable efforts have been made to reunite the child with his prior family. Any such order shall include such a finding.*

The local board or other child welfare agency having custody of the child shall not be required by the court to make reasonable efforts to reunite the child with a parent if the court finds that (A) the residual parental rights of the parent regarding a sibling of the child have previously been involuntarily terminated; (B) the parent has been convicted of an offense under the laws of the Commonwealth or a substantially similar law of any other state, the United States or any foreign jurisdiction that constitutes murder or voluntary manslaughter, or a felony attempt, conspiracy or solicitation to commit any such offense, if the victim of the offense was a child of the parent, a child with whom the parent resided at the time such offense

occurred or the other parent of the child; (C) the parent has been convicted of an offense under the laws of the Commonwealth or a substantially similar law of any other state, the United States or any foreign jurisdiction that constitutes felony assault resulting in serious bodily injury or felony bodily wounding resulting in serious bodily injury or felony sexual assault, if the victim of the offense was a child of the parent or a child with whom the parent resided at the time of such offense; ~~or~~ (D) based on clear and convincing evidence, the parent has subjected any child to aggravated circumstances; or (E) abandoned a child under circumstances which would justify the termination of residual parental rights pursuant to subsection D of § 16.1-283.

As used in this section:

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

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

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

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

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

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

C. A copy of the entire foster care plan shall be sent by the court to the child, if he is 12 years of age or older; the guardian ad litem for the child, the attorney for the child's parents or for any other person standing in loco parentis at the time the board or child welfare agency obtained custody or the board placed the child, to the parents or other person standing in loco parentis, 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 the plan shall be sent by the court to the foster parents. A hearing shall be held for the purpose of reviewing and approving the foster care plan. The hearing shall be held within 60 days of (i) the child's initial foster care placement, if the child was placed through an agreement between the parents or guardians and the local department of social services or a child welfare agency; (ii) the original preliminary removal order hearing, if the child was placed in foster care pursuant to § 16.1-252; (iii) the hearing on the petition for relief of custody, if the child was placed in foster care pursuant to § 16.1-277.02; or (iv) the dispositional hearing at which the child was placed in foster care and an order was entered pursuant to § 16.1-278.2, 16.1-278.3, 16.1-278.4, 16.1-278.5, 16.1-278.6, or 16.1-278.8. However, the hearing shall be held in accordance with the provisions of § 16.1-277.01 with a petition for approval of an entrustment agreement. If the judge makes any revision in any part of the foster care plan, a copy of the changes shall be sent by the court to all persons who received a copy of the original of that part of the plan.

C1. Any order transferring custody of the child to a relative other than the child's prior family shall be entered only upon a finding, based upon a preponderance of the evidence, that the relative is one who, after an investigation as directed by the court, (i) is found by the court to be willing and qualified to receive and care for the child; (ii) is willing to have a positive, continuous relationship with the child; (iii) is committed to providing a permanent, suitable home for the child; and (iv) is willing and has the ability to protect the child from abuse and neglect; and the order shall so state. The court's order transferring custody to a relative should further provide for, as appropriate, any terms or conditions which would promote the child's interest and welfare, *including his relationship to his parents and siblings*; ongoing provision of social services to the child and the child's custodian; and court review of the child's placement.

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

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

308 board placed the child.

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

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

339 F. At the conclusion of the hearing at which the initial foster care plan is reviewed, the court shall
340 schedule a foster care review hearing to be held within four months in accordance with § 16.1-282. However,
341 if an order is entered pursuant to subsection C2, the court shall schedule a foster care review hearing to be
342 held within 12 months of the entry of such order in accordance with the provisions of § 16.1-282.2. Parties
343 who are present at the hearing at which the initial foster care plan is reviewed shall be given notice of the date
344 set for the foster care review hearing and parties who are not present shall be summoned as provided in
345 § 16.1-263.

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

351 **§ 16.1-282. Foster care review.**

352 A. In the case of a child who was the subject of a foster care plan filed with the court pursuant to
353 § 16.1-281, a foster care review hearing shall be held within four months of the dispositional hearing at which
354 the foster care plan pursuant to § 16.1-281 was reviewed if the child (i) was placed through an agreement
355 between the parents or guardians and the local board of social services where legal custody remains with the
356 parents or guardians and such agreement has not been dissolved by court order or (ii) is under the legal
357 custody of a local board of social services or a child welfare agency and has not had a petition to terminate
358 parental rights granted, filed or ordered to be filed on the child's behalf; has not been placed in permanent
359 foster care; or is age 16 or over and the plan for the child is not independent living.

360 Any interested party, including the parent, guardian or person who stood in loco parentis prior to the
361 board's placement of the child or the board's or child welfare agency's assumption of legal custody, may file
362 with the court the petition for a foster care review hearing hereinafter described at any time after the initial
363 foster care placement of the child. However, the board or child welfare agency shall file the petition within
364 three months of the dispositional hearing at which the foster care plan was reviewed pursuant to § 16.1-281.

365 B. The petition shall:

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

2. 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 placed the child, of such person or persons;

3. 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;

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

5. 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

6. Set forth the disposition sought and the grounds therefor; however, in the case of a child who has attained age 16 and for whom the plan is independent living, the foster care plan shall be included and shall address the services needed to assist the child to transition from foster care to independent living.

C. Upon receipt of the petition filed by the board, child welfare agency, or any interested party as provided in subsection B of this section, the court shall schedule a hearing to be held within 30 days if a hearing was not previously scheduled. 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 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. If the parent or guardian of the child did not appear at the dispositional hearing and was not noticed to return for the foster care review hearing in accordance with subsection F of § 16.1-281, the parent or guardian shall be summoned to appear at the foster care review hearing in accordance with § 16.1-263. The review hearing shall be held pursuant to this section although a parent or guardian fails to appear and is not represented by counsel, provided personal or substituted service was made on the parent or guardian, 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;

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

5. The petitioning board or child welfare agency; and

6. Such other persons as the court, in its discretion, may direct. The local board of social services or other child welfare agency shall identify for the court such other persons as have a legitimate interest in the hearing, including, but not limited to, preadoptive parents for a child in foster care.

D. In cases in which a child is placed by the local board of social services or a licensed child-placing agency in a qualified residential treatment program as defined in § 16.1-228, the provisions of subsection E of § 16.1-281 shall apply to any hearing held pursuant to this section.

E. At the conclusion of the hearing, the court shall, upon the proof adduced in accordance with the best interests of the child and subject to the provisions of subsection F, 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~~ *Any order authorizing a disposition that does not reunite the child with his parents, guardian, or other person standing in loco parentis to the child shall be entered only upon a finding by the court that reasonable efforts have been made to achieve reunification. Any such order shall include such a finding.*

F. Any order entered at the conclusion of this hearing that has the effect of achieving a permanent goal for the child by terminating residual parental rights pursuant to § 16.1-277.01, 16.1-277.02, 16.1-278.3, or 16.1-283; by placing the child in permanent foster care pursuant to clause (iv) of subsection A of § 16.1-282.1; or, if the child has attained the age of 16 years and the plan for the child is independent living, directing the board or agency to provide the necessary services to transition from foster care, pursuant to clause (v) of subsection A of § 16.1-282.1 shall state whether reasonable efforts have been made to place the child in a timely manner in accordance with the foster care plan and to complete the steps necessary to finalize the permanent placement of the child.

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

432 welfare; ongoing provision of social services to the child and the child's custodian; and court review of the
433 child's placement.

434 G. The court shall possess continuing jurisdiction over cases reviewed under this section for so long as a
435 child remains in a foster care placement or, when a child is returned to his prior family subject to conditions
436 imposed by the court, for so long as such conditions are effective. After the hearing required pursuant to
437 subsection C, the court shall schedule a permanency planning hearing on the case to be held five months
438 thereafter in accordance with § 16.1-282.1 or within 30 days upon the petition of any party entitled to notice
439 in proceedings under this section when the judge determines there is good cause shown for such a hearing.
440 However, in the case of a child who is the subject of an order that has the effect of achieving a permanent
441 goal for the child by terminating residual parental rights pursuant to § 16.1-277.01, 16.1-277.02, 16.1-278.3,
442 or 16.1-283; by placing the child in permanent foster care pursuant to clause (iv) of subsection A of
443 § 16.1-282.1; or by directing the board or agency to provide the child with services to achieve independent
444 living status, if the child has attained the age of 16 years, pursuant to clause (v) of subsection A of
445 § 16.1-282.1, a permanency planning hearing within five months shall not be required and the court shall
446 schedule a foster care review hearing to be held within 12 months of the entry of such order in accordance
447 with the provisions of § 16.1-282.2.

448 **§ 16.1-282.1. Permanency planning hearing for children in foster care.**

449 A. In the case of a child who was the subject of a foster care plan filed with the court pursuant to
450 § 16.1-281, a permanency planning hearing shall be held within 10 months of the dispositional hearing at
451 which the foster care plan pursuant to § 16.1-281 was reviewed if the child (a) was placed through an
452 agreement between the parents or guardians and the local board of social services where legal custody
453 remains with the parents or guardians and such agreement has not been dissolved by court order; or (b) is
454 under the legal custody of a local board of social services or a child welfare agency and has not had a petition
455 to terminate parental rights filed on the child's behalf, has not been placed in permanent foster care, or is age
456 16 or over and the plan for the child is not independent living. The board or child welfare agency shall file a
457 petition for a permanency planning hearing 30 days prior to the date of the permanency planning hearing
458 scheduled by the court. The purpose of this hearing is to establish a permanent goal for the child and either to
459 achieve the permanent goal or to defer such action through the approval of an interim plan for the child.

460 To achieve the permanent goal, the petition for a permanency planning hearing shall seek to (i) transfer
461 the custody of the child to his prior family, or dissolve the board's placement agreement and return the child
462 to his prior family; (ii) transfer custody of the child to a relative other than the child's prior family or to fictive
463 kin for the purpose of establishing eligibility for the Federal-Funded Kinship Guardianship Assistance
464 program pursuant to § 63.2-1305 or the State-Funded Kinship Guardianship Assistance program pursuant to
465 § 63.2-1306, subject to the provisions of subsection A1; (iii) terminate residual parental rights pursuant to
466 § 16.1-277.01 or 16.1-283; (iv) place a child who is 16 years of age or older in permanent foster care pursuant
467 to § 63.2-908; (v) if the child has been admitted to the United States as a refugee or asylee and has attained
468 the age of 16 years or older and the plan is independent living, direct the board or agency to provide the child
469 with services to transition from foster care; or (vi) place a child who is 16 years of age or older in another
470 planned permanent living arrangement in accordance with the provisions of subsection A2. If the child has
471 been in the custody of a local board or child welfare agency for 15 of the most recent 22 months and no
472 petition for termination of parental rights has been filed with the court, the local board or child welfare
473 agency shall state in its petition for a permanency planning hearing (a) the reasons, pursuant to subdivision A
474 1, 2, or 3 of § 63.2-910.2, why a petition for termination of parental rights has not been filed and (b) the
475 reasonable efforts made regarding reunification ~~or~~ and transfer of custody to a relative and the timeline of
476 such efforts. In cases in which a foster care plan approved prior to July 1, 2011, includes independent living
477 as the goal for a child who is not admitted to the United States as an asylee or refugee, the petition shall direct
478 the board or agency to provide the child with services to transition from foster care.

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

483 Upon receipt of the petition, if a permanency planning hearing has not already been scheduled, the court
484 shall schedule such a hearing to be held within 30 days. The permanency planning hearing shall be held
485 within 10 months of the dispositional hearing at which the foster care plan was reviewed pursuant to
486 § 16.1-281. The provisions of subsection B of § 16.1-282 shall apply to this petition. The procedures of
487 subsection C of § 16.1-282 and the provisions of subsection G of § 16.1-282 shall apply to the scheduling and
488 notice of proceedings under this section.

489 A1. The following requirements shall apply to the transfer of custody of the child to a relative other than
490 the child's prior family or to fictive kin for the purpose of establishing eligibility for the Federal-Funded
491 Kinship Guardianship Assistance program pursuant to § 63.2-1305 or the State-Funded Kinship Guardianship
492 Assistance program pursuant to § 63.2-1306 in accordance with the provisions of clause (ii) of subsection A.
493 Any order transferring custody of the child to a relative other than the child's prior family shall be entered

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

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

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

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

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

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

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

A3. The following requirements shall apply to the selection and approval of permanent foster care

556 pursuant to clause (iv) of subsection A:

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

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

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

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

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

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

584 b. *When the interim plan removes the goal of returning the child to his parent, that reasonable efforts*
585 *were made to reunite the child and parent; or*

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

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

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

601 D. In cases in which a child is placed by the local board of social services or a licensed child-placing
602 agency in a qualified residential treatment program as defined in § 16.1-228, the provisions of subsection E of
603 § 16.1-281 shall apply to any hearing held pursuant to this section.

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

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

612 **§ 16.1-282.2. Annual foster care review.**

613 A. The court shall review a foster care plan annually for any child who remains in the legal custody of a
614 local board of social services or a child welfare agency and (i) on whose behalf a petition to terminate
615 parental rights has been granted, filed or ordered to be filed, (ii) who is placed in permanent foster care, or
616 (iii) who is age 16 or over and for whom the plan is independent living. The foster care review hearing shall
617 be scheduled at the conclusion of a hearing held pursuant to § 16.1-281, 16.1-282, or 16.1-282.1 at which the

order is entered: terminating parental rights, directing the filing of a petition for termination of parental rights by the board or agency, placing the child in permanent foster care, or directing the board or agency to provide the child who is age 16 or over and for whom the plan is independent living with services to transition from foster care. The foster care review hearing shall be held within 12 months of the date of such order, so long as the child remains in the custody of the board or agency.

The board or agency shall file the petition for a foster care review hearing, and the court shall provide notice of the foster care review hearing in accordance with the provisions of § 16.1-282. The board or agency shall file a written Adoption Progress Report with the juvenile court pursuant to § 16.1-277.01, 16.1-277.02, 16.1-278.3, or 16.1-283, if applicable, with the petition required by this section. The court order entered at the conclusion of the hearing held on the petition shall state whether reasonable efforts have been made to place the child in a timely manner in accordance with the *most recently court*-approved foster care plan that established a permanent goal for the child and to complete the steps necessary to finalize the permanent placement of the child.

B. At the foster care review hearing in the case of a child who is placed in permanent foster care, the court shall give consideration to the appropriateness of the services being provided to the child and permanent foster parents, to any change in circumstances since the entry of the order placing the child in permanent foster care, and to such other factors as the court deems proper.

C. At the foster care review hearing in the case of a child who meets the criteria of subdivisions A 1 through 4 of § 16.1-283.2, the court shall inquire of the guardian ad litem and the local board of social services whether the child has expressed a preference that the possibility of restoring the parental rights of his parent or parents be investigated. If the child expresses or has expressed such a preference, the court shall direct the local board of social services or the child's guardian ad litem to conduct an investigation of the parent or parents. If, following such investigation, the local board of social services or the child's guardian ad litem deems it appropriate to do so, either may file a petition for the restoration of parental rights. A hearing on such petition shall be held as provided by § 16.1-283.2.

D. In cases in which a child is placed by the local board of social services or a licensed child-placing agency in a qualified residential treatment program as defined in § 16.1-228, the provisions of subsection E of § 16.1-281 shall apply to any hearing held pursuant to this section.

§ 16.1-283. Termination of residual parental rights.

A. The residual parental rights of a parent or parents may be terminated by the court as hereinafter provided in a separate proceeding if the petition specifically requests such relief. No petition seeking termination of residual parental rights shall be accepted by the court prior to the filing of a foster care plan, pursuant to § 16.1-281, which documents termination of residual parental rights as being in the best interests of the child. The court may hear and adjudicate a petition for termination of parental rights in the same proceeding in which the court has approved a foster care plan which documents that termination is in the best interests of the child. The court may terminate the residual parental rights of one parent without affecting the rights of the other parent. The local board of social services or a licensed child-placing agency need not have identified an available and eligible family to adopt a child for whom termination of parental rights is being sought prior to the entry of an order terminating parental rights; *however, evidence that no such available and eligible family has been identified may be considered by the court when making a finding regarding whether termination is in the best interests of the child.*

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 transferring custody to a person with a legitimate interest. However, in such cases the court shall give a consideration to granting custody to a person with a legitimate interest, and if custody is not granted to a person with a legitimate interest, the judge shall communicate to the parties the basis for such decision either orally or in writing. 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.

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

A1. Any order transferring custody of the child to a person with a legitimate interest pursuant to subsection A shall be entered only upon a finding, based upon a preponderance of the evidence, that such person is one who, after an investigation as directed by the court, (i) is found by the court to be willing and qualified to receive and care for the child; (ii) is willing to have a positive, continuous relationship with the child; (iii) is committed to providing a permanent, suitable home for the child; and (iv) is willing and has the ability to protect the child from abuse and neglect; and the order shall so state. The court's order transferring

680 custody to a person with a legitimate interest should further provide, as appropriate, for any terms and
681 conditions that would promote the child's interest and welfare.

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

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

689 2. It is not reasonably likely that the conditions which resulted in such neglect or abuse can be
690 substantially corrected or eliminated so as to allow the child's safe return to his parent or parents within a
691 reasonable period of time. In making this determination, the court shall take into consideration *whether*
692 *reasonable efforts were made by the local board of social services or licensed child-placing agency to*
693 *rehabilitate the parent or parents, and the efforts made to rehabilitate the parent or parents by any public or*
694 *private social, medical, mental health or other rehabilitative agencies prior to the child's initial placement in*
695 *foster care.*

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

698 a. The parent or parents have a mental or emotional illness or intellectual disability of such severity that
699 there is no reasonable expectation that such parent will be able to undertake responsibility for the care needed
700 by the child in accordance with his age and stage of development;

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

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

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

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

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

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

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

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

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

740 E. The residual parental rights of a parent or parents of a child who is in the custody of a local board or

licensed child-placing agency may be terminated by the court if the court finds, based upon clear and convincing evidence, that it is in the best interests of the child and that (i) the residual parental rights of the parent regarding a sibling of the child have previously been involuntarily terminated; (ii) the parent has been convicted of an offense under the laws of the Commonwealth or a substantially similar law of any other state, the United States or any foreign jurisdiction that constitutes murder or voluntary manslaughter, or a felony attempt, conspiracy or solicitation to commit any such offense, if the victim of the offense was a child of the parent, a child with whom the parent resided at the time such offense occurred or the other parent of the child; (iii) the parent has been convicted of an offense under the laws of the Commonwealth or a substantially similar law of any other state, the United States or any foreign jurisdiction that constitutes felony assault resulting in serious bodily injury or felony bodily wounding resulting in serious bodily injury or felony sexual assault, if the victim of the offense was a child of the parent or a child with whom the parent resided at the time of such offense; or (iv) the parent has subjected any child to aggravated circumstances.

As used in this section:

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

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

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

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

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

F. 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 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 written 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.

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

§ 63.2-910.2. Petition to terminate parental rights.

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

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

2. The local board has determined that the filing of such a petition would not be in the best interests of the child and has documented a compelling reason for such determination in the child's foster care plan, such as (i) a relative has shown the will and ability to care for the child or (ii) the parent's incarceration or participation in a court-ordered residential substance abuse treatment program constitutes the primary factor in the child's placement in foster care, and termination of parental rights is not in the child's best interests; ~~or~~

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

803 child's foster care plan, services deemed necessary for the child's safe return home or has not otherwise made
804 reasonable efforts, *as defined in § 16.1-278.1*, to return the child home, ~~if~~ *unless not* required under §
805 ~~473(a)(15)(B)(ii)~~ § 471(a)(15)(D)(i) or (ii) of Title IV-E of the Social Security Act (42 U.S.C. § 673),
806 § 16.1-281, or § 16.1-283; or

807 *4. In any case in which one or more parents has been detained by a federal immigration authority for an*
808 *immigration purpose, no petition shall be filed for the termination of parental rights unless there is no*
809 *likelihood that (i) the child may be returned to the physical custody of his parent; (ii) a relative may be*
810 *available to care for the child; or (iii) the child may qualify for status as a special immigrant juvenile, as*
811 *defined by 8 U.S.C. § 1101(a)(27)(J).*

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

815 **2. That the Department of Social Services (the Department) shall promulgate new regulations defining**
816 **types of abuse and neglect under 22VAC40-705-30 of the Virginia Administrative Code specifying that**
817 **in situations where neglect is the result of family poverty and there are no outside resources available**
818 **to the family, the parent or caretaker shall not be determined to have neglected the child, but the local**
819 **department of social services shall provide appropriate and timely services to the family. Such**
820 **regulations may include the types of assistance and sources of funding that may be available to be**
821 **accessed.**

822 **3. That the provisions of § 16.1-278.1 of the Code of Virginia, as amended by this act, shall become**
823 **effective on July 1, 2027.**