

SENATE BILL NO. 396

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on the Judiciary

on \_\_\_\_\_)

(Patron Prior to Substitute--Senator Edwards)

A BILL to amend and reenact §§ 16.1-278.2, 16.1-278.4, 16.1-278.8, and 16.1-281 of the Code of Virginia and to amend the Code of Virginia by adding a section number 16.1-282.3, relating to foster care placements; court review; best interests of the child.

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 16.1-278.2, 16.1-278.4, 16.1-278.8, and 16.1-281 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 16.1-282.3 as follows:**

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

A. Within 60 days of a preliminary removal order hearing held pursuant to § 16.1-252 or a hearing on a preliminary protective order held pursuant to § 16.1-253, a dispositional hearing shall be held if the court found abuse or neglect and (i) removed the child from his home or (ii) entered a preliminary protective order. Notice of the dispositional hearing shall be provided to the child's parent, guardian, legal custodian, or other person standing in loco parentis in accordance with § 16.1-263. The hearing shall be held and a dispositional order may be entered, although a parent, guardian, legal custodian, or person standing in loco parentis 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. Notice shall also be provided to the local department of social services, the guardian ad litem and, if appointed, the court-appointed special advocate.

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

- 31 1. Enter an order pursuant to the provisions of § 16.1-278;
- 32 2. Permit the child to remain with his parent, subject to such conditions and limitations as the court  
33 may order with respect to such child and his parent or other adult occupant of the same dwelling;
- 34 3. Prohibit or limit contact as the court deems appropriate between the child and his parent or other  
35 adult occupant of the same dwelling whose presence tends to endanger the child's life, health or normal  
36 development. The prohibition may exclude any such individual from the home under such conditions as  
37 the court may prescribe for a period to be determined by the court but in no event for longer than 180 days  
38 from the date of such determination. A hearing shall be held within 150 days to determine further  
39 disposition of the matter that may include limiting or prohibiting contact for another 180 days;
- 40 4. Permit the local board of social services or a public agency designated by the community policy  
41 and management team to place the child, subject to the provisions of § 16.1-281, in suitable family homes,  
42 child-caring institutions, residential facilities, or independent living arrangements with legal custody  
43 remaining with the parents or guardians. The local board or public agency and the parents or guardians  
44 shall enter into an agreement which shall specify the responsibilities of each for the care and control of  
45 the child. The board or public agency that places the child shall have the final authority to determine the  
46 appropriate placement for the child. Nothing herein shall limit the authority of the court to review and  
47 approve or deny the foster care plan filed for the child and to review the child's status in foster care in  
48 accordance with subsection G of § 16.1-281 and § 16.1-282.

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

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

55 a. A person with a legitimate interest subject to the provisions of subsection A1;

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

60 c. The local board of social services of the county or city in which the court has jurisdiction or, at  
61 the discretion of the court, to the local board of the county or city in which the child has residence if other  
62 than the county or city in which the court has jurisdiction. The local board shall accept the child for care  
63 and custody, provided that it has been given reasonable notice of the pendency of the case and an  
64 opportunity to be heard. However, in an emergency in the county or city in which the court has jurisdiction,  
65 the local board may be required to accept a child for a period not to exceed 14 days without prior notice  
66 or an opportunity to be heard if the judge entering the placement order describes the emergency and the  
67 need for such temporary placement in the order. Nothing in this section shall prohibit the commitment of  
68 a child to any local board of social services in the Commonwealth when the local board consents to the  
69 commitment. The board to which the child is committed shall have the final authority to determine the  
70 appropriate placement for the child. Nothing herein shall limit the authority of the court to review and  
71 approve or deny the foster care plan filed for the child and to review the child's status in foster care in  
72 accordance with subsection G of § 16.1-281 and § 16.1-282.

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

77 A finding by the court that reasonable efforts were made to prevent removal of the child from his  
78 home shall not be required if the court finds that (i) the residual parental rights of the parent regarding a  
79 sibling of the child have previously been involuntarily terminated; (ii) the parent has been convicted of an

80 offense under the laws of the Commonwealth or a substantially similar law of any other state, the United  
81 States, or any foreign jurisdiction that constitutes murder or voluntary manslaughter, or a felony attempt,  
82 conspiracy, or solicitation to commit any such offense, if the victim of the offense was a child of the  
83 parent, a child with whom the parent resided at the time such offense occurred, or the other parent of the  
84 child; (iii) the parent has been convicted of an offense under the laws of the Commonwealth or a  
85 substantially similar law of any other state, the United States, or any foreign jurisdiction that constitutes  
86 felony assault resulting in serious bodily injury or felony bodily wounding resulting in serious bodily  
87 injury or felony sexual assault, if the victim of the offense was a child of the parent or a child with whom  
88 the parent resided at the time of such offense; or (iv) on the basis of clear and convincing evidence, the  
89 parent has subjected any child to aggravated circumstances, or abandoned a child under circumstances  
90 that would justify the termination of residual parental rights pursuant to subsection D of § 16.1-283.

91 As used in this section:

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

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

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

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

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

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

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

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

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

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

125           **§ 16.1-278.4. Children in need of services.**

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

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

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

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

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

140           5. Permit the local board of social services or a public agency designated by the community policy  
141 and management team to place the child, subject to the provisions of § 16.1-281, in suitable family homes,  
142 child caring-institutions, residential facilities, or independent living arrangements with legal custody  
143 remaining with the parents or guardians. The local board or public agency and the parents or guardians  
144 shall enter into an agreement which shall specify the responsibilities of each for the care and control of  
145 the child. The board or public agency that places the child shall have the final authority to determine the  
146 appropriate placement for the child. Nothing herein shall limit the authority of the court to review and  
147 approve or deny the foster care plan filed for the child and to review the child's status in foster care in  
148 accordance with subsection G of § 16.1-281 and § 16.1-282.

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

153           6. Transfer legal custody to any of the following:

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

156           b. A child welfare agency, private organization or facility that is licensed or otherwise authorized  
157 by law to receive and provide care for such child. The court shall not transfer legal custody of a child in

158 need of services to an agency, organization or facility out of the Commonwealth without the approval of  
159 the Commissioner of Social Services; or

160 c. The local board of social services of the county or city in which the court has jurisdiction or, at  
161 the discretion of the court, to the local board of the county or city in which the child has residence if other  
162 than the county or city in which the court has jurisdiction. The local board shall accept the child for care  
163 and custody, provided that it has been given reasonable notice of the pendency of the case and an  
164 opportunity to be heard. However, in an emergency in the county or city in which the court has jurisdiction,  
165 the local board may be required to accept a child for a period not to exceed fourteen days without prior  
166 notice or an opportunity to be heard if the judge entering the placement order describes the emergency  
167 and the need for such temporary placement in the order. Nothing in this subdivision shall prohibit the  
168 commitment of a child to any local board of social services in the Commonwealth when the local board  
169 consents to the commitment. The board to which the child is committed shall have the final authority to  
170 determine the appropriate placement for the child. Nothing herein shall limit the authority of the court to  
171 review and approve or deny the foster care plan filed for the child and to review the child's status in foster  
172 care in accordance with subsection G of § 16.1-281 and § 16.1-282.

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

177 A finding by the court that reasonable efforts were made to prevent removal of the child from his  
178 home shall not be required if the court finds that (i) the residual parental rights of the parent regarding a  
179 sibling of the child have previously been involuntarily terminated; (ii) the parent has been convicted of an  
180 offense under the laws of the Commonwealth or a substantially similar law of any other state, the United  
181 States, or any foreign jurisdiction that constitutes murder or voluntary manslaughter, or a felony attempt,  
182 conspiracy, or solicitation to commit any such offense, if the victim of the offense was a child of the  
183 parent, a child with whom the parent resided at the time such offense occurred, or the other parent of the  
184 child; (iii) the parent has been convicted of an offense under the laws of the Commonwealth or a

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

191 As used in this section:

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

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

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

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

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

206 **§ 16.1-278.8. Delinquent juveniles.**

207 A. If a juvenile is found to be delinquent, except where such finding involves a refusal to take a  
208 breath test in violation of § 18.2-268.2 or a similar ordinance, the juvenile court or the circuit court may  
209 make any of the following orders of disposition for his supervision, care and rehabilitation:

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



211           2. Permit the juvenile to remain with his parent, subject to such conditions and limitations as the  
212 court may order with respect to the juvenile and his parent;

213           3. Order the parent of a juvenile living with him to participate in such programs, cooperate in such  
214 treatment or be subject to such conditions and limitations as the court may order and as are designed for  
215 the rehabilitation of the juvenile and his parent;

216           4. Defer disposition for a specific period of time established by the court with due regard for the  
217 gravity of the offense and the juvenile's history, after which time the charge may be dismissed by the judge  
218 if the juvenile exhibits good behavior during the period for which disposition is deferred;

219           4a. Defer disposition and place the juvenile in the temporary custody of the Department to attend  
220 a boot camp established pursuant to § 66-13 provided bed space is available for confinement and the  
221 juvenile (i) has been found delinquent for an offense that would be a Class 1 misdemeanor or felony if  
222 committed by an adult, (ii) has not previously been and is not currently being adjudicated delinquent or  
223 found guilty of a violent juvenile felony, (iii) has not previously attended a boot camp, (iv) has not  
224 previously been committed to and received by the Department, and (v) has had an assessment completed  
225 by the Department or its contractor concerning the appropriateness of the candidate for a boot camp. Upon  
226 the juvenile's withdrawal, removal or refusal to comply with the terms and conditions of participation in  
227 the program, he shall be brought before the court for a hearing at which the court may impose any other  
228 disposition as authorized by this section which could have been imposed at the time the juvenile was  
229 placed in the custody of the Department;

230           5. Without entering a judgment of guilty and with the consent of the juvenile and his attorney,  
231 defer disposition of the delinquency charge for a specific period of time established by the court with due  
232 regard for the gravity of the offense and the juvenile's history, and place the juvenile on probation under  
233 such conditions and limitations as the court may prescribe. Upon fulfillment of the terms and conditions,  
234 the court shall discharge the juvenile and dismiss the proceedings against him. Discharge and dismissal  
235 under these provisions shall be without adjudication of guilt;

236           6. Order the parent of a juvenile with whom the juvenile does not reside to participate in such  
237 programs, cooperate in such treatment or be subject to such conditions and limitations as the court may

238 order and as are designed for the rehabilitation of the juvenile where the court determines this participation  
239 to be in the best interest of the juvenile and other parties concerned and where the court determines it  
240 reasonable to expect the parent to be able to comply with such order;

241 7. Place the juvenile on probation under such conditions and limitations as the court may prescribe;

242 7a. Place the juvenile on probation and order treatment for the abuse or dependence on alcohol or  
243 drugs in a program licensed by the Department of Behavioral Health and Developmental Services for the  
244 treatment of juveniles for substance abuse provided that (i) the juvenile has received a substance abuse  
245 screening and assessment pursuant to § 16.1-273 and that such assessment reasonably indicates that the  
246 commission of the offense was motivated by, or closely related to, the habitual use of alcohol or drugs  
247 and indicates that the juvenile is in need of treatment for this condition; (ii) the juvenile has not previously  
248 been and is not currently being adjudicated for a violent juvenile felony; and (iii) such facility is available.

249 Upon the juvenile's withdrawal, removal, or refusal to comply with the conditions of participation in the  
250 program, he shall be brought before the court for a hearing at which the court may impose any other  
251 disposition authorized by this section. The court shall review such placements at 30-day intervals;

252 8. Impose a fine not to exceed \$500 upon such juvenile;

253 9. Suspend the motor vehicle and driver's license of such juvenile or impose a curfew on the  
254 juvenile as to the hours during which he may operate a motor vehicle. Any juvenile whose driver's license  
255 is suspended may be referred for an assessment and subsequent referral to appropriate services, upon such  
256 terms and conditions as the court may order. The court, in its discretion and upon a demonstration of  
257 hardship, may authorize the use of a restricted permit to operate a motor vehicle by any juvenile who  
258 enters such program for any of the purposes set forth in subsection E of § 18.2-271.1 or for travel to and  
259 from school. The restricted permit shall be issued in accordance with the provisions of such subsection.  
260 However, only an abstract of the court order that identifies the juvenile and the conditions under which  
261 the restricted license is to be issued shall be sent to the Department of Motor Vehicles.

262 If a curfew is imposed, the juvenile shall surrender his driver's license, which shall be held in the  
263 physical custody of the court during any period of curfew restriction. The court shall send an abstract of  
264 any order issued under the provisions of this section to the Department of Motor Vehicles, which shall

265 preserve a record thereof. Notwithstanding the provisions of Article 12 (§ 16.1-299 et seq.) of this chapter  
266 or the provisions of Title 46.2, this record shall be available only to all law-enforcement officers, attorneys  
267 for the Commonwealth and courts. A copy of the court order, upon which shall be noted all curfew  
268 restrictions, shall be provided to the juvenile and shall contain such information regarding the juvenile as  
269 is reasonably necessary to identify him. The juvenile may operate a motor vehicle under the court order  
270 in accordance with its terms.

271 Any juvenile who operates a motor vehicle in violation of any restrictions imposed pursuant to this  
272 section is guilty of a violation of § 46.2-301.

273 The Department of Motor Vehicles shall refuse to issue a driver's license to any juvenile denied a  
274 driver's license until such time as is stipulated in the court order or until notification by the court of  
275 withdrawal of the order imposing the curfew;

276 10. Require the juvenile to make restitution or reparation to the aggrieved party or parties for actual  
277 damages or loss caused by the offense for which the juvenile was found to be delinquent;

278 11. Require the juvenile to participate in a public service project under such conditions as the court  
279 prescribes;

280 12. In case of traffic violations, impose only those penalties that are authorized to be imposed on  
281 adults for such violations. However, for those violations punishable by confinement if committed by an  
282 adult, confinement shall be imposed only as authorized by this title;

283 13. Transfer legal custody to any of the following:

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

286 b. A child welfare agency, private organization or facility that is licensed or otherwise authorized  
287 by law to receive and provide care for such juvenile. The court shall not transfer legal custody of a  
288 delinquent juvenile to an agency, organization or facility outside of the Commonwealth without the  
289 approval of the Director; or

290 c. The local board of social services of the county or city in which the court has jurisdiction or, at  
291 the discretion of the court, to the local board of the county or city in which the juvenile has residence if

292 other than the county or city in which the court has jurisdiction. The board shall accept the juvenile for  
293 care and custody, provided that it has been given reasonable notice of the pendency of the case and an  
294 opportunity to be heard. However, in an emergency in the county or city in which the court has jurisdiction,  
295 such local board may be required to temporarily accept a juvenile for a period not to exceed 14 days  
296 without prior notice or an opportunity to be heard if the judge entering the placement order describes the  
297 emergency and the need for such temporary placement in the order. Nothing in this subdivision shall  
298 prohibit the commitment of a juvenile to any local board of social services in the Commonwealth when  
299 such local board consents to the commitment. The board to which the juvenile is committed shall have the  
300 final authority to determine the appropriate placement for the juvenile. Nothing herein shall limit the  
301 authority of the court to review and approve or deny the foster care plan filed for the child and to review  
302 the child's status in foster care in accordance with subsection G of § 16.1-281 and § 16.1-282. Any order  
303 authorizing removal from the home and transferring legal custody of a juvenile to a local board of social  
304 services as provided in this subdivision shall be entered only upon a finding by the court that reasonable  
305 efforts have been made to prevent removal and that continued placement in the home would be contrary  
306 to the welfare of the juvenile, and the order shall so state;

307 14. Unless waived by an agreement between the attorney for the Commonwealth and the juvenile  
308 and his attorney or other legal representative, upon consideration of the results of an investigation  
309 completed pursuant to § 16.1-273, commit the juvenile to the Department of Juvenile Justice, but only if  
310 (i) he is 11 years of age or older and has been adjudicated delinquent of an act enumerated in subsection  
311 B or C of § 16.1-269.1 or (ii) he is 14 years of age or older and the current offense is (a) an offense that  
312 would be a felony if committed by an adult, (b) an offense that would be a Class 1 misdemeanor if  
313 committed by an adult and the juvenile has previously been found to be delinquent based on an offense  
314 that would be a felony if committed by an adult, or (c) an offense that would be a Class 1 misdemeanor if  
315 committed by an adult and the juvenile has previously been adjudicated delinquent of three or more  
316 offenses that would be a Class 1 misdemeanor if committed by an adult, and each such offense was not a  
317 part of a common act, transaction or scheme;

318 15. Impose the penalty authorized by § 16.1-284;

319 16. Impose the penalty authorized by § 16.1-284.1;

320 17. Unless waived by an agreement between the attorney for the Commonwealth and the juvenile  
321 and his attorney or other legal representative, upon consideration of the results of an investigation  
322 completed pursuant to § 16.1-273, impose the penalty authorized by § 16.1-285.1;

323 18. Impose the penalty authorized by § 16.1-278.9; or

324 19. Require the juvenile to participate in a gang-activity prevention program including, but not  
325 limited to, programs funded under the Virginia Juvenile Community Crime Control Act pursuant to §  
326 16.1-309.7, if available, when a juvenile has been found delinquent of any of the following violations: §  
327 18.2-51, 18.2-51.1, 18.2-52, 18.2-53, 18.2-55, 18.2-56, 18.2-57, 18.2-57.2, 18.2-121, 18.2-127, 18.2-128,  
328 18.2-137, 18.2-138, 18.2-146, or 18.2-147, or any violation of a local ordinance adopted pursuant to §  
329 15.2-1812.2.

330 B. If the court finds a juvenile delinquent of any of the following offenses, the court shall require  
331 the juvenile to make at least partial restitution or reparation for any property damage, for loss caused by  
332 the offense, or for actual medical expenses incurred by the victim as a result of the offense: § 18.2-51,  
333 18.2-51.1, 18.2-52, 18.2-53, 18.2-55, 18.2-56, 18.2-57, 18.2-57.2, 18.2-121, 18.2-127, 18.2-128, 18.2-  
334 137, 18.2-138, 18.2-146, or 18.2-147; or for any violation of a local ordinance adopted pursuant to § 15.2-  
335 1812.2. The court shall further require the juvenile to participate in a community service project under  
336 such conditions as the court prescribes.

337 **§ 16.1-281. Foster care plan.**

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

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

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

364           B. The foster care plan shall describe in writing (i) the programs, care, services and other support  
365 which will be offered to the child and his parents and other prior custodians; (ii) the participation and  
366 conduct which will be sought from the child's parents and other prior custodians; (iii) the visitation and  
367 other contacts which will be permitted between the child and his parents and other prior custodians, and  
368 between the child and his siblings; (iv) the nature of the placement or placements which will be provided  
369 for the child, including an assessment of the stability of each placement, the services provided or plans for  
370 services to be provided to address placement instability or to prevent disruption of the placement, and a  
371 description of other placements that were considered for the child, if any, and reasons why such other

372 placements were not provided; (v) for school-age children, the school placement of the child; (vi) for  
373 children 14 years of age and older, the child's needs and goals in the areas of counseling, education,  
374 housing, employment, and money management skills development, along with specific independent living  
375 services that will be provided to the child to help him reach these goals; and (vii) for children 14 years  
376 and older, an explanation of the child's rights with respect to education, health, visitation, court  
377 participation, and the right to stay safe and avoid exploitation. The foster care plan shall include all  
378 documentation specified in 42 U.S.C. § 675(5)(l) and § 63.2-905.3. If the child in foster care is placed in  
379 a qualified residential treatment program as defined in § 16.1-228, the foster care plan shall also include  
380 the report and documentation set forth in subsection A of § 63.2-906.1. If the child in foster care is  
381 pregnant or is the parent of a child, the foster care plan shall also include (a) a list of the services and  
382 programs to be provided to or on behalf of the child to ensure parental readiness or capability and (b) a  
383 description of the foster care prevention strategy for any child born to the child in foster care. In cases in  
384 which a foster care plan approved prior to July 1, 2011, identifies independent living as the goal for the  
385 child, and in cases involving children admitted to the United States as refugees or asylees who are 16 years  
386 of age or older and for whom the goal is independent living, the plan shall also describe the programs and  
387 services which will help the child prepare for the transition from foster care to independent living. If  
388 consistent with the child's health and safety, the plan shall be designed to support reasonable efforts which  
389 lead to the return of the child to his parents or other prior custodians within the shortest practicable time  
390 which shall be specified in the plan. The child's health and safety shall be the paramount concern of the  
391 court and the agency throughout the placement, case planning, service provision and review process. For  
392 a child 14 years of age and older, the plan shall include a signed acknowledgment by the child that the  
393 child has received a copy of the plan and that the rights contained therein have been explained to the child  
394 in an age-appropriate manner.

395         If the department or child welfare agency concludes that it is not reasonably likely that the child  
396 can be returned to his prior family within a practicable time, consistent with the best interests of the child,  
397 the department, child welfare agency or team shall (1) include a full description of the reasons for this  
398 conclusion; (2) provide information on the opportunities for placing the child with a relative or in an

399 adoptive home; (3) design the plan to lead to the child's successful placement with a relative or fictive kin  
400 for the purpose of establishing eligibility for the Federal-Funded Kinship Guardianship Assistance  
401 program established pursuant to § 63.2-1305 or the State-Funded Kinship Guardianship Assistance  
402 program established pursuant to § 63.2-1306 or in an adoptive home within the shortest practicable time;  
403 and (4) if neither of such placements is feasible, explain why permanent foster care is the plan for the child  
404 or independent living is the plan for the child in cases involving children admitted to the United States as  
405 refugees or asylees who are 16 years of age or older and for whom the goal is independent living.

406           The local board or other child welfare agency having custody of the child shall not be required by  
407 the court to make reasonable efforts to reunite the child with a parent if the court finds that (A) the residual  
408 parental rights of the parent regarding a sibling of the child have previously been involuntarily terminated;  
409 (B) the parent has been convicted of an offense under the laws of the Commonwealth or a substantially  
410 similar law of any other state, the United States or any foreign jurisdiction that constitutes murder or  
411 voluntary manslaughter, or a felony attempt, conspiracy or solicitation to commit any such offense, if the  
412 victim of the offense was a child of the parent, a child with whom the parent resided at the time such  
413 offense occurred or the other parent of the child; (C) the parent has been convicted of an offense under  
414 the laws of the Commonwealth or a substantially similar law of any other state, the United States or any  
415 foreign jurisdiction that constitutes felony assault resulting in serious bodily injury or felony bodily  
416 wounding resulting in serious bodily injury or felony sexual assault, if the victim of the offense was a  
417 child of the parent or a child with whom the parent resided at the time of such offense; or (D) based on  
418 clear and convincing evidence, the parent has subjected any child to aggravated circumstances, or  
419 abandoned a child under circumstances which would justify the termination of residual parental rights  
420 pursuant to subsection D of § 16.1-283.

421           As used in this section:

422           "Aggravated circumstances" means torture, chronic or severe abuse, or chronic or severe sexual  
423 abuse, if the victim of such conduct was a child of the parent or child with whom the parent resided at the  
424 time such conduct occurred, including the failure to protect such a child from such conduct, which conduct



425 or failure to protect: (i) evinces a wanton or depraved indifference to human life, or (ii) has resulted in the  
426 death of such a child or in serious bodily injury to such a child.

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

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

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

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

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

437 C. A copy of the entire foster care plan shall be sent by the court to the child, if he is 12 years of  
438 age or older; the guardian ad litem for the child, the attorney for the child's parents or for any other person  
439 standing in loco parentis at the time the board or child welfare agency obtained custody or the board placed  
440 the child, to the parents or other person standing in loco parentis, and such other persons as appear to the  
441 court to have a proper interest in the plan. However, a copy of the plan shall not be sent to a parent whose  
442 parental rights regarding the child have been terminated. A copy of the plan shall be sent by the court to  
443 the foster parents. A hearing shall be held for the purpose of reviewing and approving the foster care plan.  
444 The hearing shall be held within 60 days of (i) the child's initial foster care placement, if the child was  
445 placed through an agreement between the parents or guardians and the local department of social services  
446 or a child welfare agency; (ii) the original preliminary removal order hearing, if the child was placed in  
447 foster care pursuant to § 16.1-252; (iii) the hearing on the petition for relief of custody, if the child was  
448 placed in foster care pursuant to § 16.1-277.02; or (iv) the dispositional hearing at which the child was  
449 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-  
450 278.5, 16.1-278.6, or 16.1-278.8. However, the hearing shall be held in accordance with the provisions of  
451 § 16.1-277.01 with a petition for approval of an entrustment agreement. If the judge makes any revision

452 in any part of the foster care plan, a copy of the changes shall be sent by the court to all persons who  
453 received a copy of the original of that part of the plan.

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

463 C2. Any order entered at the conclusion of the hearing that has the effect of achieving a permanent  
464 goal for the child by terminating residual parental rights pursuant to § 16.1-277.01, 16.1-277.02, 16.1-  
465 278.3, or 16.1-283; by placing the child in permanent foster care pursuant to clause (iv) of subsection A  
466 of § 16.1-282.1; or, in cases in which independent living was identified as the goal for a child in a foster  
467 care plan approved prior to July 1, 2011, or in which a child has been admitted to the United States as a  
468 refugee or asylee and is over 16 years of age and independent living has been identified as the permanency  
469 goal for the child, by directing the board or agency to provide the child with services to achieve  
470 independent living status, if the child has attained the age of 16 years, pursuant to clause (v) of subsection  
471 A of § 16.1-282.1 shall state whether reasonable efforts have been made to place the child in a timely  
472 manner in accordance with the foster care plan and to complete the steps necessary to finalize the  
473 permanent placement of the child.

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

477 E. 1. In cases in which a child is placed by the local board of social services or a licensed child-  
478 placing agency in a qualified residential treatment program as defined in § 16.1-228, a hearing shall be

479 held within 60 days of such placement. Prior to such hearing, the qualified residential treatment program  
480 shall file with the court the assessment report prepared pursuant to clause (viii) of the definition of  
481 qualified residential treatment program set forth in § 16.1-228. The court shall (i) consider the assessment  
482 report prepared by a qualified individual pursuant to clause (viii) of the definition of qualified residential  
483 treatment program set forth in § 16.1-228 and submitted pursuant to this subsection; (ii) consider the report  
484 and documentation required under subsection A of § 63.2-906.1 and filed with the foster care or  
485 permanency plan; (iii) determine whether the needs of the child can be met through placement in a foster  
486 home or, if not, whether placement in the qualified residential treatment program would provide the most  
487 effective and appropriate level of care for the child in the least restrictive environment and be consistent  
488 with the short-term and long-term goals established for the child in his foster care or permanency plan;  
489 and (iv) approve or deny the placement of the child in the qualified residential treatment program. The  
490 hearing required by this subsection may be held in conjunction with a dispositional hearing held pursuant  
491 to subsection C, a foster care review hearing held pursuant to § 16.1-282, a permanency planning hearing  
492 held pursuant to § 16.1-282.1, or an annual foster care review hearing held pursuant to § 16.1-282.2,  
493 provided that such hearing has already been scheduled by the court and is held within 60 days of the child's  
494 placement in the qualified residential treatment program.

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

506 or adoptive parent, or in a foster home. The court shall review such evidence and approve or deny the  
507 continued placement of the child in the qualified residential treatment program.

508 F. At the conclusion of the hearing at which the initial foster care plan is reviewed, the court shall  
509 schedule a foster care review hearing to be held within four months in accordance with § 16.1-282.  
510 However, if an order is entered pursuant to subsection C2, the court shall schedule a foster care review  
511 hearing to be held within 12 months of the entry of such order in accordance with the provisions of § 16.1-  
512 282.2. Parties who are present at the hearing at which the initial foster care plan is reviewed shall be given  
513 notice of the date set for the foster care review hearing and parties who are not present shall be summoned  
514 as provided in § 16.1-263.

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

520 **§ 16.1-282.3. Best interests of the child; foster care or prospective third-party custody**  
521 **placements.**

522 In the case of a child who is in the care and custody of the local board of social services or a child  
523 welfare agency, in determining the best interests of such child for purposes of determining custody and  
524 reviewing placements of children in foster care, the court shall consider the following:

525 1. The age and physical and mental condition of the child, giving due consideration to the child's  
526 changing developmental needs;

527 2. The physical safety and welfare of the child;

528 3. The child's familial, cultural, and religious background and ties;

529 4. The relationship and role that the potential custodian or caregiver has played in the upbringing  
530 and care of the child, if any;

531 5. The propensity of the potential custodian or caregiver to actively support the child's contact and  
532 relationship with the child's parent or parents, if reunification is the goal of the child's foster care plan;

533 6. The child's relational bonds and attachments, including the child's relationships with siblings  
534 and other relatives;

535 7. The child's need for placement stability and the level of disruption caused by any proposed  
536 change of custody or placement;

537 8. The preferences of the child's birth parent;

538 9. The reasonable preference of the child, if the court deems the child to be of reasonable  
539 intelligence, understanding, age, and experience to express such a preference; and

540 10. Such other factors as the court deems necessary and proper to the determination.

541 **2. That the Committee on District Courts be requested to study the Juvenile and Domestic Relations**  
542 **District Court system to assess whether appropriate diligence and attention is being given to child**  
543 **dependency court hearings and to make recommendations as to whether a separate docket or court**  
544 **would result in better service to children and families involved in child dependency hearings and**  
545 **other family law matters. The Committee on District Courts shall complete its meetings by**  
546 **November 30, 2022, and shall submit to the Governor and General Assembly an executive summary**  
547 **and a report of its findings and recommendations for publication as a House or Senate document.**  
548 **The executive summary and report shall be submitted as provided in the procedures of the Division**  
549 **of Legislative Automated Systems for the processing of legislative documents and reports no later**  
550 **than the first day of the 2023 Regular Session of the General Assembly and shall be posted on the**  
551 **General Assembly's website.**

552 **3. That the Office of the Children's Ombudsman shall convene a work group to consider issues**  
553 **relating to the Commonwealth's model of court-appointed legal counsel in child dependency cases.**  
554 **The work group shall include representatives from the Virginia Indigent Defense Commission, the**  
555 **Virginia Bar Association Commission on the Needs of Children, the Commission on Youth, the**  
556 **Office of the Executive Secretary of the Supreme Court of Virginia, and the Virginia Poverty Law**  
557 **Center and other Virginia Legal Aid programs. The work group shall make recommendations for**  
558 **legislative and budgetary changes to address these issues by November 1, 2022, to the Chairmen of**  
559 **the Senate Committee on the Judiciary and the House Committee for Courts of Justice.**

**560**

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