

SENATE BILL NO. 396

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice

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, relating to foster care placements; court review.

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 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.

If a child is found to be (a) abused or neglected; (b) at risk of being abused or neglected by a parent or custodian who has been adjudicated as having abused or neglected another child in his care; or (c) abandoned by his parent or other custodian, or without parental care and guardianship because of his

27 parent's absence or physical or mental incapacity, the juvenile court or the circuit court may make any of
28 the following orders of disposition to protect the welfare of the child:

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

30 2. Permit the child to remain with his parent, subject to such conditions and limitations as the court
31 may order with respect to such child and his parent or other adult occupant of the same dwelling;

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

38 4. Permit the local board of social services or a public agency designated by the community policy
39 and management team to place the child, subject to the provisions of § 16.1-281, in suitable family homes,
40 child-caring institutions, residential facilities, or independent living arrangements with legal custody
41 remaining with the parents or guardians. The local board or public agency and the parents or guardians
42 shall enter into an agreement which shall specify the responsibilities of each for the care and control of
43 the child. The board or public agency that places the child shall have the final authority to determine the
44 appropriate placement for the child. Nothing herein shall limit the authority of the court to review the
45 child's status in foster care in accordance with subsection G of § 16.1-281 or to review the foster care plan
46 through a petition filed pursuant to subsection A of § 16.1-282.

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

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

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

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

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

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

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

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

89 As used in this section:

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

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

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

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

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

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

105 A1. Any order transferring custody of the child to a person with a legitimate interest pursuant to
106 subdivision A 5 a shall be entered only upon a finding, based upon a preponderance of the evidence, that
107 such person is one who, after an investigation as directed by the court, (i) is found by the court to be

108 willing and qualified to receive and care for the child; (ii) is willing to have a positive, continuous
109 relationship with the child; (iii) is committed to providing a permanent, suitable home for the child; and
110 (iv) is willing and has the ability to protect the child from abuse and neglect; and the order shall so state.
111 The court's order transferring custody to a person with a legitimate interest should further provide for, as
112 appropriate, any terms or conditions which would promote the child's interest and welfare; ongoing
113 provision of social services to the child and the child's custodian; and court review of the child's placement.

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

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

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

123 **§ 16.1-278.4. Children in need of services.**

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

127 1. Enter an order pursuant to the provisions of § 16.1-278.
128 2. Permit the child to remain with his parent subject to such conditions and limitations as the court
129 may order with respect to such child and his parent.

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

133 4. Beginning July 1, 1992, in the case of any child fourteen years of age or older, where the court
134 finds that the child is not able to benefit appreciably from further schooling, the court may excuse the

135 child from further compliance with any legal requirement of compulsory school attendance as provided
136 under § 22.1-254 or authorize the child, notwithstanding the provisions of any other law, to be employed
137 in any occupation which is not legally declared hazardous for children under the age of eighteen.

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

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

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

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

154 b. A child welfare agency, private organization or facility that is licensed or otherwise authorized
155 by law to receive and provide care for such child. The court shall not transfer legal custody of a child in
156 need of services to an agency, organization or facility out of the Commonwealth without the approval of
157 the Commissioner of Social Services; or

158 c. The local board of social services of the county or city in which the court has jurisdiction or, at
159 the discretion of the court, to the local board of the county or city in which the child has residence if other
160 than the county or city in which the court has jurisdiction. The local board shall accept the child for care
161 and custody, provided that it has been given reasonable notice of the pendency of the case and an

162 opportunity to be heard. However, in an emergency in the county or city in which the court has jurisdiction,
163 the local board may be required to accept a child for a period not to exceed fourteen days without prior
164 notice or an opportunity to be heard if the judge entering the placement order describes the emergency
165 and the need for such temporary placement in the order. Nothing in this subdivision shall prohibit the
166 commitment of a child to any local board of social services in the Commonwealth when the local board
167 consents to the commitment. The board to which the child is committed shall have the final authority to
168 determine the appropriate placement for the child. Nothing herein shall limit the authority of the court to
169 review the child's status in foster care in accordance with subsection G of § 16.1-281 or to review the
170 foster care plan through a petition filed pursuant to subsection A of § 16.1-282.

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

175 A finding by the court that reasonable efforts were made to prevent removal of the child from his
176 home shall not be required if the court finds that (i) the residual parental rights of the parent regarding a
177 sibling of the child have previously been involuntarily terminated; (ii) the parent has been convicted of an
178 offense under the laws of the Commonwealth or a substantially similar law of any other state, the United
179 States, or any foreign jurisdiction that constitutes murder or voluntary manslaughter, or a felony attempt,
180 conspiracy, or solicitation to commit any such offense, if the victim of the offense was a child of the
181 parent, a child with whom the parent resided at the time such offense occurred, or the other parent of the
182 child; (iii) the parent has been convicted of an offense under the laws of the Commonwealth or a
183 substantially similar law of any other state, the United States, or any foreign jurisdiction that constitutes
184 felony assault resulting in serious bodily injury or felony bodily wounding resulting in serious bodily
185 injury or felony sexual assault, if the victim of the offense was a child of the parent or a child with whom
186 the parent resided at the time of such offense; or (iv) on the basis of clear and convincing evidence, the
187 parent has subjected any child to aggravated circumstances, or abandoned a child under circumstances
188 that would justify the termination of residual parental rights pursuant to subsection D of § 16.1-283.

189 As used in this section:

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

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

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

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

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

204 **§ 16.1-278.8. Delinquent juveniles.**

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

- 208 1. Enter an order pursuant to the provisions of § 16.1-278;
- 209 2. Permit the juvenile to remain with his parent, subject to such conditions and limitations as the
210 court may order with respect to the juvenile and his parent;
- 211 3. Order the parent of a juvenile living with him to participate in such programs, cooperate in such
212 treatment or be subject to such conditions and limitations as the court may order and as are designed for
213 the rehabilitation of the juvenile and his parent;

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

217 4a. Defer disposition and place the juvenile in the temporary custody of the Department to attend
218 a boot camp established pursuant to § 66-13 provided bed space is available for confinement and the
219 juvenile (i) has been found delinquent for an offense that would be a Class 1 misdemeanor or felony if
220 committed by an adult, (ii) has not previously been and is not currently being adjudicated delinquent or
221 found guilty of a violent juvenile felony, (iii) has not previously attended a boot camp, (iv) has not
222 previously been committed to and received by the Department, and (v) has had an assessment completed
223 by the Department or its contractor concerning the appropriateness of the candidate for a boot camp. Upon
224 the juvenile's withdrawal, removal or refusal to comply with the terms and conditions of participation in
225 the program, he shall be brought before the court for a hearing at which the court may impose any other
226 disposition as authorized by this section which could have been imposed at the time the juvenile was
227 placed in the custody of the Department;

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

234 6. Order the parent of a juvenile with whom the juvenile does not reside to participate in such
235 programs, cooperate in such treatment or be subject to such conditions and limitations as the court may
236 order and as are designed for the rehabilitation of the juvenile where the court determines this participation
237 to be in the best interest of the juvenile and other parties concerned and where the court determines it
238 reasonable to expect the parent to be able to comply with such order;

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

240 7a. Place the juvenile on probation and order treatment for the abuse or dependence on alcohol or
241 drugs in a program licensed by the Department of Behavioral Health and Developmental Services for the
242 treatment of juveniles for substance abuse provided that (i) the juvenile has received a substance abuse
243 screening and assessment pursuant to § 16.1-273 and that such assessment reasonably indicates that the
244 commission of the offense was motivated by, or closely related to, the habitual use of alcohol or drugs
245 and indicates that the juvenile is in need of treatment for this condition; (ii) the juvenile has not previously
246 been and is not currently being adjudicated for a violent juvenile felony; and (iii) such facility is available.
247 Upon the juvenile's withdrawal, removal, or refusal to comply with the conditions of participation in the
248 program, he shall be brought before the court for a hearing at which the court may impose any other
249 disposition authorized by this section. The court shall review such placements at 30-day intervals;

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

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

260 If a curfew is imposed, the juvenile shall surrender his driver's license, which shall be held in the
261 physical custody of the court during any period of curfew restriction. The court shall send an abstract of
262 any order issued under the provisions of this section to the Department of Motor Vehicles, which shall
263 preserve a record thereof. Notwithstanding the provisions of Article 12 (§ 16.1-299 et seq.) of this chapter
264 or the provisions of Title 46.2, this record shall be available only to all law-enforcement officers, attorneys
265 for the Commonwealth and courts. A copy of the court order, upon which shall be noted all curfew
266 restrictions, shall be provided to the juvenile and shall contain such information regarding the juvenile as

267 is reasonably necessary to identify him. The juvenile may operate a motor vehicle under the court order
268 in accordance with its terms.

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

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

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

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

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

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

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

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

288 c. The local board of social services of the county or city in which the court has jurisdiction or, at
289 the discretion of the court, to the local board of the county or city in which the juvenile has residence if
290 other than the county or city in which the court has jurisdiction. The board shall accept the juvenile for
291 care and custody, provided that it has been given reasonable notice of the pendency of the case and an
292 opportunity to be heard. However, in an emergency in the county or city in which the court has jurisdiction,
293 such local board may be required to temporarily accept a juvenile for a period not to exceed 14 days

294 without prior notice or an opportunity to be heard if the judge entering the placement order describes the
295 emergency and the need for such temporary placement in the order. Nothing in this subdivision shall
296 prohibit the commitment of a juvenile to any local board of social services in the Commonwealth when
297 such local board consents to the commitment. The board to which the juvenile is committed shall have the
298 final authority to determine the appropriate placement for the juvenile. Nothing herein shall limit the
299 authority of the court to review the child's status in foster care in accordance with subsection G of § 16.1-
300 281 or to review the foster care plan through a petition filed pursuant to subsection A of § 16.1-282. Any
301 order authorizing removal from the home and transferring legal custody of a juvenile to a local board of
302 social services as provided in this subdivision shall be entered only upon a finding by the court that
303 reasonable efforts have been made to prevent removal and that continued placement in the home would
304 be contrary to the welfare of the juvenile, and the order shall so state;

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

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

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

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

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

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

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

335 **§ 16.1-281. Foster care plan.**

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

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

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

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

362 B. The foster care plan shall describe in writing (i) the programs, care, services and other support
363 which will be offered to the child and his parents and other prior custodians; (ii) the participation and
364 conduct which will be sought from the child's parents and other prior custodians; (iii) the visitation and
365 other contacts which will be permitted between the child and his parents and other prior custodians, and
366 between the child and his siblings; (iv) the nature of the placement or placements which will be provided
367 for the child, including an assessment of the stability of each placement, the services provided or plans for
368 services to be provided to address placement instability or to prevent disruption of the placement, and a
369 description of other placements that were considered for the child, if any, and reasons why such other
370 placements were not provided; (v) for school-age children, the school placement of the child; (vi) for
371 children 14 years of age and older, the child's needs and goals in the areas of counseling, education,
372 housing, employment, and money management skills development, along with specific independent living
373 services that will be provided to the child to help him reach these goals; and (vii) for children 14 years
374 and older, an explanation of the child's rights with respect to education, health, visitation, court

375 participation, and the right to stay safe and avoid exploitation. The foster care plan shall include all
376 documentation specified in 42 U.S.C. § 675(5)(l) and § 63.2-905.3. If the child in foster care is placed in
377 a qualified residential treatment program as defined in § 16.1-228, the foster care plan shall also include
378 the report and documentation set forth in subsection A of § 63.2-906.1. If the child in foster care is
379 pregnant or is the parent of a child, the foster care plan shall also include (a) a list of the services and
380 programs to be provided to or on behalf of the child to ensure parental readiness or capability and (b) a
381 description of the foster care prevention strategy for any child born to the child in foster care. In cases in
382 which a foster care plan approved prior to July 1, 2011, identifies independent living as the goal for the
383 child, and in cases involving children admitted to the United States as refugees or asylees who are 16 years
384 of age or older and for whom the goal is independent living, the plan shall also describe the programs and
385 services which will help the child prepare for the transition from foster care to independent living. If
386 consistent with the child's health and safety, the plan shall be designed to support reasonable efforts which
387 lead to the return of the child to his parents or other prior custodians within the shortest practicable time
388 which shall be specified in the plan. The child's health and safety shall be the paramount concern of the
389 court and the agency throughout the placement, case planning, service provision and review process. For
390 a child 14 years of age and older, the plan shall include a signed acknowledgment by the child that the
391 child has received a copy of the plan and that the rights contained therein have been explained to the child
392 in an age-appropriate manner.

393 If the department or child welfare agency concludes that it is not reasonably likely that the child
394 can be returned to his prior family within a practicable time, consistent with the best interests of the child,
395 the department, child welfare agency or team shall (1) include a full description of the reasons for this
396 conclusion; (2) provide information on the opportunities for placing the child with a relative or in an
397 adoptive home; (3) design the plan to lead to the child's successful placement with a relative or fictive kin
398 for the purpose of establishing eligibility for the Federal-Funded Kinship Guardianship Assistance
399 program established pursuant to § 63.2-1305 or the State-Funded Kinship Guardianship Assistance
400 program established pursuant to § 63.2-1306 or in an adoptive home within the shortest practicable time;
401 and (4) if neither of such placements is feasible, explain why permanent foster care is the plan for the child

402 or independent living is the plan for the child in cases involving children admitted to the United States as
403 refugees or asylees who are 16 years of age or older and for whom the goal is independent living.

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

419 As used in this section:

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

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

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

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

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

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

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

452 C1. Any order transferring custody of the child to a relative other than the child's prior family shall
453 be entered only upon a finding, based upon a preponderance of the evidence, that the relative is one who,
454 after an investigation as directed by the court, (i) is found by the court to be willing and qualified to receive

455 and care for the child; (ii) is willing to have a positive, continuous relationship with the child; (iii) is
456 committed to providing a permanent, suitable home for the child; and (iv) is willing and has the ability to
457 protect the child from abuse and neglect; and the order shall so state. The court's order transferring custody
458 to a relative should further provide for, as appropriate, any terms or conditions which would promote the
459 child's interest and welfare; ongoing provision of social services to the child and the child's custodian; and
460 court review of the child's placement.

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

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

475 E. 1. In cases in which a child is placed by the local board of social services or a licensed child-
476 placing agency in a qualified residential treatment program as defined in § 16.1-228, a hearing shall be
477 held within 60 days of such placement. Prior to such hearing, the qualified residential treatment program
478 shall file with the court the assessment report prepared pursuant to clause (viii) of the definition of
479 qualified residential treatment program set forth in § 16.1-228. The court shall (i) consider the assessment
480 report prepared by a qualified individual pursuant to clause (viii) of the definition of qualified residential
481 treatment program set forth in § 16.1-228 and submitted pursuant to this subsection; (ii) consider the report

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

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

506 F. At the conclusion of the hearing at which the initial foster care plan is reviewed, the court shall
507 schedule a foster care review hearing to be held within four months in accordance with § 16.1-282.
508 However, if an order is entered pursuant to subsection C2, the court shall schedule a foster care review

509 hearing to be held within 12 months of the entry of such order in accordance with the provisions of § 16.1-
510 282.2. Parties who are present at the hearing at which the initial foster care plan is reviewed shall be given
511 notice of the date set for the foster care review hearing and parties who are not present shall be summoned
512 as provided in § 16.1-263.

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

518 **2. That the Committee on District Courts be requested to study the Juvenile and Domestic Relations**
519 **District Court system to assess whether appropriate diligence and attention is being given to child**
520 **dependency court hearings and to make recommendations as to whether a separate docket or court**
521 **would result in better service to children and families involved in child dependency hearings. The**
522 **Committee on District Courts shall complete its meetings by November 30, 2023, and shall submit**
523 **to the Governor and General Assembly an executive summary and a report of its findings and**
524 **recommendations for publication as a House or Senate document. The executive summary and**
525 **report shall be submitted as provided in the procedures of the Division of Legislative Automated**
526 **Systems for the processing of legislative documents and reports no later than the first day of the**
527 **2024 Regular Session of the General Assembly and shall be posted on the General Assembly's**
528 **website.**

529 **3. That the Office of the Children's Ombudsman shall convene a work group to consider issues**
530 **relating to the Commonwealth's model of court-appointed legal counsel in child dependency cases.**
531 **The work group shall include representatives from the Virginia Indigent Defense Commission, the**
532 **Virginia Bar Association Commission on the Needs of Children, the Commission on Youth, the**
533 **Office of the Executive Secretary of the Supreme Court of Virginia, and the Virginia Poverty Law**
534 **Center and other Virginia Legal Aid programs. The work group shall make recommendations for**

535 legislative and budgetary changes to address these issues by November 1, 2022, to the Chairmen of
536 the Senate Committee on the Judiciary and the House Committee for Courts of Justice.

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