



Virginia's Court System

In this section:

→ [Overview of the Court Process for Foster Care Cases in Virginia](#)

What do Juvenile and Domestic Relations (JDR) District Courts do?

Serving the Commonwealth through 32 judicial districts, the JDR court is a limited jurisdiction trial court that hears cases involving children and families. There is a JDR court in each Virginia city and county. The JDR court hears all matters involving juveniles, such as criminal or traffic matters. Juvenile delinquency cases are cases involving a minor under the age of 18 who has been accused of committing an offense that would be considered criminal if committed by an adult. Other juvenile offenses may be referred to as status offenses. Status offenses are those acts that are unlawful only because they are committed by a minor.

In addition, this court handles other matters involving the family such as custody, support, and visitation. The court also hears family abuse cases, cases where adults have been accused of child abuse or neglect, and criminal cases where the defendant and alleged victim are family or household members.

What is the Court Improvement Program?

The Office of the Executive Secretary (OES) staff for this program work on all aspects of juvenile and family law to integrate best practices into the policies and daily routines of the court system. Major activities include developing, conducting and supporting special projects that address issues of concern to children and families involved with the court system and implementing standards promulgated by the Judicial Council of Virginia governing lawyers who serve as guardians ad litem.

Contact Information

Virginia's Courts

<http://vacourts.gov>

Court Improvement Program

Office of the Supreme Court of Virginia

100 N. 9th St., 3rd Floor

Richmond, VA 23219

804-786-6455

Director – Sandra L. Karison

Overview of the Court Process for Foster Care Cases in Virginia*

I. General Introduction

A. Scope

“Child dependency” generally includes cases involving abuse or neglect, entrustment and relief of custody, foster care, permanency planning, termination of parental rights

B. Authorities

1. Multiple Virginia statutes, especially in the following Titles of the Virginia Code:
 - a. 16.1 - “Juvenile Code”
 - b. 63.2 - Social Services
 - c. 20 - Domestic Relations
 - d. 22.1 - Education
2. Regulations (VDSS - 22 VAC 44)
3. VDSS Guidance Manuals, www.dss.virginia.gov
4. Major bodies of federal law
 - a. Child Abuse Prevention and Treatment Act (CAPTA) 1974
 - b. Indian Child Welfare Act (ICWA) 1978
 - c. Adoption Assistance and Child Welfare Act of 1980
 - d. Multi Ethnic Placement Act (MEPA) 1994 & (IEPA) 1996
 - e. Adoption and Safe Families Act (ASFA) 1997

* Adapted from outline prepared by the Court Improvement Program, Office of the Executive Secretary, Supreme Court of Virginia for the Virginia CLE *Representation of Children as a Guardian Ad Litem – 2018 Qualifying Course*

- f. Keeping Children & Families Safe Act (KCFSA) 2003
- g. Fostering Connections to Success and Increasing Adoptions Act 2008
- h. Preventing Sex Trafficking and Strengthening Families Act 2014
- i. Every Student Succeeds Act (ESSA) 2015
- j. Family First Prevention Services Act (FFPSA) 2018
- k. Social Security Act, as amended

C. Subject Matter Jurisdiction

- 1. Code § 16.1-241 (basic); see *also* Va. Code §§ 16.1-241.3, 16.1-242, 16.1-242.1
- 2. Uniform Child Custody Jurisdiction and Enforcement Act - § 20-146.1 et seq.
- 3. Indian Child Welfare Act (federal)

D. Child Dependency Case Process in Brief

- 1. Case initiation - petition
- 2. Clerk of court processes case
- 3. Summonses, notices of hearing issued for service of process
- 4. Appointment of guardian ad litem for child, advisement of right to counsel for parent or guardian, appointments of counsel (Va. Code §§ 16.1-266, 16.1-281 F)
- 5. Emergency hearing (*ex parte*)
- 6. Preliminary hearing
- 7. Adjudication
- 8. Disposition
 - a. Legal custody may be established or transferred
 - b. Initial foster care plan is reviewed
- 9. Foster care review (petition)

- 10. Permanency planning (petition)
- 11. Achieve permanent goal (petition)
 - a. Return home
 - b. Custody to relative
 - c. Termination of residual parental rights
 - d. Other options

- 12. Post permanency planning
 - a. Foster care review (petition)
 - b. Adoption Progress Report

E. Statutorily Authorized Placements in Foster Care

- 1. Virginia law authorizes placement of a child with a local department of social services only as a result of the following:
 - a. Court order in child abuse or neglect case
 - b. Court order in case of a child at risk of abuse or neglect by a parent or custodian who has been adjudicated as having abused or neglected another child in the care of the parent or custodian
 - c. Entrustment agreement by parent
 - d. Court order in relief of custody case
 - e. Court order in child in need of services, child in need of supervision, status offense or delinquency case
 - f. Placement agreement between local department and parents or guardian
- 2. Court is not authorized to place a child in foster care with a local department of social services as a result of:
 - a. Court order in a custody case
 - b. Child protective order entered pursuant to § 16.1-253. But if the petition alleges abuse or neglect and the child is found by the court to be abused or neglected, transfer of custody to a local department is authorized upon disposition of the petition. Va. Code § 16.1-278.2.

F. Limitations on Placement

1. Interstate Compact on the Placement of Children (ICPC) - § 63.2-1000
 - a. Applicable to any child in DSS custody or supervision placed out of state
 - b. Includes placement with relatives
 - c. Protects children with services across state lines
 - d. Cannot be “waived”
2. Indian Child Welfare Act (ICWA)
 - a. Applicable to any child who is, or who is eligible to be, a member of a federally-recognized Indian tribe
 - b. Higher standards of proof apply for child’s removal from home (clear and convincing evidence) and termination of parental rights (beyond a reasonable doubt)
 - c. Preferences for placements for foster care or adoption apply
 - d. Requires “active efforts” by DSS to prevent removal and to return home
 - e. Seeks to maintain Indian child’s ties to Indian family and tribe for placements and provision of tribal and cultural services

G. Requirements for Court Determinations and Orders

1. Correct court orders meet funding eligibility requirements
 - a. Federal financial participation (Title IV-E funding)
 - b. State/local Children’s Services Act funding for children who are not IV-E eligible
2. Required judicial determinations (findings in a court order):
 - a. Continued placement in the home would be contrary to the welfare of the child (“Imminent threat to child’s life or health to extent that severe or irremedial injury would be likely to result if the child were returned to or left in the custody of his parents, guardian, legal custodian...” Va. Code §§ 16.1-251, 16.1-252.)

- b. Reasonable efforts have been made to prevent removal (or reasonable efforts are not required under law)
 - c. Reasonable efforts have been made to reunite the child with parents, guardian or other person standing in loco parentis (or reasonable efforts are not required under law). See Va. Code § 16.1-282.
 - d. Reasonable efforts to finalize the permanency plan that is in effect. See Va. Code §§ 16.1-282.1, 16.1-282.2.
 - e. Reasonable efforts to prevent removal or reunify child with parent are not required when:
 - i. Parent's rights to sibling were involuntarily terminated
 - ii. Parent convicted of murder or voluntary manslaughter of child or other parent
 - iii. Parent convicted of felony assault or felony sexual assault and victim is child
 - iv. Parent subjected child to aggravated circumstances or abandoned child.
See, e.g., Va. Code § 16.1-281.
 - f. Judicial determinations must be:
 - i. Detailed, explicitly documented;
 - ii. Child specific, made on a case by case basis, one child per order; and
 - iii. In a written court order. 45 CFR § 1356.21(d).
3. Written order must be entered timely
- a. The date that the order is signed determines whether the required time frames are met, not the date the hearing is held
 - b. Nunc pro tunc orders and later affidavits do not cure problems with timeliness or documentation of judicial determinations
 - c. A transcript of the proceeding is the sole alternative to documentation in a timely, complete, sufficient court order for purposes of establishing title IV-E eligibility

H. Standards of Proof (non-ICWA cases)

1. Preponderance of the evidence for all petitions resulting in child's placement in foster care
2. Clear and convincing evidence for voluntary or involuntary termination of parental rights

II. Abuse or Neglect Cases

A. How Department of Social Services Becomes Involved

1. Pre-court case
 - a. A complaint or report to Virginia Department of Social Services or a local department may be made by calling the Hotline or otherwise notifying the department. See Va. Code §§ 63.2-1503, 63.2-1510.
 - b. Call from a mandated reporter - Va. Code § 63.2-1509
2. Court initiated Preliminary Child Protective Order, or other court referral
 - a. Va. Code § 16.1-253 A authorizes the entry of a preliminary child protective order on the court's motion if necessary to protect a child's life, health, safety or normal development pending the final determination of any matter before the court
 - b. Va. Code § 16.1-278 authorizes the juvenile and domestic relations district court to order a local department of social services to provide child protective services upon notice and an opportunity to be heard
 - c. Va. Code § 16.1-260 (Court Services Unit intake statute) provides in subsection A that complaints alleging abuse or neglect of a child shall be referred initially to the local department of social services

B. Role of Department of Social Services Upon Receipt of Complaint or Report

1. Differential response system - Va. Code § 63.2-1504. All local departments operate as a "child protective services differential response agency," meaning the department responds to valid reports or complaints of child abuse or neglect by conducting either (a) an investigation or (b) a family assessment and developing a safety plan in consultation with the family (Va. Code § 63.2-1505 B)

2. Local department is authorized to take child into custody for up to 72 hours without a prior court order. Va. Code § 63.2-1517.
3. Local department may file petition with juvenile and domestic relations district court alleging abuse or neglect of child and seeking
 - a. Child protective order
 - b. Removal of child from home
 - c. Both removal and protective order

C. Child Protective Orders

1. Ex parte preliminary child protective order - Va. Code § 16.1-253 B
 - a. When it is established that there would be an imminent threat to life or health, and that delay occasioned by providing an adversary hearing would be likely to result in serious or irreparable injury to the child
 - b. Hearing is required within the shortest time possible, not to exceed 5 business days, with at least 24 hours-notice to the parties and guardian ad litem
2. Preliminary child protective order - Va. Code § 16.1-253 A
 - a. May issue upon petition or court's own motion
 - b. Court finding: necessary to protect a child's life, health, safety or normal development, pending the final determination of any matter before the court
 - c. Court order: abstention from offensive conduct; cooperation in the provision of reasonable services or programs designed to protect the child's health, safety and normal development; access to the child's home to visit the child and to inspect the fitness of the home; visitation with the child; refraining from acts which endanger the child; and/or refraining from contacts with the child, or family or household members
 - d. Duration: pending the final determination of any matter before the court
3. Adjudication of allegation of abuse or neglect at 5-day hearing or, upon objection, within 30 days of the date of the preliminary hearing
4. Final child protective order may be entered upon disposition of the petition if a child is found by the court to be abused or neglected, at risk of abuse or neglect by a custodian who has been adjudicated as having abused or

neglected a child in his or her care, or abandoned or without parental care, a final child protective order may be entered to protect the child's welfare

D. Removal of Child from Home

1. Emergency removal from parent, guardian, legal custodian, or person in loco parentis - Va. Code §16.1-251
 - a. May be ordered ex parte
 - b. Court findings
 - i. Child would be subjected to an imminent threat to life or health to the extent that severe or irremediable injury would be likely to result if the child were returned to or left in the custody of his parents, guardian, legal custodian, or other person standing in loco parentis and
 - ii. Reasonable efforts have been made to prevent removal of the child from his home and there are no alternatives less drastic than removal which could reasonably and adequately protect the child's life and health pending a final hearing on the petition
 - iii. Substitute reasonable efforts findings:
 - a) Reasonable efforts are deemed to have been made because there is no reasonable opportunity to provide preventive services or
 - b) Reasonable efforts to prevent removal are not required under law
 - c. Alternatives less drastic than removal include provision of medical, educational, psychiatric, psychological, homemaking or other similar services to the child or family or the issuance of a preliminary child protective order
 - d. Court shall give consideration to temporary placement of the child with a relative or other interested individual, including grandparents, under the supervision of the local department of social services
 - e. Hearing must be held as soon as practicable, but no later than 5 business days after the physical removal of the child
2. Preliminary removal order hearing - Va. Code § 16.1-252
 - a. Court findings

- i. Child would be subjected to an imminent threat to life or health to the extent that severe or irreparable injury would be likely to result if the child were returned to or left in the custody of his parents, guardian, legal custodian, or other person standing in loco parentis and
- ii. Reasonable efforts have been made to prevent removal of the child from his home and there are no alternatives less drastic than removal which could reasonably and adequately protect the child's life and health pending final hearing on the petition
- iii. Substitute reasonable efforts findings:
 - a) Reasonable efforts are deemed to have been made because there is no reasonable opportunity to provide preventive services or
 - b) Reasonable efforts to prevent removal are not required under law
- b. Alternatives less drastic than removal include provision of medical, educational, psychiatric, psychological, homemaking or other similar services to the child or family or the issuance of a preliminary child protective order
- c. Adjudication of allegation of abuse or neglect at 5-day preliminary hearing or, upon objection, within 30 days of the date of the preliminary hearing
- d. Court order
 - i. Preliminary removal - the court may place the child in the temporary care and custody of a relative or other interested individual, including grandparents, provided certain criteria are met; or if such placement is not available, in the care and custody of a suitable agency
 - ii. Reasonable visitation between the child and parents, guardian, legal custodian, or other person in loco parentis and with siblings, if such visitation would not endanger the child's life or health
 - iii. Dismiss the petition if the evidence is insufficient to establish abuse or neglect of the child

E. Dispositional Hearing - Va. Code § 16.1-278.2

1. Timing and scope
 - a. Held within 60 days of the preliminary hearing held pursuant to § 16.1-252 or 16.1-253 if the child was found to be abused or neglected
 - b. Va. Code § 16.1-278.2 also applies to disposition of a case involving a child who is found by the court to be at risk of abuse or neglect by a custodian who has been adjudicated as having abused or neglected a child in his or her care
2. Court order
 - a. Upon a finding of no less drastic alternative, the court may transfer legal custody of the child
 - i. to a relative or other interested individual, provided certain criteria are met
 - ii. to a child welfare agency
 - iii. to a local department of social services
 - b. Court findings if legal custody of the child is transferred to a local department of social services
 - i. Reasonable efforts have been made to prevent removal, unless court finds such efforts are not required under law
 - ii. Continued placement in the home would be contrary to the welfare of the child
3. Foster care plan pursuant to § 16.1-281 is reviewed and court order entered at dispositional hearing

F. Appeal

1. Dispositional order is first appealable order in abuse or neglect case (removal and adjudicatory orders are not appealable)
2. J&DR District Court retains jurisdiction to hear petition for foster care review - § 16.1-241.2

III. Entrustment Cases

- A. Authority to Accept Child for Entrustment - Va. Code § 63.2-903
- B. Basic filing requirements

1. Petition for approval of entrustment agreement filed by board or agency accepting child filed in juvenile and domestic relations district court
 2. Foster care plan pursuant to § 16.1-281 must be filed with petition
 3. Timing for filing petition
 - a. Shall be filed within a reasonable period of time, not to exceed 89 days after the execution of an entrustment agreement for less than 90 days, if the child is not returned to his home within that period
 - b. Shall be filed within a reasonable period of time, not to exceed 30 days after the execution of an entrustment agreement for 90 days or longer or for an unspecified period of time, if such entrustment agreement does not provide for the termination of all parental rights and responsibilities with respect to the child
 - c. May be filed in the case of a permanent entrustment agreement which provides for the termination of all parental rights and responsibilities with respect to the child
 4. Scheduling of hearing
 - a. Within 45 days of the filing of the petition without order of publication
 - b. Within 75 days of filing of petition with order of publication
- C. Adjudication and Disposition - Va. Code § 16.1-277.01
1. Entrustment agreement is voluntary and may be temporary or permanent
 2. At the hearing, the court shall hear evidence on the petition and review the foster care plan filed pursuant to § 16.1-281
 3. Best interest is the standard for approval, by clear and convincing evidence if a permanent entrustment provides for voluntary termination of parental rights
 4. Any order transferring custody of the child must contain same findings as in case of abused or neglected child pursuant to § 16.1-278.2
 5. Written agreement to post adoption contact expressly authorized
 6. Upon termination of parental rights, entrustment agreement is rendered irrevocable and local department of social services or child placing agency is given authority to place the child for adoption and give consent

7. Adoption Progress Report shall be filed in the juvenile and domestic relations district court every 6 months from the date of an order terminating parental rights, for the purpose of reviewing progress being made to place child in an adoptive home

IV. Relief of Custody Cases

A. Basic Filing Requirements

1. Request for relief of care and custody of a child shall be referred initially to the local department of social services for investigation and provision of services, if appropriate (foster care prevention services). Va. Code § 16.1-277.02.
2. Relief is available to the petitioner(s) (petition may be joined by another party)
3. May seek temporary or permanent relief of custody; the latter can include voluntary termination of parental rights

B. Adjudication and Disposition

1. Process may take 2+ hearings - §§ 16.1-277.02 and 16.1-278.3 apply
2. Upon receipt of the petition, the court shall schedule a hearing which may include or final disposition of the matter
3. Standard for granting petition
 - a. Good cause (preponderance of the evidence) for temporary relief of custody
 - b. Clear and convincing evidence in best interest of child, if permanent relief of custody and termination of parental rights is sought
4. Any order transferring custody of the child must contain same findings as in case of abused or neglected child pursuant to § 16.1-278.2
5. Written agreement to post adoption contact expressly authorized
6. Upon termination of parental rights, local department of social services or child placing agency is given authority to place the child for adoption and give consent
7. Adoption Progress Report shall be filed in the juvenile and domestic relations district court every 6 months from the date of an order

terminating parental rights, for the purpose of reviewing progress being made to place child in an adoptive home

V. Other Out of Home Placements

A. Pursuant to Dispositional Order (in statutorily authorized case types)

1. Child in need of services - § 16.1-278.4
2. Child in need of supervision - § 16.1-278.5
3. Status offender - § 16.1-278.6
4. Delinquent child - § 16.1-278.8

B. Authorized Placements

1. Parents enter into an agreement for placement of the child by a local board of social services or a public agency designated by the community policy and management team, subject to the foster care statutes, in suitable placements with legal custody remaining with the parents or guardians under a placement agreement. See Va. Code § 63.2-900; Virginia Department of Social Services Child and Family Services Manual, E. Foster Care, Section 3.7.5, http://dss.virginia.gov/files/division/dfs/fc/intro_page/guidance_manuals/fc/06_2017/section_3_entering_foster_care.pdf
2. Transfer legal custody to
 - a. A relative or other individual who, after study, is found by court to be qualified to receive and care for the child
 - b. A child welfare agency
 - c. A local board of social services with notice and opportunity to be heard or in an emergency, temporarily place for a period not to exceed 14 days
3. Court order authorizing removal of child from home and placement under an agreement with local board or public agency or upon transfer of legal custody to local board of social services must contain certain findings:
 - a. Reasonable efforts have been made to prevent removal and
 - b. Continued placement in the home would be contrary to the welfare of the child

4. For children placed in foster care, the board or agency must file a foster care plan within 45 days for a hearing to be held within 60 of placement

VI. Case Planning for a Child in Foster Care

A. In General

1. Each child in foster care shall have a foster care plan
2. Each child in foster care shall be assigned a permanent plan goal
3. A guardian ad litem shall be appointed to represent the child any time a hearing is held to review the foster care plan for the child or the child's status in foster care. Va. Code § 16.1-281.
 - a. The same guardian ad litem for the child should be appointed for every hearing, if at all possible
 - b. The guardian ad litem should attend Family Partnership Meetings and other case planning meetings, including Family Assessment and Planning Team (FAPT) meetings

B. Permissible Plan Goals - § 63.2-906

1. Transfer custody of the child to his prior family
2. Transfer custody of the child to a relative other than his prior family
 - a. Statutory findings must be satisfied - relative is willing and qualified, committed to providing a permanent suitable home for the child, etc. *See, e.g., Va. Code § 16.1-281 C1. See also Lynchburg Div. of Soc. Servs. v. Cook, 276 Va. 465 (2008).*
 - b. Kinship Guardianship Assistance Program (KinGAP) facilitates placements with relatives for children for whom adoption or being returned home are not appropriate permanency options. Certain eligibility criteria apply for payment allowances made to kinship guardians under kinship guardianship assistance agreements. *See Va. Code §§ 63.2-100, 63.2-1305.*
3. Finalize an adoption of the child
4. Place a child who is 16 years of age or older in permanent foster care. Va. Code § 63.2-908.
5. Transition to independent living if, and only if, the child is admitted to the United States as a refugee or asylee

6. Place a child who is 16 years of age or older in another planned permanent living arrangement in accordance with subsection A2 of § 16.1-282.1

C. Court Reviews for a Child in Foster Care

1. The permanent goal assigned for the child shall be reviewed and approved by the juvenile and domestic relations district court having jurisdiction of the child's case.
2. Each child in foster care shall be subject to the permanency planning and review procedures established in §§ 16.1-281, 16.1-282, and 16.1-282.1.
3. The court may review the plan or the status of a child in foster care on its own motion. Va. Code § 16.1-281.
4. Ask whether the child can be safely returned home today. If not, why not?

VII. Foster Care and Permanency Hearings

A. Foster Care Plan Pursuant to § 16.1-281

1. Filed within 45 days of custody granted to local department of social services or child welfare agency (may be extended to 60 days) or with a petition for approval of an entrustment agreement
2. Hearing on foster care plan within 60 days of custody transfer (at the dispositional hearing pursuant to § 16.1-278.2 if the child was found to be abused and neglected and placed in foster care)
3. Plan is developed with involvement of the parents or other custodians and the child, if it is in the child's best interest. 14 year old has right to be involved and may choose up to two members of the case planning team

B. Foster Care Review Pursuant to § 16.1-282

1. Hearing is held within 4 months of dispositional hearing at which the initial foster care plan was reviewed
2. Purpose of the hearing is to review the progress made on the initial foster care plan or make changes in the plan
3. Court reviews progress toward meeting the foster care goal, approves or disapproves changes to the plan

4. Judicial determination (finding) is made whether reasonable efforts have been made to return the child home if that is the goal or to finalize another permanent placement
- C. Initial Permanency Planning Hearing - Va. Code § 16.1-282.1, -281(B), -283
1. Hearing is within 5 months of foster care review, or within 30 days of finding reasonable efforts to reunite are not required
 2. Purpose of this hearing is to establish a permanent goal for a child and either to achieve the goal or defer such action through approval of an interim plan for a maximum of six months
 3. Approval of an interim plan requires particularized court findings, for example, if the goal for the child is to return home, the court must find that:
 - a. the parent has made marked progress toward reunification with the child
 - b. the parent has maintained a close and positive relationship with the child
 - c. the child is likely to return home within the near future
 4. Child's placement must be described in foster care plan
 - a. Including in state and out of state options and whether placement is in or out of state
 - b. If placement is out of state, plan must provide the reason why the placement is appropriate and in the best interests of the child
 5. Child's right to be heard - § 16.1-282.1
 - a. Consultation with the child by judge in age appropriate manner in every permanency hearing unless the court finds that such consultation is not in the best interests of the child
 - b. Child in permanent foster care or another planned permanent living arrangement must be asked about child's desired permanency outcome
 6. Child placed out of state
 - a. Least restrictive alternative possible is preferred

- b. All in state and out of state options shall be documented in foster care plan
- c. Court shall consider and if child is placed out of state, determine if appropriate and in best interests of child

7. Necessary reasonable efforts findings and implications

- a. Court shall find whether reasonable efforts have been made to reunite the child with the child's prior family, if returning home is the permanent goal for the child; or whether reasonable efforts have been made to achieve the permanent goal identified by the board or agency, if the goal is other than returning the child home
- b. Federal law requires reasonable efforts to place the child in a timely manner in accordance with the permanency plan, and to complete whatever steps are necessary to finalize the permanent placement of the child; Virginia statute satisfies this
- c. Implications
 - i. Finding is required for Title IV-E funding within 12 months of the date the child is considered to have entered foster care and every 12 months thereafter
 - ii. Without finding made timely and documented in court order, the child's case is ineligible for federal financial participation until the finding is made. See 45 CFR § 1356.21(b).

8. Reasonable efforts for siblings

- a. Local departments of social services must make reasonable efforts to place siblings together and if they can't, to provide frequent visitation among the siblings unless contrary to the safety or well-being of any of the siblings
- b. Consider reasonable efforts for siblings in making reasonable efforts findings to reunify the child and family or finalize an alternate permanency plan, but a specific court finding on reasonable efforts for siblings is not required
- c. Va. Code § 63.2-912 authorizes courts to grant visitation rights to siblings (and parents, grandparents), and requires the court's order to state the nature and extent of any visitation rights granted

D. Subsequent permanency planning hearing - Va. Code § 16.1-282.1

The same requirements apply to this hearing as apply to the first permanency planning hearing.

VIII. Termination of Residual Parental Rights - Va. Code § 16.1-283

A. Standing and requirements of filing petition

1. Child must be in foster care
2. No petition shall be accepted by the court prior to the filing of a foster care plan documenting that termination of parental rights is in the best interest of the child
3. Separate petitions are required for each parent (not on same petition)
4. Adoptive family need not have been identified prior to filing petition
5. Local department of social services is required to file petitions to terminate parental rights when the child has been in foster care for 15 out of the past 22 months. Va. Code § 63.2-910.2
6. Guardian ad litem has standing to file for termination of parental rights. *Stanley v. Fairfax County Dep't of Social Servs.*, 242 Va. 60 (1991).

B. Hearing

1. Various grounds for termination of parental rights are specified in § 16.1-283
2. Foster care plan with goal of adoption (petition for permanency planning hearing) may be heard in the same proceeding as the termination of parental rights petition(s)
3. Clear and convincing evidence required to grant petition(s)
4. Reasonable efforts must have been provided to the parent(s), unless not required under law
5. Parental rights of one parent may be terminated without affecting rights of other parent
6. Child's' right to object: parental rights may not be terminated if child age 14 years or otherwise of an age of discretion objects

C. Court Order and Next Steps

1. Order terminating parental rights shall be accompanied by an order continuing or granting custody to a local department of social services or

child placing agency or granting custody or guardianship to a relative or other interested individual, subject to specified findings

- a. However, the court shall consider granting custody to a relative, including grandparents
- b. An order continuing or granting custody to a local department of social services or child placing agency shall indicate whether the department or agency has authority to place the child for adoption and consent thereto

2. Adoption Progress Report shall be filed in the juvenile and domestic relations district court every 6 months from the date of an order terminating parental rights, for the purpose of reviewing progress being made to place child in an adoptive home

D. Appeal of Involuntary Termination of Parental Rights

1. Trial de novo in circuit court within 90 days of appeal - § 16.1-296 C
2. Court of Appeals - case takes precedence on the docket. *Id.*

IX. Post Permanency Planning

A. Foster Care Review Hearing

1. Held within 6 months of approving placement in another planned permanent living arrangement. Va. Code § 16.1-282.1.
2. Held annually pursuant to § 16.1-282.2 for any child who remains in the custody of a local department of social services or child welfare agency
 - a. On whose behalf petitions to terminate parental rights have been granted, filed, or ordered to be filed
 - b. Who is placed in permanent foster care
 - c. For whom the plan is independent living with services to transition from foster care
3. Court shall inquire of GAL and local DSS whether child has expressed a preference for the possibility of restoring parental rights and, if so, the court shall direct the GAL or local DSS to conduct an investigation of the parent or parents

B. Adoption Progress Report

Filed every 6 months from the date of the order terminating parental rights and heard every 12 months with the petition for foster care review, for the purpose of reviewing progress being made to place child in an adoptive home

C. Restoration of parental rights pursuant to § 16.1-283.2

1. Petition may be filed by guardian ad litem or the local department of social services if:
 - a. Child is at least 14 years of age
 - b. Child was adjudicated abused, neglected, in need of services or supervision, or delinquent
 - c. Parent's rights were involuntarily terminated at least 2 years prior to filing petition
 - d. Child has not achieved his permanency goal or the permanency goal was achieved but not sustained
 - e. Child and parent consent to the restoration of parental rights
2. Petition may be filed by GAL or local DSS after an investigation ordered by the court pursuant to § 16.1-282.2, when child has expressed a preference to have the possibility of restoration of parental rights investigated

X. Fostering Futures

A. Description

Program of extended foster care services available to eligible youth reaching age 18 on or after July 1, 2016. 2018 Appropriation Act, Item 344.

B. Scope

Local department of social services and youth may enter into a voluntary continuing services agreement for youth age 18 to 21 to receive continuing services and support

C. Additional Eligibility Criteria

1. Child was in foster care before 18
 - a. Youth turned 18 while in foster care and is not yet 21 (includes permanent foster care non-custodial foster care or entrusted)
 - b. Youth was released from DJJ custody between ages 18-21 and was in foster care immediately prior to commitment to DJJ

- c. Life skills: engaged in an eligible program (education, vocation, employment, etc., or incapable due to a medical condition)
- d. Living arrangement: living in independent living setting (may be a foster home; may not be a group home or residential treatment facility)

D. Court Process

1. Local department of social services files petition for approval of agreement
2. Court may appoint counsel to represent the youth, preferably the lawyer who formerly represented the youth as GAL while in the custody of the local department prior to reaching age 18
3. Court may enter order approving the agreement and may schedule the case for future review hearings

XI. New Federal Law Transforms Child Welfare

A. Family First Prevention Services Act (FFPSA) (Public Law 115-123, February 9, 2018) - Overview

1. Expands use of Title IV-E funds to reimburse states for providing evidence-based foster care prevention services effective October 1, 2018
 - a. Eligibility includes child and/or parent/kin caregiver
 - b. Types of prevention services
 - i. Services to address mental health challenges
 - ii. Substance abuse treatment
 - iii. In-home parent skill-based programs
2. Restricts federal reimbursement for foster care maintenance of a child placed in a group home or residential treatment facility, with certain exceptions
3. Encourages placements of children in foster care with relatives and with their siblings or in foster family homes¹

¹ Virginia's use of congregate care is comparatively high, with 17% of children in foster care placed in non-family settings compared to 12% nationwide, as of 9/30/2016. JOINT LEGISLATIVE AUDIT AND REVIEW COMMISSION, IMPROVING VIRGINIA'S FOSTER CARE SYSTEM at 37 (2018). <http://jlarc.virginia.gov/2018-foster-care.asp> (last visited March 19, 2019).

B. Virginia Plans to Implement FFPSA in Stages

1. 2019 Virginia General Assembly aligned state law
 - a. Requires a criminal background check as a condition of employment, volunteering, or providing services on a regular basis in a children's residential facility licensed by specified state agencies. Va. Code § 37.2-408.1. 2019 Acts of Assembly Ch. 100 (Senate Bill 1678), Ch. 282 (House Bill 2014) (contains emergency enactment clause; effective March 8, 2019).
 - b. Establishes requirements for court approval when a child is placed in a "Qualified Residential Treatment Program." 2019 Acts of Assembly Ch. 282 (House Bill 2014), Ch. 688 (Senate Bill 1679) (effective July 1, 2019).
2. Placements in Qualified Residential Treatment Programs - start date TBA
3. Implementation of FFPSA foster care prevention services - start date TBA

C. FFPSA Placement Preferences

1. In general, states are eligible for federal reimbursement of foster care maintenance payments made on behalf of foster children placed:
 - a. in a foster family home,
 - b. with a parent residing in a licensed residential family-based substance abuse treatment facility meeting certain requirements, see 42 U.S.C. 672(j), or in a "child-care institution,"² with certain limitations. See 42 U.S.C. § 672(a).
2. Title IV-E will not reimburse foster care maintenance payments made by a state on behalf of a child placed in a child care institution, beginning with the 3rd week of the placement, unless the child is placed in one of the following³:

² A "child care institution" means a private or child-care institution, or a public child-care institution which accommodates no more than 25 children, which is licensed by the State...or has been approved by the agency...." 42 U.S.C. § 672(c). At any given time, 15-16% of Virginia's foster care population is placed in a non-family setting, including group homes and psychiatric treatment facilities. Only psychiatric treatment facilities will likely meet the new federal standard.

³ 42 U.S.C. § 672(k).

- a. Setting specializing in prenatal, post-partum, or parenting supports for pregnant or parenting youth
- b. Residential facility providing care and support for youth who are or are at risk of becoming victims of human trafficking
- c. Supervised independent living setting for youth 18 or older (Virginia’s “Fostering Futures” program)
- d. Juvenile justice setting (but numbers of youth placed may not increase)
- e. “Qualified residential treatment program” (QRTP) with court approval and child must meet strict clinical criteria. See 42 U.S.C. § 671(k)(4). See also Va. Code §§ 16.1-228, 16.1-281, 16.1-282, 16.1-282.1, 16.1-282.2, 63.2-100, 63.2-906.1.

D. Requirements for Placement in a Qualified Residential Treatment Program (QRTP)

- 1. What is a QRTP? (Va. Code §§ 16.1-228, 63.2-100)
 - a. 24-hour residential treatment program (facility) for children in foster care; is licensed and accredited by DBHDS⁴
 - b. Meets the clinical and other needs of children with serious emotional or behavioral disorders
 - c. Uses a “trauma-informed”⁵ treatment model
 - d. Employs registered and/or licensed clinical staff on site and available 24 hours/day, 7 days/week
 - e. Facilitates child maintaining connections with family members, including siblings, and “fictive kin” (defined term)
 - f. Facilitates engagement of family in child’s treatment program, if in child’s best interests
 - g. Provides discharge planning and 6 months of aftercare

⁴ An estimated 39/141 Virginia facilities may receive “endorsement” by October 2019.

⁵ The organizational structure and treatment framework of a QRRP must address the consequences of trauma and facilitate healing. Virginia’s Children’s Cabinet has adopted the federal Department of Health and Human Services Substance Abuse and Mental Health Services Administration’s definition of “trauma informed” for use in Virginia.

- h. Requires that any child placed in the program receive an assessment within 30 days of placement by a “qualified individual” (defined term)
- 2. Assessment requirement (set out in definition of “qualified residential treatment program,” Va. Code §§ 16.1-228, 63.2-100):
 - a. Timing - assessment must be completed within 30 days of placement
 - b. Conducted by a “qualified individual,” meaning a trained professional or licensed clinician who is independent of the placing agency and placement setting. Va. Code §§ 16.1-228, 63.2-100.⁶ (CSBs may conduct these assessments)
- 3. Role of qualified individual in assessment (set out in definition of “qualified residential treatment program” Va. Code §§ 16.1-228, 63.2-100):
 - a. Assesses child’s strengths and needs using a designated tool (currently used for Medicaid approval process for residential treatment)
 - b. Identifies whether the child’s needs can be met in a placement with a family member or in a foster home
 - c. Addresses whether the QRTP is the least restrictive environment and consistent with the short- and long-term goals for the child set forth in his foster care or permanency plan
 - d. Establishes list of short- and long-term mental and behavioral health goals for the child
 - e. Conducts assessment in conjunction with child’s “family and permanency team,” defined in § 63.2-100. See *also* Va. Code § 63.2-906.1.
 - f. Documents assessment in a written report filed with the court prior to any hearing on the child’s placement.
- 4. Case plan requirements (Va. Code § 63.2-906.1; see *also* Va. Code §§ 16.1-281 B):

⁶ More specifically, a “qualified individual” for the purpose of conducting a QRTP assessment is a “licensed mental health professional” as defined in 12 VAC 35-105-20 (a physician, licensed clinical psychologist, licensed professional counselor, licensed clinical social worker, licensed substance abuse treatment practitioner, licensed marriage and family therapist, certified psychiatric clinical nurse specialist, or licensed behavior analyst).

- a. Developed by local department of social services or child placing agency
 - b. Describes reasonable and good faith efforts agency made to identify the child's relatives, fictive kin, and professionals to be included on the child's Family and Permanency Team
 - c. Family and Permanency Team involvement in case plan
 - i. Agency must include contact information
 - ii. Meetings must be held at times and places convenient to the family
 - iii. Child's parent participates in selecting members of the team if the goal is reunification
 - d. Assessment was done according to law and in conjunction with the FPT
 - e. Considers placement preferences of the child and FPT "with recognition that the child should be placed with his siblings unless the court finds that such placement is contrary to the best interests of the child"
 - f. If the child's and FPT placements preferences differ from the placement recommended in the assessment, the reasons why their preferences were not recommended
5. Hearing and court approval of placement is required
- a. Initial approval within 60 days of placement. Va. Code § 16.1-281 E (requirements for court hearing). See also Va. Code §§ 16.1-282, -282.1, -282.2, and 63.2-906.1.
 - b. Qualified individual must submit written assessment report prior to any hearing on the child's placement in a QRTP
 - c. Local board or child placing agency files a foster care plan or permanency plan, including all information required in § 63.2-906.1 for placement in a QRTP
 - d. Local board shall present evidence that demonstrates the child's needs cannot be met in a foster home and the QRTP provides the most appropriate level of care in the least restrictive environment and is consistent with the short and long term goals for the child in the foster care plan or permanency plan; the length of time placement is

expected to continue; and efforts to achieve the child's goal. See Va. Code § 16.1-281. See *also* Va. Code §§ 16.1-282, -282.1, -282.2, and 63.2-906.1.

6. Court's role in QRTP process
 - a. Consider qualified individual's assessment, determination, and documentation
 - b. Consider local board or child placing agency's documentation in foster care or permanency plan and evidence presented on QRTP placement
 - c. Determines whether the needs of the child can be met through a placement in a foster family home or, if not, whether a QRTP provides the most effective and appropriate level of care for the child in the least restrictive environment and is consistent with the child's short and long term goals in the permanency plan and approves or denies the QRTP placement
7. Time limits on placement in QRTP
 - a. Only for time needed to provide services and treatment, up to 12 consecutive or 18 non-consecutive months for child 13 years or older, or 6 months for 12 or younger
 - b. Placement for longer requires written approval of VDSS Commissioner to federal Secretary of HHS