

Chapter 5 - Chins/Chinsup, Abuse, Neglect and Foster Care Case Procedures

Children in Need of Services, Children in Need of Supervision and Status Offenses

Definitions

1. A ***child in need of services*** is defined as (i) a child whose behavior, conduct or condition presents or results in a serious threat to the well-being and physical safety of the child; (ii) a child who remains away from or deserts or abandons his family or lawful custodian during one occasion and is demonstratively at risk of coercion, exploitation, abuse, or manipulation or has been lured from his parent or lawful custodian by means of trickery or misrepresentation or under false pretenses; or (iii) a child under the age of 14 whose behavior, conduct or condition presents or results in a serious threat to the well-being and physical safety of another person, except for a child undergoing certain good-faith spiritual treatment in accord with recognized religious tenets, or a child who habitually remains away from, deserts, or who abandons his family due to physical, emotional or sexual abuse in the home as determined by a court or local child protective services unit shall not be considered a child in need of services for that reason alone.
2. A ***child in need of supervision*** is defined as a child who:
 - while subject to compulsory school attendance, is habitually and without justification absent from school (truant), *and*
 - the child has been offered an adequate opportunity to receive the benefit of any and all educational services and programs that are required to be provided by law and which meet the child's particular educational needs, *and*
 - the school system from which the child is absent or other appropriate agency has made a reasonable effort to affect the child's regular attendance without success, *and*
 - the school system has provided documentation that it has complied with the provisions of [Va. Code § 22.1-258](#) regarding the efforts of an attendance officer to encourage frequently absent children to attend school, *or*
 - without reasonable cause and without the consent of their parent, lawful custodian or placement authority, remains away from or deserts or abandons their parent or lawful custodian on more than one occasion or remains away without proper authority from a

residential care facility in which the child has been placed by the court, *and*

- such conduct presents a clear and substantial danger to the child's life or health, *and*
- the child or his family is in need of treatment, rehabilitation or services not presently being received, *and*
- the intervention of the court is essential to provide the treatment, rehabilitation or services needed by the child or his family.

3. A ***status offender*** is a child who commits an act prohibited by law that would not be a criminal act if committed by an adult.

Case Initiation

Child in Need of Services and Status Offenders

Case initiation for a child in need of services and status offenders will be through preparation of a DC-511, PETITION. A child in need of services may be taken into custody when:

- There is no suitable person into whose custody the child may be released, or
- There is a clear and substantial danger to the child's life or health, or
- The assumption of custody is necessary to ensure the child's appearance before the court.

The same duties, responsibilities and procedures for detaining a child, conducting a detention hearing, and post-detention hearing release apply in child in need of services cases that apply in delinquency cases (See "Juvenile Delinquency Case Procedures - Case Initiation") except that the:

- Child may not be detained in jail, and
- Court is not required to advise a child that he has a right to remain silent, and
- Child may not be detained in a detention home after the detention hearing.

See [Va. Code §§ 16.1-246](#), [16.1-247](#), [16.1-248.1](#), and [16.1-249](#).

A status offender committing a curfew or tobacco related violation may be released by the arresting officer on a VIRGINIA UNIFORM SUMMONS instead of being taken in for the issuance of a DC-511, PETITION. In either instance, no costs are to be assessed against the offender.

Child in Need of Supervision

Case initiation for a child in need of supervision will be through the preparation of a DC-511, PETITION through an intake officer only after the intake officer determines whether the petitioner and the child have utilized or attempted to utilize treatment and services available in the community and have exhausted all non-judicial remedies which are available to them, and determines that they have made reasonable efforts to do so.

Pre-trial Procedures

Prior to the adjudicatory hearing, the clerk's office will perform such functions as are necessary to properly prepare the case for court. To complete the indexing and filing functions, the clerk's office will:

If no prior record exists:

- Assign a new case number and enter in JCMS.
- Prepare the case attaching all case-related papers.
- File the case in the pending court date file.

Appointment of Counsel

The child involved in a case in juvenile and domestic relations district court has the right of representation by a lawyer during matters and proceedings concerning their interests. Prior to the adjudicatory hearing by the court of any case involving a child who is alleged to be in need of services or supervision, such child and their parent, guardian, legal custodian or other person standing *in loco parentis* shall be informed by a judge, clerk or probation officer of the child's right to counsel with the use of district court form DC-513, ADVISEMENT AND REQUEST FOR APPOINTMENT OF COUNSEL, or district court form DC-515, WAIVER OF RIGHT TO BE REPRESENTED BY A LAWYER (JUVENILE) and of the liability of the parent, guardian, legal custodian or other person standing *in loco parentis* for the costs of such legal services and be given an opportunity to:

- Obtain and employ counsel of the child's own choice; or

- If the court determines that the child is indigent within the contemplation of the law and their parent, guardian, legal custodian or other person standing *in loco parentis* does not retain an attorney for the child, a statement shall be executed by such child, and the court shall appoint an attorney-at-law to represent him; or
- Waive the right to representation by an attorney, if the court finds the child and the parent, guardian, legal custodian or other person standing *in loco parentis* of the child consent, in writing, to such waiver and that the interests of the child and the parent, guardian, legal custodian or other person standing *in loco parentis* in the proceeding are not adverse. Such written waiver shall be in accordance with law and shall be filed with the court records of the case.

Note: The court determines whether the child or adult is indigent within the meaning of the law pursuant to the guidelines set forth in [Va. Code § 19.2-159](#) after reviewing the district court form DC-333, [FINANCIAL STATEMENT - ELIGIBILITY DETERMINATION FOR INDIGENT DEFENSE SERVICES](#), of the person for whom representation by a court-appointed lawyer is being sought. If the parents of a child also claim to be indigent, they must execute a separate financial statement. If the parents, guardian, legal custodian or person standing *in loco parentis* is later found to be financially able to pay for the court-appointed lawyer, they would be liable for such fees and expenses up to the limit set forth in subdivision 1 of [Va. Code § 19.2-163](#), which is currently \$330.00.

Appointment of Court-Appointed Special Advocate

District court form DC-544, ORDER FOR COURT - APPOINTED SPECIAL ADVOCATE (CASA) is designed for appointment of a court-appointed special advocate to provide assistance in the case. It specifies the powers and duties of this appointee. [Va. Code §§ 9.1-153, 9.1-154, 9.1-155, 9.1-156, and 9.1-157](#).

Case Hearing

Responsibilities of the clerk's office for the adjudicatory hearing include:

- Assuring that all parties and witnesses involved have been notified of the hearing.
- Verifying that all cases assigned to the court date have been entered on the docket.

- Assuring that the case files for the day's cases are delivered to the judge prior to court.

The judge hears the testimony in the case, reviews the evidence, and renders a judgment.

After the court has made adjudication, either a disposition is rendered in the same hearing or a disposition hearing date is set and several procedures may be ordered by the court to be completed prior to the disposition hearing:

- The court may order a social history report pursuant to [Va. Code § 16.1-273](#), using district court form DC-542, ORDER FOR INVESTIGATION AND REPORT that the court service unit or other entity must complete and file with the court at least seventy-two hours prior to the disposition hearing. If the case involves a child in need of supervision, then an evaluation by the appropriate public agency using an interdisciplinary team approach must be made and the report filed as described above prior to final disposition. In lieu of directing an evaluation, the court may consider the report of such interdisciplinary team, which met not more than ninety days prior to the court's finding that the child is in need of supervision.
- The court may also order the child to be examined by a local mental health center or, if none, then by a physician, a psychiatrist, or clinical psychologist pursuant to [Va. Code § 16.1-275](#). Upon the written recommendation of a physician, psychiatrist or clinical psychologist, the juvenile may be transferred to a state mental hospital for up to ten days for a recommendation for treatment.
- The clerk's office will issue district court form DC-538, PLACEMENT ORDER and send it to the director of the shelter care facility if the child is ordered placed in the facility by the court.

In the case of a child in need of supervision, the court shall direct that an evaluation be done of the child's service needs using an interdisciplinary team approach. A report of the evaluation must be filed with the court at least seventy-two hours prior to the disposition hearing. If a report was done concerning the child by an interdisciplinary team within ninety days prior to the court's finding, the court may use that report in lieu of a new report.

Disposition Hearing

At the disposition hearing, the court has several dispositional alternatives that it may invoke.

- Children in Need of Services or Status Offenders

The dispositional alternatives for a child in need of services or a status offender pursuant to [Va. Code § 16.1-278.4](#) are:

- Enter an order under [Va. Code § 16.1-278](#) to obtain services otherwise required by law for the child, the parents, or other legal custodians as the court prescribes.
- Permit the child to remain home with their normal custodians subject to restrictions or conditions as the court may direct.
- Permit the placement of the child in a suitable family home, child-caring institution, residential facility with legal custody remaining with the parents or guardian or independent living arrangement if the child has been admitted to the United States as a refugee or asylee who is at least 16 years of age or older. The court must find that reasonable efforts have been made to prevent placement out of the home and that continued placement in the home would be contrary to the welfare of the child.
- Require the child to participate in a public service project under such conditions as the court prescribes.
- Transfer legal custody of the child to:
 - A person with a legitimate interest who is found to be qualified to receive and care for the child.
 - A licensed child welfare agency, private organization, or facility.
 - The local Department of Social Services or public welfare where the court has jurisdiction or where the child resides even if it is a different jurisdiction than that of the court. The local department must be given notice and the opportunity to be heard. Transfers to local public welfare or social services departments require a finding in the order whether reasonable efforts were made to prevent removal and that continued home placement would be contrary to the child's welfare. If the judge further finds that reasonable efforts were made to reunite the child with their parents, guardian or other person standing *in loco*

parentis to the child and so states in their order, the local department can obtain federal funds reimbursement for foster care services. In an emergency, the local department of public welfare may be required to accept a child for a period not to exceed fourteen days without prior notice or an opportunity to be heard if the judge entering the order describes in the order the emergency and the need for such temporary placement.

- Order the child, the child's parent, guardian or legal custodian to participate in such programs, cooperate in such treatment or be subject to such conditions and limitations as the court may order and as are designed for the rehabilitation of the child.
- If the child is fourteen years old or older and the court finds that the child is not able to benefit from further schooling, the court may:
 - Excuse the child from compulsory school attendance, and,
 - Authorize the child to be employed in a non-hazardous occupation.

Note: In status offenses, a civil penalty may be assessed. No costs are authorized in the statute for status offenses, however, if unpaid, notice of the delinquent fine will transmit to DMV.

- Children in Need of Supervision

Following the submission of a report of evaluation, the court will complete district court form DC-548 CHILD IN NEED OF SUPERVISION ORDER. The dispositional alternatives for a child in need of supervision under [Va. Code § 16.1-278.5](#) are:

- All of the alternatives available for a child in need of services under [Va. Code § 16.1-278.4](#) (See list above).
- Place the child on probation subject to conditions and limitations, including suspension of the child's driver's license and issuance of a restricted driver's permit.
- Order the child, the child's parent, guardian or legal custodian to participate in such programs, cooperate in such treatment or be subject to such conditions and limitations as the court may order and as are designed for the rehabilitation of the child.
- Require the child to participate in a public service project, as defined in [Va. Code § 16.1-278.1](#), under such terms and conditions as the court may prescribe.

In the case of any child subject to compulsory school attendance in [Va. Code § 22.1-254](#), where the court finds that the parent, guardian, legal custodian, or other person standing *in loco parentis* of such child is in violation of [Va. Code §§ 22.1-254](#), [22.1-255](#), [22.1-265](#), or [22.1-267](#), in addition to any penalties provided in [Va. Code § 22.1-263](#) or [22.1-265](#), the parent, guardian, legal custodian, or other person standing *in loco parentis* of a child living with such person may be ordered to participate in such programs, cooperate in such treatment, or be subject to such conditions and limitations as the court may order and as are designed for the rehabilitation of the child, parent, guardian, legal custodian, or other person standing *in loco parentis* of such child. Upon the failure of any parent, guardian, legal custodian, or other person standing *in loco parentis* of such child to participate in such programs or to cooperate in such treatment or to comply with any conditions and limitations that the court may order, the court may impose a fine of not more than \$100 for each day in which such person fails to comply with the order of the court.

In the case where the court finds that such parent, guardian, legal custodian, or other person standing *in loco parentis* has willfully disobeyed a lawful process, judgment, decree, or order of the court requiring such person to comply with the compulsory school attendance law, in addition to any conditions or limitations that the court may order or any penalties provided by [Va. Code §§ 16.1-278.2](#) through [16.1-278.19](#), [22.1-263](#) or [22.1-265](#), the court may find the parent, guardian, legal custodian, or other person standing *in loco parentis* guilty of a Class 1 misdemeanor as provided by [Va. Code § 18.2-371](#).

If a court finds that a child at least thirteen years of age has failed to comply with school attendance and meeting requirements as provided in [Va. Code § 22.1-258](#), the court shall order the denial of the child's driving privileges for a period of not less than thirty days. If such failure to comply involves a child under the age of sixteen, the child's ability to apply for a driver's license shall be delayed for a period of not less than thirty days after they reaches the age of sixteen and three months. District court form DC-576, DRIVER'S LICENSE DENIAL ORDER (JUVENILE)/DRIVER'S LICENSE SUSPENSION ORDER (UNDERAGE ALCOHOL VIOLATIONS) is used to note the denial and to grant a restricted driver's license. For second or subsequent violations, the court may order denial of the juvenile's license for one year or until the age of eighteen, whichever is longer, or delay the juvenile's ability to apply for a license for one year after they reach the age of sixteen years and three months.

Pursuant to [Va. Code § 46.2-334.001](#), the principal, or his designee, of any public school in the Commonwealth may petition the juvenile and domestic relations district court within whose jurisdiction the minor resides to suspend the minor's license if they have had 10 or more unexcused absences from school on consecutive school days. The court shall give notice and opportunity for the minor to show cause why his driver's license should not be suspended. Upon failure to show cause for the license not to be suspended, the court may suspend the minor's driver's license for any period of time, until the minor is 18 years old. The juvenile may apply to a juvenile and domestic relations district court for issuance of a restricted driver's license for any of the purposes set forth in subsection E of [§ 18.2-271.1](#). No restricted license shall be issued pursuant to this section unless the licensee (i) is employed at least four hours per day and at least 20 hours per week, (ii) has a medical condition that requires the person to be able to drive a motor vehicle, or (iii) is the only licensee in his household. The court shall order the surrender of such person's license and shall forward to the Commissioner a copy of its order entered pursuant to this subsection.

Post-Trial Procedures

The bulk of the activity in non-delinquent juvenile cases takes place after trial. The purpose of these procedures is to do what is in the best interests of the child. The major post-trial procedures presented here include:

- Clerk's office procedures
- Appeals
- Review of orders previously entered

The clerk's office performs several functions to assure that case dispositions are recorded and completed cases are properly indexed and filed. The post-trial procedures of the clerk's office are:

- Enter disposition information in JCMS.
- Prepare the court order as per the court's instructions.
- Complete the district court form DC-538, PLACEMENT ORDER for children placed in shelter care or the district court form DC-539,

- RELEASE ORDER for children to be released and send the form to the director of the shelter care facility.
- Prepare and issue notices or legal documents to carry out the various post-trial activities such as district court form DC-581, NOTICE OF APPEAL – JUVENILE CIVIL APPEALS.

Appeal

Appeal of a judgment of the juvenile court may be taken to the circuit court, [Va. Code §§ 16.1-296, 16.1-344](#). An agency may appeal for a child involved in a non-delinquent juvenile case. Procedures for the clerk's office processing an appeal include:

- Verify that the appeal has been noted within ten days after disposition including the disposition of an order on a motion for reconsideration of a continuing treatment program.
- Note the appeal in JCMS.
- Prepare district court form DC-581, NOTICE OF APPEAL – JUVENILE CIVIL APPEALS as per the instructions in the DISTRICT COURT FORMS MANUAL.
- If applicable, receive recognizance from the appellant.
- Send all case-related documents to the circuit court clerk's office.
 - Petition (juvenile)
 - Notices
 - Orders
 - Placement documents
 - Other pleadings or case documents
 - Photocopies of pertinent documents (petition, order, notice of appeal) to retain in the court's file, in accordance with local policy.

Costs, taxes and fees on appealed cases shall be assessed only in those cases in which a trial fee could have been assessed in the juvenile and domestic relations court and shall be collected in the circuit court, except that the appeal to circuit court of any case in which a fee either was or could have been assessed pursuant to [Va. Code § 16.1-69.48:5](#) shall also be in accordance with [Va. Code § 16.1-296.2](#).

Request for New Trial

A new trial in the case may be requested pursuant to [Va. Code § 16.1-97.1](#). The motion for a new trial must be filed within thirty days after the date of judgment, and the court must rule on the motion within forty-five days

from the date of judgment; however, the clerk's office should accept the motion when filed and the court should rule on the timeliness of filing issues.

Reopening and Modification of Disposition Orders

Review of disposition orders previously entered by the court may be had to reopen a case and modify or revoke the order as a result of alleged changes in circumstances of the parents, child, or other parties to a case; or the court may review a case and proceed against a person as a result of alleged violations of probation or other conditional sentence considerations.

Procedures for such an action involve:

- Filing a district court form DC-368, [MOTION TO REOPEN \(CRIMINAL/TRAFFIC\)/MOTION TO REHEAR \(CIVIL\)/ MOTION FOR NEW TRIAL \(CIVIL\)](#) stating the reason to review the disposition (such as a change of circumstances). A motion for rehearing must be filed within sixty days of the date of conviction. [Va. Code § 16.1-133.1](#).
- Issuing a DC-511, PETITION or a district court form DC-529, DETENTION ORDER where an alleged violation of the terms of a court order has occurred.
- Filing a DC-511, PETITION or district court form DC-635, [MOTION FOR SHOW CAUSE SUMMONS OR CAPIAS](#) or district court form DC-630, [MOTION TO AMEND OR REVIEW ORDER](#), preparing petitions for revocation or modification of probation, protective supervision, or parole status in the same manner as for the original proceedings.

Violation of Court Order

If a child adjudicated to be in need of services is found to have willfully and materially violated a court order for a second or subsequent time, the court may suspend the juvenile's driver's license, impose a curfew on operating a motor vehicle, or issue a restricted license pursuant to [Va. Code § 16.1-278.8 \(9\)](#). [Va. Code § 16.1-292](#). If a child adjudicated to be in need of supervision is found to have willfully and materially violated a lawful order for the second or subsequent time, pursuant to [Va. Code § 16.1-292](#), the court may:

- suspend the child's driver's license
- order a child fourteen years old or older to be placed in a nonsecure residential facility or
- order a child into secure detention for up to seven consecutive days if the court finds in its order that:
 - nonsecure placement is not likely to meet the child's needs, and
 - all other treatment options in the community have been exhausted, and secure placement is necessary to meet the child's service needs.

If a juvenile is found to have violated a court order as a status offender, any order of disposition of such violation confining the juvenile in a secure facility for juveniles shall (a) identify the valid court order that has been violated; (b) specify the factual basis for determining that there is reasonable cause to believe that the juvenile has violated such order; (c) state the findings of fact that support a determination that there is no appropriate less restrictive alternative available to placing the juvenile in such a facility, with due consideration to the best interest of the juvenile; (d) specify the length of time of such confinement, not to exceed seven days; and (e) include a plan for the juvenile's release from such facility. Such order of confinement shall not be renewed or extended. The court should utilize the DC-590 ORDER OF DISPOSITION – VIOLATION OF COURT ORDER FOR STATUS OFFENSE OR CHILD IN NEED OF SUPERVISION.

If secure detention is ordered, the court shall order additional review and additional treatment plan development by the prior interdisciplinary team that made the original evaluation and report at the earlier dispositional stage.

Status offenses-Tobacco Related violations - See section "Tobacco Violations" in Chapter 3 of the procedural manual.

The Court Improvement Program - Foster Care and Adoption is an initiative in the Office of the Executive Secretary of the Supreme Court of Virginia that focuses on improving court practice in child abuse/neglect and foster care cases. The Court Improvement Program's recommendations, included as a part of these materials, have been developed in consultation with a committee of judges, clerks, social services personnel and attorneys who advise the program.

In all of the proceedings discussed in this section, judicial determinations must be detailed and child specific. The orders that have been developed

for use in these proceedings must be completed in their entirety to provide the specific information required for placement in foster care. *Nunc Pro Tunc* orders will not cure defects in timeliness or documentation. Please note that the date the order is signed determines whether the statutory time requirements have been met, not the date the hearing was held.

Placement of a child in the custody of the local Department of Social Services may be ordered by the court only as a result of the following:

- a court order in an abuse or neglect case
- a court order in the situation of a child at risk of abuse or neglect where a parent or custodian has been adjudicated as having abused or neglected another child in the care of the parent or custodian
- an entrustment agreement by the parent or custodian
- a court order in a case where a parent or custodian is requesting relief of custody
- a court order in a CHINS case or status offense case or delinquency case
- a placement agreement with parents or a guardian

There is no statutory authority to place a child in foster care based on a petition for determination of custody.

Abuse, Neglect, Relief of Custody, Entrustment, Foster Care, Termination of Parental Rights and Voluntary Continuing Services

Designated non-attorney employees of DSS may complete, sign, and file with the clerk, on forms approved by the Supreme Court of Virginia, petitions for foster care review, petitions for permanency planning hearings, petitions to establish paternity, motions to establish or modify support, motions to amend or review an order and motions for a rule to show cause.

[Va. Code §§ 16.1-260, 54.1-3900, 63.2-332](#)

Emergency Removal Hearing and Preliminary Removal Hearings

[Va. Code §§ 16.1-251, 16.1-252](#)

Emergency Removal Order

Timing: If the petitioner fails to obtain an emergency removal order within four hours of taking custody of the child, the affidavit or sworn testimony

before the judge or intake officer shall state the reasons therefor pursuant to [Va. Code § 16.1-251](#).

Initiation: To secure an emergency removal order for a child, a petition must be filed in which it is alleged that the child is abused or neglected. [Va. Code § 16.1-251 \(A\)](#). When an emergency removal order is requested, the petition or accompanying affidavit should allege abuse or neglect of a child and include:

- A specific statement of the factual circumstances that allegedly necessitate removal of the child. [Va. Code § 16.1-252 \(B\)\(ii\)](#).
- A statement that child support may be considered if a determination is made that the child must be removed from the home. [Va. Code § 16.1-252 \(B\)\(iii\)](#).
- A district court form DC-620, [AFFIDAVIT \(UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT\) UCCJEA](#). Pursuant to [Va. Code § 20-146.1](#), a “child custody proceeding” includes a child neglect, abuse or other proceeding in which legal custody, physical custody or visitation with respect to a child is an issue. This affidavit should be completed with as much information as is available at the time of the request for an emergency removal order and updated upon the filing of subsequent pleadings. District court form DC-621, [NON-DISCLOSURE ADDENDUM](#), must be completed to protect identifying information.
- A district court form [DC-418, AFFIDAVIT-DEFAULT JUDGMENT SERVICEMEMBERS CIVIL RELIEF ACT](#). Pursuant to [Va. Code § 8.01-15.2](#), in any civil action or proceeding in which the defendant does not make an appearance, the court shall not enter a judgment by default until the plaintiff files with the court an affidavit (i) stating whether or not the defendant is in military service and showing necessary facts to support the affidavit; or (ii) if the plaintiff is unable to determine whether or not the defendant is in military service, stating that the plaintiff is unable to determine whether or not the defendant is in military service.

Note: The Court Improvement Program recommends that the guardian *ad litem* should be informed by the clerk of the court of the date and time of the emergency removal hearing and of the preliminary removal hearing and should attend these hearings. The Department of Social Services (DSS) and the child’s parents

- should be provided with a copy of the district court form DC-514, ORDER FOR APPOINTMENT OF GUARDIAN *AD LITEM* when it is entered.
- Appointment of guardian *ad litem*: Upon the filing of a petition alleging abuse or neglect, the court shall appoint a guardian *ad litem* (GAL) to represent the child using the district court form DC-514, ORDER FOR APPOINTMENT OF GUARDIAN *AD LITEM*. [Va. Code § 16.1-266 \(A\)](#). Pursuant to [Va. Code § 16.1-266.1](#), check the list of qualified guardians *ad litem* maintained by the Office of the Executive Secretary of the Supreme Court before selecting a guardian *ad litem*. However, if no attorney who is on the list is reasonably available, the judge has discretion to appoint any discreet and competent attorney admitted to practice law in Virginia.
 - Pursuant to [Va. Code § 16.1-267](#), when a guardian *ad litem* is appointed for a child by the Commonwealth, the juvenile and domestic relations district court or circuit court, shall order the parent, parents, adoptive parent, or adoptive parents of the child or another party with a legitimate interest therein who has filed a petition with the court, to reimburse the Commonwealth the costs of such services in an amount not to exceed the amount awarded the guardian *ad litem* by the court. If the court determines such party is unable to pay, the required reimbursement may be reduced or eliminated.

Emergency Removal Hearing

Requirements for obtaining emergency removal order: The court may issue an emergency removal order based upon the petitioner's evidence of the following, presented by an affidavit or by sworn testimony, which may be *ex parte*:

- The child would be subjected to an imminent threat to life or health to the extent that severe or irreparable injury would be likely to result if the child were returned to or left in the custody of their parents, guardian, legal custodian or other person standing *in loco parentis* pending a final hearing on the petition.
- Reasonable efforts have been made to prevent removal of the child from their home and there are no alternatives less drastic than removal of the child from their home that could reasonably protect the child's life or health pending a final hearing on the petition. The alternatives less drastic than removal may include but not limited to the provision of medical, educational, psychiatric,

psychological, homemaking or other similar services to the child or family or the issuance of a preliminary child protective order pursuant to [Va. Code § 16.1-253](#).

- Reasonable efforts to prevent removal have been made because there was no reasonable opportunity to provide preventive services. [Va. Code § 16.1-251 \(A\)\(2\)](#).
- Reasonable efforts to prevent removal of the child from his home are not required because the court finds that (i) the residual parental rights of the parent regarding a sibling of the child have previously been involuntarily terminated; (ii) the parent has been convicted of an offense under the laws of the Commonwealth or a substantially similar law of any other state, the United States, or any foreign jurisdiction that constitutes murder or voluntary manslaughter, or a felony attempt, conspiracy, or solicitation to commit any such offense, if the victim of the offense was a child of the parent, a child with whom the parent resided at the time such offense occurred, or the other parent of the child; (iii) the parent has been convicted of an offense under the laws of the Commonwealth or a substantially similar law of any other state, the United States, or any foreign jurisdiction that constitutes felony assault resulting in serious bodily injury or felony bodily wounding resulting in serious bodily injury or felony sexual assault, if the victim of the offense was a child of the parent or a child with whom the parent resided at the time of such offense; or (iv) on the basis of clear and convincing evidence, the parent has subjected any child to aggravated circumstances or abandoned a child under circumstances that would justify the termination of residual parental rights pursuant to subsection D of § [16.1-283](#).

Court order:

The court must make a reasonable effort finding. If the child is placed in the temporary custody of the local Department of Social Services, the district court form DC-526, EMERGENCY REMOVAL ORDER shall state that reasonable efforts have been made, are deemed to have been made to prevent removal, or are not required [Va. Code § 16.1-251 \(A\)\(2\)](#).

In the emergency removal hearing, the court shall give consideration to temporary placement of the child with a person with a legitimate interest, including grandparents, under the supervision of the local Department of

Social Services, until such time as the hearing in accordance with [Va. Code § 16.1-252](#) is held. [Va. Code § 16.1-251 \(C\)](#).

The local Department of Social Services, if granted legal custody of the child (as the term “legal custody” is defined in [Va. Code § 16.1-228](#) (i)), shall not be required to comply with the requirements of this section in order to determine where and with whom the child shall live, notwithstanding that the child had been placed with a natural parent. [Va. Code § 16.1-251 \(D\)](#).

Note: Federal Regulation promulgated March 27, 2000 interpreting the Adoption and Safe Families Act of 1997, P.L. 105-89, require that certain key judicial determinations, including [imminent threat to the child and] reasonable efforts to prevent removal, be explicitly documented, made on a case-by-case basis and stated in the court’s order. 45 C.F.R. § 1356.21(d).

Preliminary Removal Hearing-Pre-trial

Timing: A hearing must be held as soon as practicable after entry by the court of an emergency removal order, but the hearing must be held in no event later than five business days after the removal of the child. [Va. Code § 16.1-251 \(B\)](#). The hearing is called a “preliminary removal hearing.”

Notice of hearing pursuant to [Va. Code § 16.1-252 \(B\)](#): Prior to the preliminary removal hearing, notice of the hearing shall be given at least twenty-four hours in advance to the following:

- the parents, guardian, legal custodian, or other person standing *in loco parentis*; and
- the child’s guardian *ad litem*, who must be appointed in all cases alleging abuse or neglect in accordance with [Va. Code § 16.1-266](#) (See also [Va. Code § 16.1-266.1](#)); and
- the child, if they are twelve years of age or older.

Notice of the preliminary removal hearing shall include:

- The Court Improvement Program recommends that notice of the right to counsel should be given at the emergency removal hearing if the parent or guardian is present at this hearing. If the parent or guardian does not attend this hearing, the recommended practice is to secure counsel for these persons, to be present at the preliminary removal hearing. The preliminary removal hearing may result in an adjudication of the child abuse or neglect petition. To avoid continuances of these hearings, counsel should be present at

the preliminary removal hearing or be waived by the parents. The district court form DC-510, SUMMONS includes notice of the right to counsel, date, and place of hearing;

- A specific statement of factual circumstances that allegedly necessitate removal of the child. This statement may be contained in the petition or in the affidavit supporting the request for the emergency removal order.
- That child support may be considered if a determination is made that the child must be removed from the home. This notice is printed on the reverse side of the district court form DC-510, SUMMONS. A separate district court form DC-610, PETITION FOR SUPPORT (CIVIL) should be filed against each parent as soon as practicable by the local Department of Social Services, if a determination is made that the child must be removed from the home. The clerk should set a hearing on the support petition in accordance with local procedures.

Note: If paternity has not previously been established, a petition for a determination of parentage pursuant to [Va. Code § 16.1-241 \(Q\)](#) should be filed such that paternity may be placed on the docket as an issue to be resolved.

Summons

After the filing of a petition, the court shall direct a district court form DC-510, SUMMONS to the child, if they are twelve years of age or older, and another to the parent, guardian, legal custodian or other person standing *in loco parentis*, and to other persons as appear to the court to be proper or necessary parties to the proceedings. [Va. Code § 16.1-263 \(A\)](#). Proper and necessary parties may include individuals, whose names appear on the petition, including foster parents. In accordance with [Va. Code § 9.1-157](#), the provisions of [Va. Code § 16.1-264](#) regarding notice to parties shall apply to ensure that the Court Appointed Special Advocate is notified of hearings and other proceedings concerning the case to which they are assigned. If notice cannot be given twenty-four hours in advance despite diligent efforts to do so, the hearing shall be held and the parents, guardian, legal custodian or other person standing *in loco parentis* shall be afforded a later hearing on their motion. [Va. Code § 16.1-252 \(B\)](#).

No summons or notification of a parent or guardian shall be required if the judge certifies on the record that the identity of a parent or guardian is not

reasonably ascertainable. The district court form DC-509, AFFIDAVIT/CERTIFICATION OF PARENTAL IDENTITY OR LOCATION can be used for this purpose. An affidavit of the mother that the identity of the father is not reasonably ascertainable shall be sufficient evidence of this fact, provided there is no other evidence before the court which would refute such an affidavit. [Va. Code § 16.1-263 \(E\)](#).

Parties shall be informed in accordance with [Va. Code § 16.1-252 \(C\)](#) of their right to counsel pursuant to [Va. Code § 16.1-266](#), as follows: Prior to the adjudicatory hearing by the court of a petition in which a child is alleged to be abused or neglected or at risk of abuse or neglect as provided in [Va. Code § 16.1-241 \(A\)\(2a\)](#), prior to the hearing of any case involving any other adult charged with abuse or neglect of a child, and prior to a hearing at which a parent could be subjected to the loss of residual parental rights, the child's parent or guardian or the other adult shall be informed by a judge, clerk or probation officer of his right to counsel and be given an opportunity to (i) retain counsel; (ii) if qualified, have counsel appointed; (iii) waive counsel using district court form DC-536, TRIAL WITHOUT A LAWYER - WAIVER OF RIGHT TO BE REPRESENTED BY A LAWYER. [Va. Code § 16.1-266 \(C\)](#).

Note: The discretionary authority of the court pursuant to [Va. Code § 16.1-266 \(E\)](#) to appoint a discreet and competent attorney at law to represent a child, children, parent or guardian as counsel or guardian *ad litem* "in all other cases" may be interpreted to mean (i) cases other than those in which a parent or guardian is charged with abuse/neglect or could be subjected to the loss of residual parental rights and responsibilities; or (ii) cases in which a parent or guardian cannot be informed of an exercise or waive his right to counsel. The latter interpretation would support the appointment of an attorney as counsel or guardian *ad litem* to represent the interests of a parent whose identity or whereabouts is unknown. Such a parent or guardian could also be subjected to the loss of residual parental rights and responsibilities. See [Va. Code § 16.1-266 \(C\)](#); but see *Fredericksburg Dep't of Social Servs. v. Brown and Williams*, Record Nos. 1969-99-2, 2008-99-2 (Va. Ct. App. 2000) (affirming on other grounds the trial court's denial of petitions to terminate the parents' residual parental rights, where the children entered foster care based upon an invalid entrustment agreement. The trial court had denied the petitions based upon failure to appoint attorneys to represent the parents). A parent or guardian whose identity or whereabouts is unknown may also be under a disability in that they are unable to defend their legal rights. See [Va. Code § 8.01-2](#) (defining "person under a disability"). See also *Norfolk Div. of Social Servs. v. Unknown Father*, 2 Va. App. 420, (1986) (in proceedings involving custody of a child of an unwed minor, guardian *ad litem* for the unknown

father had standing to appeal the entrustment agreement decision by the juvenile and domestic relations district court).

In the court's discretion, a discreet and competent attorney at law may be appointed as counsel or guardian *ad litem* to represent the interests of a parent or guardian. [Va. Code § 16.1-266 \(E\)](#). Pursuant to this authority, an attorney may be appointed to represent the interests of a parent who is under the age of eighteen years or under a disability such as incarceration or mental illness. The district court form DC-514, ORDER FOR APPOINTMENT OF GUARDIAN AD LITEM should be used for this appointment. If an attorney is to be appointed as a guardian *ad litem* for a parent or guardian (as opposed to appointment as "counsel"), reference should be made from the list of qualified guardians *ad litem* maintained by the Office of the Executive Secretary of the Supreme Court, as in the case for appointment of a guardian *ad litem* for a child. This list can be found at <https://www.courts.state.va.us/> under "Directories".

The court shall consider appointing an attorney-at-law:

- If the identity or location of a parent or guardian is not reasonably ascertainable or a parent or guardian fails to appear, the court shall consider appointing an attorney-at-law to represent the interests of the absent parent or guardian, and the hearing may be held. [Va. Code § 16.1-266 \(C\)](#).
- Prior to a hearing at which a child is the subject of an initial foster care plan filed pursuant to [Va. Code § 16.1-281](#), a foster care review hearing pursuant to [Va. Code § 16.1-282](#) and a permanency planning hearing pursuant to [Va. Code § 16.1-282.1](#), the court shall consider appointing counsel to represent the child's parent or guardian.

Transportation of incarcerated witness: If the presence of a prisoner is essential to the just adjudication and disposition of a case involving a child who is alleged to be abused or neglected, the judge may issue a district court form DC-354, CUSTODIAL TRANSPORTATION ORDER upon the request of a party or the court's motion. The order may direct the Director of the [Department of Corrections](#) or the administrator of the state, local or regional correctional institution to deliver the witness from a state, local or regional correctional institution to the sheriff of the jurisdiction of the court issuing the order. The order shall be executed in accordance with [Va. Code § 8.01-410](#). [Va. Code § 16.1-276.2](#).

Pursuant to [Va. Code § 16.1-252 \(D\)](#), if the alleged child victim was fourteen years of age or younger on the date of the alleged offense and is sixteen or under at the time of the hearing, the guardian *ad litem* or Department of Social Services may apply for an order from the court requesting that the child's testimony be taken by closed-circuit television pursuant to [Va. Code § 63.2-1521](#). The requesting party shall apply for such an order at least forty-eight hours prior to the hearing.

Note: These provisions also permit the testimony of any child witness who is fourteen years of age or under at the time of the trial to be taken by closed-circuit television, upon proper application and order of the court. [Va. Code § 63.2-1521](#).

Preliminary Removal Hearing

The burden of proof for abuse or neglect proceeding that may lead to temporary placement of the child is preponderance of the evidence. Wright v. Arlington County Dept. of Social Servs., 9 Va. App. 411, 388 S.E.2d 477 (1990).

The child and his parent, guardian, legal custodian or other person standing *in loco parentis* have the right to confront and cross-examine adverse witnesses and present evidence at the preliminary removal hearing. [Va. Code § 16.1-252 \(D\)](#).

Requirements for obtaining preliminary removal order: Pursuant to [Va. Code § 16.1-252 \(A\)](#), the preliminary removal hearing shall be in the nature of a preliminary hearing rather than a final determination of custody. In order for a preliminary order to issue or for an existing removal order to be continued, the petitioner must prove:

- The 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* pending a final hearing on the petition.
- Reasonable efforts have been made to prevent removal of the child from his home and there are no alternatives less drastic than removal of the child from his home that could reasonably protect the child's life or health pending a final hearing on the petition. The alternatives less drastic than removal may include but not be limited to the provision of medical, educational, psychiatric,

psychological, homemaking or other similar services to the child or family or the issuance of a preliminary child protective order pursuant to [Va. Code § 16.1-253](#).

- Reasonable efforts to prevent removal are deemed to have been made because there was no reasonable opportunity to provide preventive services.
- Reasonable efforts to prevent removal of the child from his home are not required because the court finds that (i) the residual parental rights of the parent regarding a sibling of the child have previously been involuntarily terminated; (ii) the parent has been convicted of an offense under the laws of the Commonwealth or a substantially similar law of any other state, the United States, or any foreign jurisdiction that constitutes murder or voluntary manslaughter, or a felony attempt, conspiracy, or solicitation to commit any such offense, if the victim of the offense was a child of the parent, a child with whom the parent resided at the time such offense occurred, or the other parent of the child; (iii) the parent has been convicted of an offense under the laws of the Commonwealth or a substantially similar law of any other state, the United States, or any foreign jurisdiction that constitutes felony assault resulting in serious bodily injury or felony bodily wounding resulting in serious bodily injury or felony sexual assault, if the victim of the offense was a child of the parent or a child with whom the parent resided at the time of such offense; or (iv) on the basis of clear and convincing evidence, the parent has subjected any child to aggravated circumstances or abandoned a child under circumstances that would justify the termination of residual parental rights pursuant to subsection D of § [16.1-283](#).

Federal regulations promulgated March 27, 2000 interpreting the Adoption and Safe Families Act of 1997 require that certain key judicial determinations, including [imminent threat to the child] and reasonable efforts to prevent removal, be explicitly documented, made on a case-by-case basis and stated in the court's order. 45 C.F.R. § 1356.21(d).

Court order at preliminary removal hearing: If the court determines, pursuant to [Va. Code § 16.1-252 \(E\)](#) that the removal of the child is proper, the court shall, using the district court form DC-528, PRELIMINARY CHILD REMOVAL ORDER:

- Order that the child be placed in the temporary care and custody of a suitable person, subject to the provisions of [Va. Code § 16.1-252 \(F\)\(1\)](#) and under the supervision of the local Department of Social Services, with consideration being given to placement in the temporary care and custody of a person with a legitimate interest, including grandparents, until such time as the court enters an order of disposition pursuant to [Va. Code § 16.1-278.2](#). If such placement is not available, the court shall place the child in the care and custody of a suitable agency. [Va. Code § 16.1-252 \(F\)\(1\)](#).
- Prior to transferring temporary custody of the child to a person with a legitimate interest, including grandparents, the court shall consider whether the person with a legitimate interest is one who is willing and qualified to receive and care for the child; and is willing to have a positive, continuous relationship with the child; and is willing and has the ability to protect the child from abuse and neglect. [Va. Code § 16.1-252 \(F\)\(1\)](#).
- The court's order transferring temporary custody to a person with a legitimate interest should provide for compliance with any preliminary protective order entered on behalf of the child pursuant to [Va. Code § 16.1-253](#); initiation and completion of the investigation of the child's placement as directed by the court and court review of the child's placement required in accordance with the provisions of [Va. Code § 16.1-278.2](#); and as appropriate, ongoing provision of social services to the child and the temporary custodian. [Va. Code § 16.1-252 \(F\)\(1\)](#).
- Order that reasonable visitation be allowed between the child and his parents, guardian, legal custodian or other person standing *in loco parentis*, if such visitation would not endanger the child's life or health.
- Order that the parent or other legally obligated person pay support pursuant to [Va. Code § 16.1-290](#).

In addition, the court may enter district court form DC-527, PRELIMINARY CHILD PROTECTIVE ORDER pursuant to [Va. Code § 16.1-253](#), imposing requirements and conditions that the court deems appropriate for protection of the welfare of the child. Upon entry of a Preliminary Child Protective Order the court shall **forthwith** but in all cases no later than the

end of business on the day the order is issued enter the information into the VCIN system and **forthwith** forward a copy of the order to law enforcement responsible for service.

Finding of abuse or neglect at the preliminary removal hearing - [Va. Code § 16.1-252 \(G\)](#)

At the conclusion of the preliminary removal hearing, unless there is an appropriate objection, the court shall determine whether the allegations of abuse or neglect have been proven by a preponderance of the evidence. Any finding of abuse or neglect shall be stated in the court order.

However, if before a finding of abuse or neglect is made, a person responsible for the care and custody of the child, DSS or the child's GAL objects to a finding being made at the preliminary removal hearing, the court shall make no finding of abuse or neglect and shall schedule an adjudicatory hearing on the allegation of abuse and neglect to be held within thirty days of the date of the preliminary removal hearing. The adjudicatory hearing shall be held to determine whether the allegations of abuse and neglect have been proven by a preponderance of the evidence. The court must find whether or not the child has been abused or neglected. It is not necessary to establish the perpetrator of the abuse or neglect in order to make this finding.

Parties present at the preliminary removal hearing shall be given notice of the date set for the adjudicatory hearing and the disposition hearing, and the parties not present shall be summoned as provided in [Va. Code § 16.1-263](#).

All parties present should receive a copy of the district court form DC-528, PRELIMINARY CHILD REMOVAL ORDER. All parties present should sign and receive a copy of the district court form DC-508, ACKNOWLEDGMENT OF NOTICE OF NEXT HEARING DATE for the abuse and neglect adjudicatory hearing, if continued, and the dispositional hearing. The preliminary removal order should be served on any party who did not receive a copy of the order at the preliminary removal order hearing.

If the case is continued for an adjudicatory hearing, the district court form DC-528, PRELIMINARY CHILD REMOVAL ORDER and any district court form DC-527, PRELIMINARY CHILD PROTECTIVE ORDER may still be issued. These orders shall remain in full force and effect pending the adjudicatory hearing and until superseded by the issuance of a subsequent order in the case. [Va. Code §§ 16.1-252 \(G\)](#) and [16.1-253 \(F\)](#). Upon entry of a Preliminary Child Protective Order the court shall forthwith but in all cases no later than the end of business on the day the order is issued enter the information into the VCIN

system and forthwith forward a copy of the order to law enforcement responsible for service.

Adjudicatory Hearing - [Va. Code § 16.1-252 \(G\)](#)

The petitioner must, pursuant to [Va. Code § 16.1-252 \(G\)](#), prove by a preponderance of the evidence that the child is abused and/or neglected as defined in [Va. Code § 16.1-228](#). This section states that an “abused or neglected child” is any child:

- Whose parents or other person responsible for his care creates or inflicts, threatens to create or inflict, or allows to be created or inflicted upon such a child a physical or mental injury by other than accidental means, or creates a substantial risk of death, disfigurement or impairment of bodily or mental functions, including, but not limited to, a child who is with his parent or other person responsible for his care either (i) during the manufacture or attempted manufacture of a Schedule I or II controlled substance, or (ii) during the unlawful sale of such substance by that child’s parents or other person responsible for his care, where such manufacture, or attempted manufacture or unlawful sale would constitute a felony violation of [Va. Code § 18.2-248](#);
- Whose parents or other person responsible for his care neglects or refuses to provide care necessary for his health; however, no child who in good faith is under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination shall for that reason alone be considered to be an abused or neglected child;

It is an affirmative defense to a civil proceeding that a parent safely delivered a child to a hospital with twenty-four-hour emergency services or an attended rescue squad within fourteen days of birth.

- Whose parents or other person responsible for his care abandons child;
- Whose parents or other person responsible for his care commits or allows to be committed any sexual act upon a child in violation of the law; or
- Who is without parental care or guardianship caused by the unreasonable absence or the mental or physical incapacity of the

child's parent, guardian, legal custodian or other person standing *in loco parentis*.

- Whose parents or other persons responsible for his care creates a substantial risk of physical or mental injury by knowingly leaving the child alone in the same dwelling with a person to whom the child is not related by blood or marriage and who the parent or responsible person knows has been convicted of an offense against a minor which registration is required as a violent sex offender.

The hearing shall be held and an order may be entered although a party to the preliminary removal hearing fails to appear and is not represented by counsel, provided personal or substituted service was made on the person, or the court determines that such person cannot be found after reasonable effort or, in the case of a person who is without the Commonwealth, the person cannot be found or their post office address cannot be ascertained after reasonable effort. See district court form DC-509, AFFIDAVIT/CERTIFICATION OF PARENTAL IDENTITY OR LOCATION.

Any finding of abuse or neglect can be documented in the district court form DC-561, ADJUDICATORY ORDER FOR ABUSE OR NEGLECT CASES.

Violation of a Preliminary Removal Order or an adjudicatory order entered pursuant to [Va. Code § 16.1-252](#) shall constitute contempt of court. [Va. Code § 16.1-252 \(J\)](#).

Disposition Hearing [Va. Code §§ 16.1-252 \(H\), 16.1-278.2](#)

If in a preliminary removal proceeding, a finding of abuse or neglect is made and the child is removed from his home or a preliminary child protective order is issued, a disposition hearing shall be held to dispose of the underlying petition pursuant to [Va. Code § 16.1-278.2](#).

The disposition hearing shall be scheduled at the time of the preliminary removal hearing, even if an adjudicatory hearing is requested.

The disposition hearing shall be held within sixty days of the preliminary removal hearing.

All parties present at the preliminary removal hearing shall be given notice of the date scheduled for the disposition hearing. Parties not present shall be summoned as provided in [Va. Code § 16.1-263](#).

The court has dispositional alternatives pursuant to [Va. Code § 16.1-278.2](#) in cases of (i) a child found to be abused or neglected or (ii) a child 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. The district court form DC-553, DISPOSITIONAL ORDER FOR UNDERLYING PETITION; FOSTER CARE PLAN should be used for this purpose.

When transferring custody of the child to person with a legitimate interest for disposition pursuant to [Va. Code § 16.1-278.2 \(A\)\(5\)\(a\)](#), the district court form DC-559, SUPPLEMENT TO ORDER TRANSFERRING CUSTODY should be used for the findings and orders required by [Va. Code § 16.1-278.2 \(A\)\(1\)](#).

The court shall find, after an investigation, that the prospective custodian is one who: is willing and qualified to receive and care for the child; is willing to have a positive, continuous relationship with the child; is committed to providing a permanent, suitable home for the child; and is willing and has the ability to protect the child from abuse and neglect. The court's order shall state these findings.

The court's order should further provide for, as appropriate, any terms or conditions which would promote the child's interest and welfare; ongoing provision of social services to the child and the child's custodian; and court review of the child's placement.

A dispositional order entered pursuant to [Va. Code § 16.1-278.2](#) is a final order from which an appeal may be taken in accordance with [Va. Code § 16.1-296](#). [Va. Code § 16.1-278.2 \(D\)](#).

If a district court form DC-527, PRELIMINARY CHILD PROTECTIVE ORDER was entered previously:

- finalize the district court form DC-527, PRELIMINARY CHILD PROTECTIVE ORDER by entry of a district court form DC-532, CHILD PROTECTIVE ORDER, and set a date to review the status of a child who returns home with a district court form DC-532, CHILD PROTECTIVE ORDER in effect (upon entry of a Child Protective Order the court shall **forthwith** but in all cases no later than the end of business on the day the order is issued enter the information into the VCIN system and **forthwith** forward a copy of the order to law enforcement responsible for service.); or
- as appropriate, dismiss the preliminary child protective order.

If the child has been placed in foster care, at the disposition hearing the court shall review the foster care plan for the child filed in accordance with [Va. Code § 16.1-281](#) by the local Department of Social Services, or a child welfare agency. [Va. Code § 16.1-278.2 \(B\)](#).

The court is required by [Va. Code § 16.1-252 \(F\)\(3\)](#) to order that the parent or other legally obligated person pay child support pursuant to [Va. Code § 16.1-290](#) in the event that the child is removed.

[Virginia Code § 16.1-290 \(C\)](#) states: “Whenever a juvenile is placed in foster care by the court, the court shall order and decree that the parents shall pay the Department of Social Services pursuant to §§ 20-108.1, 20-108.2, 63.2-909, and 63.2-1910.”

[Virginia Code §§ 63.2-909](#), [63.2-910](#) and [63.2-1910](#) require that responsible persons shall pay child support for a child placed in foster care from the date that custody was awarded to the local Department of Social Services.

The local Department of Social Services having “legal custody” of a child, as defined in part (i) of this definition in [Va. Code § 16.1-228](#), shall not be required to comply with the requirements of the preliminary removal section in order to redetermine where and with whom the child shall live, notwithstanding that the child had been placed with a natural parent. [Va. Code § 16.1-252 \(I\)](#).

Any person violating a dispositional order entered pursuant to [Va. Code § 16.1-278.2](#) may be proceeded against by an order requiring the person to show cause why the order has not been complied with and/or for contempt of court. [Va. Code § 16.1-292 \(A\)](#). See also [Va. Code § 16.1-253.2](#) (certain violations of a protective order entered pursuant to [Va. Code § 16.1-253](#) may be charged as a Class 1 misdemeanor).

Court may appoint a Court Appointed Special Advocate, using district court form DC-544, ORDER FOR COURT - APPOINTED SPECIAL ADVOCATE (CASA) if not previously appointed.

Appeals

Upon appeal to the circuit court of any case involving a child placed in foster care and also in any such appeal to the Court of Appeals or Supreme Court, the juvenile and domestic relations district court retains jurisdiction to continue to hear foster care review petitions pursuant to [Va. Code §§ 16.1-282](#) and [16.1-282.1](#). [Va. Code § 16.1-242.1](#).

The appeal should be noted on the district court form DC-581, NOTICE OF APPEAL - JUVENILE CIVIL APPEALS. This form provides for the style of the case to reflect "In Re: the child's name" in addition to the appellant's name and appellant's relationship to the child. The district court form DC-581, NOTICE OF APPEAL - JUVENILE CIVIL APPEALS gives notice to the parents and court staff that the matter is a civil juvenile appeal. The notice of appeal also requires information regarding the name of the Guardian *ad litem* and the attorneys representing the parties as well as an estimation of the time needed for a hearing. There is no bond or fee requirement for the appeal of a foster care order.

Statutes Pertinent to Emergency Removal and Preliminary Removal Proceedings

Pursuant to [Va. Code § 63.2-1517](#), under certain circumstances a child protective services (CPS) worker investigating a report of abuse or neglect may take a child into custody and remove the child from their home up to seventy-two hours without the approval of the parents or guardian provided that:

- Continuing the child in their place of residence or in the care or custody of the parent/custodian presents an imminent danger to the child's life or health to the extent that severe or irremediable injury would be likely to result or if evidence of abuse is perishable or subject to deterioration before a hearing can be held; and
- A court order is not immediately obtainable; and
- The court has set up procedures for placing such children; and
- Following taking the child into custody, the parents or guardians are notified as soon as practicable that the child is in custody; and
- A report is made to the local department; and
- The court is notified and the person or agency taking custody of such child obtains, as soon as possible, but in no event later than seventy-two hours, a district court form DC-526, EMERGENCY REMOVAL ORDER, unless a district court form DC-528, PRELIMINARY CHILD REMOVAL ORDER is issued after a hearing held pursuant to [Va. Code § 16.1-252](#) within seventy-two hours of the removal of the child.

[Virginia Code § 63.2-1518](#) authorizes any person required to make a report or conduct an investigation or family assessment of an abused or neglected

child to talk to the child suspected of being abused/neglected or to any of the child's siblings. The conversation may take place without the parent/custodian's consent and outside of their presence.

[Virginia Code § 63.2-1519](#) states that the following statutory privileges against testifying do not apply in these cases: husband-wife privilege, physician-patient privilege.

[Virginia Code § 63.2-1520](#) states that photographs and x-rays may be taken of the abused/neglected child without the parent/custodian's consent as part of the medical evaluation. Photographs may be taken of the child without the parent/custodian's consent as part of the investigation or family assessment of the case by DSS, but shall not be used in lieu of medical evaluation. Such photographs and x-rays may be introduced into evidence in any subsequent proceeding.

[Virginia Code § 63.2-1524](#) gives the court the authority to order psychological, psychiatric and physical examinations of the child alleged to be abused/neglected and of the parent/custodian/caretaker of the child and of the siblings of the child.

[Virginia Code § 63.2-1525](#) states that competent evidence by a physician that a child is abused/neglected shall constitute *prima facie* evidence to support removal of the child, in the case of a petition for removal of custody of a child alleged to have been abused or neglected.

[Virginia Code § 16.1-245.1](#) provides that any party in any civil case heard in a juvenile and domestic relations district court involving allegations of child abuse or neglect may present evidence by a report from the treating or examining health care provider as defined in [Va. Code § 8.01-581.1](#), or by the records of a hospital, medical facility or laboratory, as to the extent, nature, and treatment of any physical condition or injury suffered by a person and the examination of the person or the result of the laboratory analysis. The party intending to present a medical report as evidence at trial must provide the opposing parties a copy of the report to which is attached a sworn statement by the treating or examining health care provider or laboratory analyst that (i) the information contained therein is true, accurate, and fully describes the nature and extent of the physical condition or injury and (ii) the patient named therein was the person treated or examined by such health care provider; or, in the case of a laboratory analysis, that the information contained therein is true and accurate. Written notice of intent to present the medical report also must be provided at least ten days, or in the case of a preliminary removal

hearing pursuant to [Va. Code § 16.1-252](#), at least twenty-four hours prior to the trial. A hospital or medical facility record shall be admitted if attached to it is a sworn statement of the custodian thereof that the same is a true and accurate copy.

There are three Virginia statutes ([Va. Code §§ 63.2-1521](#), [63.2-1522](#), and [63.2-1523](#)) regarding specialized ways in which children may testify in abuse/neglect proceedings.

- [Virginia Code § 63.2-1521](#) is entitled “Testimony by child using two-way closed-circuit television.” This statute pertains to civil child abuse or neglect proceedings only. It is available if an alleged child victim was fourteen years of age or under on the date of the alleged offense and sixteen or under at the time of the trial, and if any child witness is fourteen years of age or under at the time of the trial. The child’s attorney/guardian *ad litem* (or if the child is in custody of DSS, the DSS attorney) may apply for a court order for the child’s testimony to be taken in a room outside the courtroom and to be televised by two-way closed-circuit television. The attorney must ask for the court to enter this order at least forty-eight hours before a preliminary removal hearing, pursuant to [Va. Code § 16.1-252 \(D\)](#), and seven days before trial, pursuant to [Va. Code § 63.2-1521](#).

In order to permit testimony by two-way closed-circuit television, the court must find that the child is unavailable to testify in open court in the presence of the defendant, jury, judge and the public for any of the following reasons:

- the child’s persistent refusal to testify despite judicial requests to do so;
- the child’s substantial inability to communicate about the offense; or
- the substantial likelihood, based upon expert opinion testimony, that the child will suffer severe emotional trauma from so testifying.

Note: A statutory provision applicable to some criminal proceedings, paralleling the provisions of [Va. Code § 63.2-1521](#) may be found in [Va. Code § 18.2-67.9](#).

- [Virginia Code § 63.2-1522](#) is entitled “Admission of evidence of sexual acts with children.” This statute pertains to civil proceedings involving a child age twelve or under at the time of the trial who is alleged to be

abused or neglected. Under certain limited circumstances outlined in the statute, a child's out-of-court statement that might otherwise be considered hearsay may be admitted into evidence. The statement of the child must describe an act of a sexual nature performed with or on the child by another. The statement must possess specified guarantees of trustworthiness and reliability. The proponent of the statement must notify the adverse party of his intention to offer the out-of-court statement and the substance of the statement sufficiently in advance of the proceedings to provide the adverse party with a reasonable opportunity to subpoena witnesses or otherwise to defend against the statement.

- [Virginia Code § 63.2-1523](#) is titled "Use of videotaped statements of complaining witnesses as evidence." This statute is applicable in a civil proceeding involving alleged abuse or neglect of a child age twelve or under at the time of the trial, when the statutory criteria related to the preparation of the videotaped interview are satisfied. The party conducting the videotaped interview must be authorized to do so by Child Protective Services of the local Department of Social Services. The videotaped statement must have the statutory guarantees of trustworthiness. The adverse party must be given reasonable notice of the proponent's intent to use the videotape. The child must testify at the hearing or be unavailable to testify in accordance with the statutory criteria of unavailability.

Newborn Children - Suspected Abuse or Neglect of Child Based on Prenatal Substance Abuse by Mother. [Va. Code § 16.1-241.3](#)

[Virginia Code § 63.2-1509 \(B\)](#) expands on mandatory reporting of abuse or neglect. Mandatory reporters must report to DSS via the toll-free child abuse and neglect hotline an additional category of cases defined as follows. "Reason to suspect that a child is abused or neglected" shall include: (i) a finding made by a health care provider within six weeks of the birth of a child that the results of toxicology studies of the child indicate the presence of a controlled substance not prescribed for the mother by a physician; (ii) a finding made by a health care provider within six weeks of the birth of a child that the child was born dependent on a controlled substance which was not prescribed by a physician for the mother and has demonstrated withdrawal symptoms; (iii) a diagnosis made by a health care provider at any time following a child's birth that the child has an illness, disease or condition which, to a reasonable degree of medical certainty, is attributable to in utero exposure to a controlled substance which was not prescribed by a physician for the mother or the child; or (iv) a diagnosis made by a health care provider at any time following a child's birth that the

child has a fetal alcohol spectrum disorder attributable to in utero exposure to alcohol. When “reason to suspect” is based upon this subsection, such fact shall be included in the report along with the facts relied upon by the person making the report.

Pursuant to [Va. Code § 63.2-1503](#), DSS is required to determine the validity of a report of child abuse or neglect and make a determination to conduct an investigation pursuant to [Va. Code § 63.2-1505](#) or a family assessment pursuant to [Va. Code § 63.2-1506](#). If the report is based upon one of the factors specified in [Va. Code § 63.2-1509 \(B\)](#), DSS may file a petition pursuant to [Va. Code § 16.1-241.3](#). If the mother sought substance abuse counseling or treatment prior to the child’s birth, no report of abuse or neglect shall be transmitted to the Central Registry.

DSS may file a petition pursuant to [Va. Code § 16.1-241.3](#) alleging that an investigation or family assessment has been commenced in response to a report of suspected abuse or neglect pursuant to [Va. Code § 63.2-1509 \(B\)](#) and the court may enter any order authorized pursuant to Chapter 11 of Title 16.1 which the court deems necessary to protect the health and welfare of the child pending the final disposition of the investigation or family assessment under [Va. Code § 63.2-1500 et seq.](#) Such orders may include but are not limited to an emergency removal order pursuant to [Va. Code § 16.1-251](#), a preliminary child protective order pursuant to [Va. Code § 16.1-253](#) or an order pursuant to [Va. Code § 16.1-278.2 \(A\)\(1\)-\(4\)](#).

The fact that an order was entered shall not be admissible evidence in a criminal, civil or administrative proceeding other than a proceeding to enforce the order.

The order shall be effective for a limited duration not to exceed the period of time necessary to conclude the investigation or family assessment and any proceedings initiated pursuant to Va. Code § 63.2-1500 *et seq.* but shall be a final order subject to appeal.

Preliminary Protective Proceedings

[Va. Code § 16.1-253](#)

Initiation

Petitioner may be any person or a preliminary protective order may be entered on the court’s own motion, after a hearing, if necessary to protect a child’s life, health, safety or normal development pending the final determination of any matter before the court. [Va. Code § 16.1-253 \(A\)](#).

When a person requests a preliminary protective order, the DC-511, PETITION or accompanying affidavit shall contain:

- The specific facts which necessitate the issuance of a preliminary protective order; and
- Facts sufficient for the court to make a finding that the issuance of a preliminary protective order is necessary to protect a child's life, health or normal development pending the final determination; and
- The specific relief requested under [Va. Code § 16.1-253 \(A\)](#).

Prior to the hearing by the court of any case involving a child who is alleged to be abused or neglected or who is otherwise before the court pursuant to subdivision (A)(4) of [Va. Code § 16.1-241](#), the court shall appoint a guardian *ad litem* (GAL) to represent the child using district court form DC-514, ORDER FOR APPOINTMENT OF GUARDIAN AD LITEM. [Va. Code § 16.1-266 \(A\)](#). In the discretion of the court, a guardian *ad litem* may also be appointed to represent the interests of the child or children in all other cases. [Va. Code § 16.1-266 \(D\)](#). Pursuant to [Va. Code § 16.1-266.1](#), check the list of qualified guardians *ad litem* maintained by the Office of the Executive Secretary of the Supreme Court before selecting a guardian *ad litem*. The list can be found at www.courts.state.va.us under "Directories". However, if no attorney who is on the list is reasonably available, the judge has discretion to appoint any discreet and competent attorney admitted to practice law in Virginia.

Pursuant to [Va. Code § 16.1-267](#), when a guardian *ad litem* is appointed for a child by Commonwealth, the juvenile and domestic relations district court or circuit court, shall order the parent, parents, adoptive parent, or adoptive parents of the child or another party with a legitimate interest therein who has filed a petition with the court, to reimburse the Commonwealth the costs of such services in an amount not to exceed the amount awarded the guardian *ad litem* by the court. If the court determines such party is unable to pay, the required reimbursement may be reduced or eliminated.

The Court Improvement Program recommends that the guardian *ad litem* should be informed by the clerk of the date and time of the *ex parte* preliminary protective order hearing and of the preliminary protective

order hearing and should attend these hearings. If the Department of Social Services (DSS) is involved in the case, DSS and the child's parents should be provided with a copy of the district court form DC-514, ORDER FOR APPOINTMENT OF GUARDIAN AD LITEM when it is entered.

Ex parte Preliminary Protective Order. [Va. Code § 16.1-253 \(B\)](#)

The district court form DC-527, PRELIMINARY CHILD PROTECTIVE ORDER may be issued *ex parte* upon the motion of any person or the court's own motion, or upon petition. The motion or petition shall be supported by an affidavit or sworn testimony in person before a judge or intake officer. The affidavit or sworn testimony shall establish that:

- the child would be subjected to an imminent threat to life or health; and
- delay for the provision of an adversary hearing would be likely to result in serious or irreparable injury to the child's life or health.

If an *ex parte* order is entered, the court shall provide an adversary hearing within the shortest practicable time not to exceed five business days after the issuance of the order. If an *ex parte* order is entered without an affidavit being presented, the court shall state in its order the basis upon which the order was entered including a summary of the allegations made and the court's findings. The court shall **forthwith** but in all cases no later than the end of business on the day the order is issued enter the information into the VCIN system and **forthwith** forward a copy of the order to law enforcement responsible for service.

Note: If paternity has not previously been established, a petition for a determination of parentage pursuant to [Va. Code § 16.1-241 \(Q\)](#) should be filed such that paternity may be placed on the docket as an issue to be resolved.

Notice of the Adversary Hearing. [Va. Code § 16.1-253 \(C\)](#)

Notice of the hearing shall be given at least twenty-four hours in advance to the following:

- the child's guardian *ad litem*; and
- the parents, guardian, legal custodian, or other person standing *in loco parentis* and any other family or household member of the child to whom the protective order may be directed; and
- the child, if they are twelve years of age or older.

Notice of the hearing shall include:

- the time, date and place of hearing (district court form DC-510, SUMMONS);
- a specific statement of factual circumstances which allegedly necessitate the entry of a preliminary protective order;
- information concerning the right of the parties to counsel.

After the filing of a petition, the court shall direct a district court form DC-510, SUMMONS to the child, if they are twelve years of age or older, and another to the parent, guardian, legal custodian or other person standing *in loco parentis*, and to other persons as appear to the court to be proper or necessary parties to the proceedings. [Va. Code § 16.1-263](#).

The Court Improvement Program recommends that notice of the right to counsel should be sent with the notice of the preliminary protective order hearing. The child's parents or other family or household member to whom the protective order may be directed should be informed that if they want court-appointed counsel, they should contact the court in advance of the preliminary protective order hearing to make these arrangements. The preliminary protective order hearing may result in an adjudication of a child abuse or neglect petition. To avoid continuances of these hearings, counsel should be present at the preliminary protective order hearing or be waived by the parents or other responsible adult. The district court form DC-510, SUMMONS includes notice of the right to counsel.

- Proper and necessary parties may include individuals, whose names appear on the petition, including foster parents.
- In accordance with [Va. Code § 9.1-157](#), the provisions of [Va. Code § 16.1-264](#) regarding notice to parties shall apply to ensure that the Court Appointed Special Advocate is notified of hearings and other proceedings concerning the case to which they are assigned.
- No summons or notification of a parent or guardian shall be required if the judge certifies on the record that the identity of a parent or guardian is not reasonably ascertainable. See district court form DC-509, AFFIDAVIT/CERTIFICATION OF PARENTAL IDENTITY OR LOCATION. An affidavit of the mother that the identity of the father is not reasonably ascertainable shall be sufficient evidence of this fact, provided there is no other evidence before the court which would refute such an affidavit. [Va. Code § 16.1-263 \(E\)](#).

Right to Counsel

Pursuant to [Va. Code § 16.1-253 \(D\)](#), parties shall be informed by a judge, clerk or probation officer of their right to counsel in accordance with [Va. Code § 16.1-266](#) and be given an opportunity to (i) retain counsel; (ii) if qualified, have counsel appointed (the district court form DC-334, REQUEST FOR APPOINTMENT OF LAWYER should be used by the party to request appointment of an attorney); (iii) waive counsel using district court form DC-536, TRIAL WITHOUT A LAWYER. [Va. Code § 16.1-266 \(C\)](#). Advisement of the right to counsel shall be given:

- to the parent or guardian of the child, prior to the adjudicatory hearing by the court of a petition in which a child is alleged to be abused or neglected or at risk of abuse or neglect as provided in [Va. Code § 16.1-241 \(A\)\(2a\)](#) and prior to a hearing at which a parent could be subjected to the loss of residual parental rights.
- an adult charged with abuse or neglect of a child, prior to the hearing of the case by the court.
- In the court's discretion, a discreet and competent attorney at law may be appointed as counsel or guardian *ad litem* to represent the interests of a parent or guardian. [Va. Code § 16.1-266 \(D\)](#). Pursuant to this authority, an attorney may be appointed to represent the interests of a parent who is unknown or not found.

The court may appoint a guardian *ad litem* to represent a party, usually a parent, who is under the age of eighteen years or under a disability such as incarceration or mental illness. The district court form DC-514, ORDER FOR APPOINTMENT OF GUARDIAN AD LITEM should be used for this appointment. If an attorney is to be appointed as a guardian *ad litem* for a parent or guardian (as opposed to appointment as “counsel”), reference should be made from the list of qualified guardians *ad litem* maintained by the Office of the Executive Secretary of the Supreme Court, as in the case for appointment of a guardian *ad litem* for a child. This list can be found at www.courts.state.va.us.

Note: The discretionary authority of the court pursuant to [Va. Code § 16.1-266 \(E\)](#) to appoint a discreet and competent attorney at law to represent a child, children, parent or guardian as counsel or guardian *ad litem* “in all other cases” may be interpreted to mean (i) cases other than those in which a parent or guardian is charged with abuse/neglect or could be subjected to the loss of residual parental rights and responsibilities; or (ii) cases in which a parent or guardian cannot be informed of an exercise or waive his right to counsel. The latter interpretation would support the appointment of an attorney as counsel or guardian *ad litem* to represent the interests of a parent whose identity or whereabouts is unknown. Such a parent or guardian could also be subjected to the loss of residual parental rights and responsibilities. See [Va. Code § 16.1-266 \(C\)](#); but see *Fredericksburg Dep’t of Social Servs. v. Brown and Williams*, Record Nos. 1969-99-2, 2008-99-2 (Va. Ct. App. 2000) (affirming on other grounds the trial court’s denial of petitions to terminate the parents’ residual parental rights, where the children entered foster care based upon an invalid entrustment agreement).

The trial court had denied the petitions based upon failure to appoint attorneys to represent the parents). A parent or guardian whose identity or whereabouts is unknown may also be under a disability in that they are unable to defend their legal rights. See [Va. Code § 8.01-2](#) (defining “person under a disability”). See also *Norfolk Div. of Social Servs. v. Unknown Father*, 2 Va. App. 420, (1986) (in proceedings involving custody of a child of an unwed minor, guardian *ad litem* for the unknown father had standing to appeal the entrustment agreement decision by the juvenile and domestic relations district court).

The court shall consider appointing an attorney-at-law:

- If the identity or location of a parent or guardian is not reasonably ascertainable or a parent or guardian fails to appear, the court shall consider appointing an attorney-at-law to represent the interests of the absent parent or guardian, and the hearing may be held. [Va. Code § 16.1-266 \(C\)](#).
- Prior to a hearing at which a child is the subject of an initial foster care plan filed pursuant to [Va. Code § 16.1-281](#), foster care review hearing pursuant to [Va. Code § 16.1-282](#) and permanency planning hearing pursuant to [Va. Code § 16.1-282.1](#), the court shall consider appointing counsel to represent the child's parent or guardian.

Transportation of Incarcerated Witness

If the presence of a prisoner is essential to the just adjudication and disposition of a case involving a child who is alleged to be abused or neglected, the judge may issue a district court form DC-354, CUSTODIAL TRANSPORTATION ORDER upon the request of a party or the court's motion. The order may direct the Director of the [Department of Corrections](#) or the administrator of the state, local or regional correctional institution to deliver the witness from a state, local or regional correctional institution to the sheriff of the jurisdiction of the court issuing the order. The order shall be executed in accordance with [Va. Code § 8.01-410](#). [Va. Code § 16.1-276.2](#).

Hearing

At the adversary hearing the child, their parents, guardian, legal custodian, other person standing *in loco parentis* and any other family or household member of the child to whom notice was given shall have the right to confront and cross-examine all adverse witnesses and evidence and present evidence on their own behalf. [Va. Code § 16.1-253 \(E\)](#).

Except as provided in [Va. Code § 16.1-278.2](#) upon disposition of a case in which a finding has been made of abuse or neglect, or at risk of being abused or neglected by a parent who has been adjudicated as having abused or neglected another child in the care of the parent or custodian, the child cannot be removed from the custody of their parents, guardian, legal custodian or other person standing *in loco parentis* through a proceeding for the entry of a preliminary protective order. [Va. Code § 16.1-253 \(H\)](#).

No order under this section shall be entered against a person over whom the court does not have jurisdiction. [Va. Code § 16.1-253 \(H\)](#).

DC-527, Preliminary Child Protective Order

The preliminary protective order may require a child's parents, guardian, legal custodian, other person standing *in loco parentis* or other family or household member of the child to observe reasonable conditions of behavior for a specified length of time.

The conditions in a preliminary protective order shall include any one or more of the following:

- To abstain from offensive conduct against the child, a family or household member of the child or any person to whom custody of the child is awarded;
- To cooperate in the provision of reasonable services or programs designed to protect the child's life, health or normal development;
- To allow persons named by the court to come into the child's home at reasonable times designated by the court to visit the child or inspect the fitness of the home and to determine the child's physical or emotional health;
- To allow visitation with the child by persons entitled thereto, as determined by the court;
- To refrain from acts of commission or omission which tend to endanger the child's life, health or normal development; or
- To refrain from such contact with the child or family or household members of the child, as the court may deem appropriate, including removal of such person from the residence of the child. However, prior to the issuance by the court of an order removing such person from the residence of the child, the petitioner must prove by a preponderance of the evidence that such person's probable future conduct would constitute a danger to the life or health of such child, and that there are no less drastic alternatives which could reasonably and adequately protect the child's life or health pending a final determination on the petition.

Identifying information on person(s) subject to preliminary protective order shall be entered into the Virginia Criminal Information Network (VCIN)

forthwith but in all cases no later than the end of the business day on the day the order is issued. The preliminary protective order shall specify a date for the dispositional hearing. The court shall **forthwith** forward a copy of the order to the law enforcement agency responsible for service. Upon receipt of the order by the local law enforcement agency, the agency shall enter the name of the person subject to the order and other appropriate information into VCIN. A copy of the preliminary protective order shall be served as soon as possible on the allegedly abusing person in person as provided in [Va. Code § 16.1-264](#), and upon service, the agency making service shall enter the date and time of service into VCIN. [Va. Code § 16.1-253 \(K\)](#).

Location information of person(s) protected by preliminary protective order and family member of protected person is confidential. Neither a law-enforcement agency, the attorney for the Commonwealth, a court nor the clerk's office, nor any employee of them, may disclose, except among themselves, the residential address, telephone number, or place of employment of the person protected by the order or that of the family of such person, except to the extent that disclosure is (i) required by law or the Rules of the Supreme Court, (ii) necessary for law-enforcement purposes, or (iii) permitted by the court for good cause. [Va. Code § 16.1-253 \(I\)](#). Use district court form DC-621, [NON-DISCLOSURE ADDENDUM](#), to protect identifying information.

Finding of Abuse or Neglect at the Preliminary Protective Order Hearing - [Va. Code § 16.2-253 \(F\)](#)

If a petition alleging abuse or neglect of a child has been filed:

- At the conclusion of the preliminary protective hearing, the court shall determine whether the allegations of abuse or neglect have been proven by a preponderance of the evidence. Any finding of abuse or neglect shall be stated in the court order.
- However, if before such a finding is made a person responsible for the care and custody of the child, DSS or the child's GAL objects to a finding being made at the preliminary protective hearing, the court shall make no finding of abuse or neglect and shall schedule an adjudicatory hearing on the allegation of abuse and neglect to be held within thirty days of the date of the preliminary protective hearing. The adjudicatory hearing shall be held to determine whether the allegations of abuse and neglect have been proven by a preponderance of the evidence. The court must find whether or

not the child has been abused or neglected. It is not necessary to establish the perpetrator of the abuse or neglect in order to make this finding.

Parties present at the preliminary protective hearing shall be given notice of the date set for the adjudicatory hearing and the disposition hearing. The parties not present shall be summoned as provided in [Va. Code § 16.1-263](#). All parties present should receive a copy of the district court form DC-527, PRELIMINARY CHILD PROTECTIVE ORDER. The parties also should sign and receive a copy of the district court form DC-508, ACKNOWLEDGMENT OF NOTICE OF NEXT HEARING DATE for the abuse and neglect adjudicatory hearing, if continued, and the dispositional hearing. The preliminary protective order should be served on any party who did not receive a copy of the order at the preliminary protective hearing.

If the case is continued for an adjudicatory hearing, the preliminary protective order may still be issued. This order shall remain in full force and effect pending the adjudicatory hearing and until superseded by the issuance of a subsequent order in the case. [Va. Code § 16.1-253 \(F\)](#).

Adjudicatory Hearing When Abuse or Neglect of a Child is Alleged. [Va. Code § 16.1-253 \(F\)](#)

The petitioner must prove by a preponderance of the evidence that the child is abused and/or neglected as defined in [Va. Code § 16.1-228](#), which states that an “abused or neglected child” is any child:

- Whose parents or other person responsible for his care creates or inflicts, threatens to create or inflict, or allows to be created or inflicted upon such a child a physical or mental injury by other than accidental means, or creates a substantial risk of death, disfigurement or impairment of bodily or mental functions, including, but not limited to, a child who is with his parent or other person responsible for his care either (i) during the manufacture or attempted manufacture of a Schedule I or II controlled substance, or (ii) during the unlawful sale of such substance by that child’s parents or other person responsible for his care, where such manufacture, or attempted manufacture or unlawful sale would constitute a felony violation of [Va. Code § 18.2-248](#);
- Whose parents or other person responsible for his care neglects or refuses to provide care necessary for his health; however, no child who in good faith is under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a

recognized church or religious denomination shall for that reason alone be considered to be an abused or neglected child;

- It is an affirmative defense to a civil proceeding that a parent safely delivered a child to a hospital with twenty-four-hour emergency services or an attended rescue squad within fourteen days of birth.
- Whose parents or other person responsible for his care abandons such child;
- Whose parents or other person responsible for his care commits or allows to be committed any sexual act upon a child in violation of the law; or
- Who is without parental care or guardianship caused by the unreasonable absence or the mental or physical incapacity of the child's parent, guardian, legal custodian or other person standing *in loco parentis*.
- Whose parents or other persons responsible for his care creates a substantial risk of physical or mental injury by knowingly leaving the child alone in the same dwelling with a person to whom the child is not related by blood or marriage and who the parent or responsible person knows has been convicted of an offense against a minor which registration is required as a violent sex offender.

The hearing shall be held and an order may be entered although a party to the preliminary protective hearing fails to appear and is not represented by counsel, provided personal or substituted service was made on the person or the court determines that such person cannot be found after reasonable effort or, in the case of a person who is without the Commonwealth, the person cannot be found or his post office address cannot be ascertained after reasonable effort.

Any finding of abuse or neglect can be documented in the district court form DC-561, ADJUDICATORY ORDER FOR ABUSE OR NEGLECT CASES.

Disposition Hearing When Child is Found to be Abused or Neglected. [Va. Code § 16.1-253 \(G\)](#)

If in a preliminary protective proceeding the court makes a finding of abuse or neglect, a disposition hearing shall be held pursuant to [Va. Code § 16.1-278.2](#).

- The disposition hearing shall be scheduled at the time of the preliminary protective order hearing, even if an adjudicatory hearing is requested.
- The disposition hearing shall be held within sixty days of the preliminary protective hearing.

Parties present at the preliminary protective hearing shall be given notice of the date set for the disposition hearing. Parties not present shall be summoned as provided in [Va. Code § 16.1-263](#). All parties present should receive a copy of the district court form DC-527, PRELIMINARY CHILD PROTECTIVE ORDER. The parties also should sign and receive a copy of the district court form DC-508, ACKNOWLEDGMENT OF NOTICE OF NEXT HEARING DATE for the abuse and neglect adjudicatory hearing, if continued, and the dispositional hearing. Upon entry of a district court form DC-527, PRELIMINARY CHILD PROTECTIVE ORDER the court shall **forthwith** but in all cases no later than the end of business on the day the order is issued enter the information into the VCIN system and **forthwith** forward a copy of the order to law enforcement responsible for service.

The preliminary protective order should be served on any party who did not receive a copy of the order at the preliminary protective hearing.

Court has dispositional alternatives pursuant to [Va. Code § 16.1-278.2](#) in cases of a child found to be abused or neglected or a child 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.

When transferring custody of the child to a person with a legitimate interest for disposition pursuant to [Va. Code § 16.1-278.2 \(A\)\(5\)\(a\)](#), the district court form DC-559, SUPPLEMENT TO ORDER TRANSFERRING CUSTODY, should be used for the findings and orders required by [Va. Code § 16.1-278.2 \(A\)\(1\)](#).

- The court shall find, after an investigation, that the prospective custodian is one who: is willing and qualified to receive and care for the child; is willing to have a positive, continuous relationship with the child; is committed to providing a permanent, suitable

home for the child; and is willing and has the ability to protect the child from abuse and neglect. The court's order shall state these findings.

- The court's order should further provide for, as appropriate, any terms or conditions which would promote the child's interest and welfare; ongoing provision of social services to the child and the child's custodian; and court review of the child's placement.

The court should consider the need to order diagnostic testing of the child pursuant to [Va. Code § 16.1-275](#) to verify that the protective order meets all of the child's needs for services:

- psychological evaluations;
- physical/medical evaluations;
- educational evaluation;
- psychiatric evaluation.

Finalize the district court form DC-527, PRELIMINARY CHILD PROTECTIVE ORDER by entry of a district court form DC-532, CHILD PROTECTIVE ORDER and set date to review status of child who returns home with the child protective order in effect. Upon entry of the district court form DC-532, CHILD PROTECTIVE ORDER the court shall **forthwith** but in all cases no later than the end of business on the day the order is issued enter the information into the VCIN system and forthwith forward a copy of the order to law enforcement responsible for service.

Appeals

A dispositional order entered pursuant to [Va. Code § 16.1-278.2](#) is a final order from which an appeal may be taken in accordance with [Va. Code § 16.1-296](#). [Va. Code § 16.1-278.2 \(D\)](#).

Upon appeal to the circuit court of any case involving a child placed in foster care and also in any such appeal to the Court of Appeals or Supreme Court, the juvenile and domestic relations district court retains jurisdiction to continue to hear foster care review petitions pursuant to [Va. Code §§ 16.1-282](#) and [16.1-282.1](#). [Va. Code § 16.1-242.1](#).

The appeal should be noted on the district court form DC-581, NOTICE OF APPEAL – JUVENILE CIVIL APPEALS. This form provides for the style of the case to reflect "In Re: the child's name" in addition to the appellant's name and appellant's relationship to the child. The district court form DC-581, NOTICE

OF APPEAL – JUVENILE CIVIL APPEALS gives notice to the parents and court staff that the matter is a civil juvenile appeal. The notice of appeal also requires information regarding the name of the guardian *ad litem* and the attorneys representing the parties as well as an estimation of the time needed for a hearing. There is no bond or fee requirement for the appeal of a foster care order.

Child Protective Orders

Child protective order processing by the clerk's office is determined by the statutory basis for the order and findings and determinations made by the Court.

- Petition Alleging Abuse or Neglect, Seeking a Preliminary Child Protective Order [§ 16.1-253 F.](#)

STEP	DESCRIPTION
1	The petition alleging abuse and neglect is filed by the Department of Social Services with the intake office, using a DC-511, PETITION. An affidavit and district court form DC-621, NON-DISCLOSURE ADDENDUM, accompanies the petition. The Addendum is sealed in the district court DC-622, ENVELOPE. The DC-418, Affidavit-Default Judgment Servicemembers Civil Relief Act is also filed with the petition. One petition, affidavit and addendum should be filed per child.
2	Clerk enters the petition into JCMS using the DJJ interface. Case type AN , hearing type PO . The case is scheduled for an <i>ex parte</i> hearing the same day the petition is filed. The date for the preliminary hearing is scheduled within 5 business days.
3	Court appoints a guardian <i>ad litem</i> for the child using district court form DC-514, ORDER FOR APPOINTMENT OF GUARDIAN AD LITEM, appoints counsel for each parent, and schedules to have all counsel available for the 5-day preliminary hearing. Clerk prepares a district court form DC-527, PRELIMINARY CHILD PROTECTIVE ORDER – ABUSE AND NEGLECT, and, district court form DC-334, REQUEST FOR APPOINTMENT OF A LAWYER, for each parent.
4	After the <i>ex parte</i> hearing, and entry of a preliminary child protective order, the clerk enters the order into the protective order sub tab in JCMS for entry into VCIN, continues the case using a PPO continuance code to the

STEP	DESCRIPTION
	<p>5-day hearing using a PR hearing type, and sends the preliminary child protective order, along with the petition, affidavit, and appointments of counsel, to law enforcement for further entry into VCIN and service on the parents and child (if 12 or older). Copies, along with copies of appointment of counsel, are provided to the Department of Social Services, and counsel. If no order is entered at the <i>ex parte</i> hearing, continue the case using the continuance code NPP, and send/provide notice to parties, counsel and the agency.</p>
5	<p>Clerk prepares a district court form DC-527, PRELIMINARY CHILD PROTECTIVE ORDER – ABUSE AND NEGLECT, and a district court form DC-561, ADJUDICATORY ORDER FOR ABUSE OR NEGLECT CASES, for the 5-day preliminary hearing. At the preliminary hearing, the Court advises the parents of their right to counsel, and takes financial statements from each. This information is used to determine eligibility for court appointed counsel, as well as, to assist the Court in addressing reimbursement of GAL fees. Based on the actions of the Court at the preliminary hearing, process the case in JCMS as follows:</p> <ul style="list-style-type: none"> • Court adjudicates the allegation of abuse or neglect, and enters a district court form DC-527, Preliminary Child Protective Order – Abuse and Neglect and may also issue a district court form DC-561, Adjudicatory Order for Abuse or Neglect Cases. The clerk continues the case to the sixty-day dispositional hearing, using an FND continuance code, to indicate abuse and neglect founded, and enters the grounds for the adjudication in the Adjudication field in JCMS, located under HD Main Sub-Tab. The clerk notes which parties are present on the hearing line using the information recorded directly in the court order. An entry of the protective order is made in the protective order sub tab to communicate the information to VCIN and a copy is provided to law enforcement for further entry into VCIN. Parties are served with the protective order, and copies are provided to counsel and the agency. <p>OR</p> <ul style="list-style-type: none"> • Court continues the case for adjudication to be heard within 30 days of the preliminary hearing, and

STEP	DESCRIPTION
	<p>issues a district court form DC-527, PRELIMINARY CHILD PROTECTIVE ORDER – ABUSE AND NEGLECT. Both the 30-day adjudicatory hearing and the sixty-day dispositional hearing are set and recorded on the order. The case is continued in JCMS to the 30-day adjudicatory hearing using the PPO continuance code. The clerk notes which parties are present on the hearing line using the information recorded directly in the court order. An entry of the protective order is made in the protective order sub tab to communicate the information to VCIN and a copy is provided to law enforcement for further entry into VCIN. Parties are served with the protective order, and copies are provided to counsel and the agency. Once the abuse or neglect is adjudicated, the Court continues the case using the FND continuance code to the sixty-day dispositional hearing, and enters the grounds for the adjudication in the Adjudication field in JCMS, located under HD Main Sub-Tab.</p> <ul style="list-style-type: none"> • NOTE: If a protective order is issued, parties subject to the provisions of the Court order are required to surrender their concealed weapons permits to the Court.
6	<p>Clerk prepares a district court form DC-532, CHILD PROTECTIVE ORDER – ABUSE OR NEGLECT, for the dispositional hearing. If a final child protective order is entered, the clerk finalizes the case in JCMS using a Disposition code of CP. An entry of the protective order is made in the protective order sub tab to communicate the information to VCIN. The expiration date is entered as the child's 18th birthday, unless a different date is entered on the order. A copy is forwarded to law enforcement, parties are served with the protective order, and copies are provided to counsel and the agency. The judge may set an administrative review hearing, and the clerk should utilize the AH hearing type to schedule this hearing, allowing the case to be finalized in JCMS.</p>

- Issuance of a Preliminary Child Protective Order upon the Motion of Any Person or Upon the Court's Own Motion, After a Hearing, In Any Matter Before the Court. [Va. Code § 16.1-253 A](#)

STEP	DESCRIPTION
1	Court issues a district court form DC-545, PRELIMINARY CHILD PROTECTIVE ORDER. Clerk indexes the order under the child's name (In Re:), using the child's case number, or a new file number, and a petition number. Case type ST for Other. The hearing type is DS , and the case is continued along with the underlying matter before the Court. Clerk enters the order into the protective order sub tab in JCMS for entry into VCIN and forwards a copy to law enforcement. The Court should advise parents of their right to counsel, district court form DC-334, REQUEST FOR APPOINTMENT OF A LAWYER, appoint a guardian <i>ad litem</i> for the child, district court form DC-514, ORDER FOR APPOINTMENT OF GUARDIAN AD LITEM, and prepare financial statements on both parents to address the reimbursement of the GAL fees.
2	<p>Step 1 is repeated as long as the Court continues to hear the underlying matter, and issues a new district court form DC-545, PRELIMINARY CHILD PROTECTIVE ORDER. A Preliminary Child Protective Order under this paragraph in Va. Code § 16.1-253, expires when the underlying matter is dismissed or withdrawn. There is no longer a matter before the Court, which provides jurisdiction for the Child PPO.</p> <p>If the protective order is dissolved by the court, a copy of the order district court form DC-652, ORDER DISSOLVING PROTECTIVE ORDER, is sent to law enforcement to be removed from VCIN.</p>

- Issuance of a Preliminary Child Protective Order Upon the Filing of a Petition or Motion Where Such an Order is Requested *Ex parte* Based Upon the "Imminent Threat" Standard. [Va. Code § 16.1-253 B](#)

STEP	DESCRIPTION
1	Party files a motion with the court for an <i>ex parte</i> hearing in a pending case before the court, requesting a preliminary child protective order. An affidavit may be

STEP	DESCRIPTION
	<p>filed and a district court form DC 621, NON-DISCLOSURE ADDENDUM will always accompany the motion. The Addendum is sealed in the district court DC-622, ENVELOPE. One petition, affidavit and addendum should be filed per child. The case is processed as an ST case type.</p> <p>OR</p> <p>Party files a DC-511, PETITION at the Intake Office, requesting a Preliminary Child Protective Order. Clerk enters the case into JCMS using the DJJ interface and schedules an <i>ex parte</i> hearing the same day filed with the Court. If the petitioner is the local Department of Social Services, the case type is AN. For any other petitioner, enter the case type as ST for Other. An affidavit may be filed and district court form DC 621, NON-DISCLOSURE ADDENDUM, always accompanies the petition. The Addendum is sealed in the district court DC-622, ENVELOPE. One petition, affidavit and addendum should be filed per child.</p>
2	<p>Court appoints a guardian <i>ad litem</i> for the child using the district court form DC-514, ORDER FOR APPOINTMENT OF GUARDIAN AD LITEM, and requests a representative from the Department of Social Services attend the <i>ex parte</i> hearing, if the local department is not the Petitioner. At the <i>ex parte</i> hearing, the Court determines whether to proceed with the Preliminary Child Protective Order case, under Va. Code § 16.1-253 A (district court form DC-545, PRELIMINARY CHILD PROTECTIVE ORDER) or Va. Code § 16.1-253 F (district court form DC-527, PRELIMINARY CHILD PROTECTIVE ORDER – ABUSE AND NEGLECT). Based on this decision by the Court, procedures listed under A. or B. above would be followed.</p>

Violation of a Preliminary Protective Order Entered Pursuant to [Va. Code § 16.1-253](#):

- Pursuant to [Va. Code § 16.1-253 \(J\)](#), a violation shall constitute contempt of court.
- Pursuant to [Va. Code § 16.1-253.2](#), certain violations of a protective order entered pursuant to [Va. Code § 16.1-253](#) may be charged as a Class 1 misdemeanor: (i) prohibition of going on or remaining upon land, buildings or premises; (ii) further acts of family abuse;

or (iii) prohibition of contacts between the respondent and the respondent's family or household member. If the respondent commits an assault and battery upon any party protected by the protective order, resulting in serious bodily injury to the party, they are guilty of a Class 6 felony. Any person who violates such a protective order by furtively entering the home of any protected party while the party is present, or by entering and remaining in the home of the protected party until the party arrives, is guilty of a Class 6 felony, in addition to any other penalty provided by law. Upon conviction, the person shall be sentenced to a term of confinement and in no case shall the entire term imposed be suspended.

Court may appoint a Court Appointed Special Advocate if not previously appointed

See district court form DC-544, ORDER FOR COURT - APPOINTED SPECIAL ADVOCATE (CASA).

Petition by Custodian for Relief of Custody

[Va. Code §§ 16.1-277.02, 16.1-278.3](#)

Initiation

The request for a petition for relief of custody shall be referred initially to the local Department of Social Services (DSS) for investigation and the provision of services, if appropriate. [Va. Code § 16.1-277.02 \(A\)](#) (Use the DC-511, PETITION.)

The parent or other custodian files a verified petition for relief of custody through Court Services Unit intake department or by an attorney directly with the clerk's office. See [Va. Code §§ 16.1-260, 16.1-262](#). The petition should include:

- A specific statement of the factual circumstances which allegedly necessitate the custodian being relieved of custody; and
- A statement as to whether petitioner seeks temporary relief of custody, or permanent relief of custody and voluntary termination of parental rights.

A district court form DC-620, [AFFIDAVIT \(UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT\)](#) is filed with the petition for relief of custody.

Pursuant to [Va. Code § 20-146.1](#), a "child custody proceeding" includes a dependency proceeding in which legal custody, physical custody or

visitation with respect to a child is an issue. District court form DC-621, [NON-DISCLOSURE ADDENDUM](#), must be completed to protect identifying information.

- A district court form [DC-418, AFFIDAVIT-DEFAULT JUDGMENT](#) [SERVICEMEMBERS CIVIL RELIEF ACT](#). Pursuant to [Va. Code § 8.01-15.2](#), in any civil action or proceeding in which the defendant does not make an appearance, the court shall not enter a judgment by default until the plaintiff files with the court an affidavit (i) stating whether or not the defendant is in military service and showing necessary facts to support the affidavit; or (ii) if the plaintiff is unable to determine whether or not the defendant is in military service, stating that the plaintiff is unable to determine whether or not the defendant is in military service.

Pretrial

The court shall schedule the matter for a hearing on the petition. [Va. Code § 16.1-277.02 \(A\)](#).

Upon the filing of a petition for relief of custody, the court shall appoint a guardian *ad litem* (GAL) to represent the child in accordance with the provisions of [Va. Code § 16.1-266](#). [Va. Code § 16.1-277.02 \(A\)](#). Pursuant to [Va. Code § 16.1-266.1](#), check the list of qualified guardians *ad litem* maintained by the Office of the Executive Secretary of the Supreme Court before selecting a guardian *ad litem*. However, if no attorney who is on the list is reasonably available, the judge has discretion to appoint any discreet and competent attorney admitted to practice law in Virginia. Use the district court form DC-514, ORDER FOR APPOINTMENT OF GUARDIAN AD LITEM.

Pursuant to [Va. Code § 16.1-267](#), when a guardian *ad litem* is appointed for a child by the Commonwealth, the juvenile and domestic relations district court or circuit court, shall order the parent, parents, adoptive parent, or adoptive parents of the child or another party with a legitimate interest therein who has filed a petition with the court, to reimburse the Commonwealth the costs of such services in an amount not to exceed the amount awarded the guardian *ad litem* by the court. If the court determines such party is unable to pay, the required reimbursement may be reduced or eliminated.

The court may appoint a Court Appointed Special Advocate (CASA) in accordance with the provisions of [Va. Code § 9.1-153](#) and local practice using the district court form DC-544, ORDER FOR COURT - APPOINTED SPECIAL ADVOCATE (CASA).

Notice provisions applicable to a petition for relief of custody:

The court shall provide notice of the hearing and a copy of the petition to the following; each of who shall be a party entitled to participate in the proceeding ([Va. Code § 16.1-277.02 \(A\) \(1\)-\(4\)](#)):

Note: The court should provide a copy of the Petition and notice of the date and time of the hearing to any attorneys of record.

- The child, if twelve years of age or older;
- The guardian *ad litem* for the child;
- The child's parents, custodian or other person standing *in loco parentis* to the child;
- The local board of social services.

After the filing of a petition, the court shall direct a district court form DC-510, SUMMONS to the child, if twelve years of age or older, and another to the parent, guardian, legal custodian or other person standing *in loco parentis*, and to other persons as appear to the court to be proper or necessary parties to the proceedings. [Va. Code § 16.1-263](#).

In accordance with [Va. Code § 9.1-157](#), the provisions of [Va. Code § 16.1-264](#) regarding notice to parties shall apply to ensure that the CASA is notified of hearings and other proceedings concerning the case to which they are assigned.

- No summons or notification of a parent or guardian shall be required if the judge certifies on the record that the identity of a parent or guardian is not reasonably ascertainable. See district court form DC-509, AFFIDAVIT/CERTIFICATION OF PARENTAL IDENTITY OR LOCATION. An affidavit of the mother that the identity of the father is not reasonably ascertainable shall be sufficient evidence of this fact, provided there is no other evidence before the court which would refute such an affidavit. [Va. Code § 16.1-263 \(E\)](#).
- In the case of a hearing to grant a petition for permanent relief of custody and terminate a parent's residual parental rights:
 - Notice to the parent whose rights may be affected shall be provided in accordance with the provisions of [Va. Code §§ 16.1-263](#) and [16.1-264](#), including by Order of Publication as

appropriate. (See Miscellaneous Chapter of this manual for Order of Publication procedures.)

- The summons or notice of hearing shall clearly state the consequences of a termination of residual parental rights. Use district court form DC-535, NOTICE OF TERMINATION OF RESIDUAL PARENTAL RIGHTS.
- The hearing on the petition shall be held although a parent fails to appear and is not represented by counsel, provided personal or substituted service was made on the parent, or the court determines that such person cannot be found, after reasonable effort, or in the case of a person who is without the Commonwealth, the person cannot be found or his post office address cannot be ascertained, after reasonable effort. [Va. Code § 16.1-277.02 \(A\)\(3\)](#).

Pursuant to [Va. Code § 16.1-264](#), the court may order service by publication in accordance with the provisions of [Va. Code §§ 8.01-316](#) and [8.01-317](#).

The party who seeks service by Order of Publication must file a district court form DC-435, [AFFIDAVIT AND PETITION FOR ORDER OF PUBLICATION](#) stating one of the following grounds:

- The party to be served is a nonresident; or
- That diligence has been used without effect to ascertain the location of the party to be served; or
- That the last known residence of the party to be served was in the county or city where service is sought and a return of service has been filed by the sheriff that the service of process has been in his hands for twenty-one days and has been unable to make service; or
- If the identity of the party to be served is unknown (for example if the identity of the father is unknown) and the party to be served has been identified as unknown in the pleadings.

The Court Improvement Program recommends that the petitioner file a notarized affidavit of efforts to locate absent parent with the district court form DC-435, [AFFIDAVIT AND PETITION FOR ORDER OF PUBLICATION](#). Language

from the district court form DC-535, NOTICE OF TERMINATION OF RESIDUAL PARENTAL RIGHTS should be included in the district court form DC-436, ORDER OF PUBLICATION.

Every affidavit for Order of Publication shall state the last known post office address of the party to be served or if such address is unknown, the affidavit shall so state.

Every district court form DC-436, ORDER OF PUBLICATION shall state the following:

- Style of the suit: “In the Juvenile and Domestic Relations District Court, In Re (name of child),” the names of the adult parties (or that the Respondent is unknown); and
- Object of the suit: “To terminate the residual parental rights of the respondent”; and
- That the defendants or parties unknown are to appear and protect their interests on or before the date stated in the district court form DC-436, ORDER OF PUBLICATION, which is the date set in the courtroom or by the clerk and the date is to be no sooner than fifty days after entry of the ORDER OF PUBLICATION. (See Miscellaneous Chapter of this manual for Order of Publication procedures.)

Upon completion of publication, a certificate of compliance with the provisions of [Va. Code § 8.01-317](#) must be filed by the clerk with the papers in the case.

Upon receipt of notice of the hearing on the petition for relief of custody, the local board of social services shall investigate the matter and provide services, as appropriate, in accordance with the provisions of [Va. Code § 63.2-319](#) or Chapter 15 ([Va. Code § 63.2-1500 et seq.](#)) of Title 63.2. [Va. Code § 16.1-277.02 \(A\)\(4\)](#).

Parties shall be informed of their right to counsel in accordance with [Va. Code § 16.1-266](#). Prior to the adjudicatory hearing by the court of a petition in which a child is alleged to be abused or neglected or at risk of abuse or neglect as provided in [Va. Code § 16.1-241 \(A\)\(2a\)](#), prior to the hearing of any case involving any other adult charged with abuse or neglect of a child, and prior to a hearing at which a parent could be subjected to the loss of residual parental rights, the child’s parent or guardian or the

other adult shall be informed by a judge, clerk or probation officer of his right to counsel and be given an opportunity to (i) retain counsel; (ii) if qualified, have counsel appointed; (iii) waive counsel using district court form DC-536, TRIAL WITHOUT A LAWYER - WAIVER OF RIGHT TO BE REPRESENTED BY A LAWYER. [Va. Code § 16.1-266 \(C\)](#).

The Court Improvement Program recommends that notice of the right to counsel should be given to the parents or guardian at the first hearing on the petition for relief of custody. [Va. Code § 16.1-266 \(C\)](#). The district court form DC-510, SUMMONS includes notice of the right to counsel.

In the court's discretion, a discreet and competent attorney at law may be appointed as counsel or guardian *ad litem* to represent the interests of a parent or guardian. [Va. Code § 16.1-266 \(D\)](#). If an attorney is to be appointed as a guardian *ad litem* for a parent or guardian (as opposed to appointment as "counsel"), reference should be made from the list of qualified guardians *ad litem* maintained by the Office of the Executive Secretary of the Supreme Court, as is the case for appointment of a guardian *ad litem* for a child. This list can be found at www.courts.state.va.us. The court may appoint a guardian *ad litem* to represent a party, usually a parent, who is under the age of eighteen or under a disability such as incarceration or mental illness. The district court form DC-514, ORDER FOR APPOINTMENT OF GUARDIAN AD LITEM should be used for this appointment.

Note: The discretionary authority of the court pursuant to [Va. Code § 16.1-266 \(E\)](#) to appoint a discreet and competent attorney at law to represent a child, children, parent or guardian as counsel or guardian *ad litem* "in all other cases" may be interpreted to mean (i) cases other than those in which a parent or guardian is charged with abuse/neglect or could be subjected to the loss of residual parental rights and responsibilities; or (ii) cases in which a parent or guardian cannot be informed of an exercise or waive his right to counsel. The latter interpretation would support the appointment of an attorney as counsel or guardian *ad litem* to represent the interests of a parent whose identity or whereabouts is unknown. Such a parent or guardian could also be subjected to the loss of residual parental rights and responsibilities. See [Va. Code § 16.1-266 \(C\)](#); but see *Fredericksburg Dep't of Social Servs. v. Brown and Williams*, Record Nos. 1969-99-2, 2008-99-2 (Va. Ct. App. 2000) (affirming on other grounds the trial court's denial of petitions to terminate the parents' residual parental rights, where the children entered foster care based upon an invalid entrustment agreement. The trial court had denied the petitions based upon failure to appoint attorneys to represent the parents). A parent or

guardian whose identity or whereabouts is unknown may also be under a disability in that they are unable to defend their legal rights. See [Va. Code § 8.01-2](#) (defining “person under a disability”). See also *Norfolk Div. of Social Servs. v. Unknown Father*, 2 Va. App. 420, (1986) (in proceedings involving custody of a child of an unwed minor, guardian *ad litem* for the unknown father had standing to appeal).

The court shall consider appointing an attorney-at-law:

- If the identity or location of a parent or guardian is not reasonably ascertainable or a parent or guardian fails to appear, the court shall consider appointing an attorney-at-law to represent the interests of the absent parent or guardian, and the hearing may be held. [Va. Code § 16.1-266 \(C\)](#).
- Prior to a hearing at which a child is the subject of an initial foster care plan filed pursuant to [Va. Code § 16.1-281](#), a foster care review hearing pursuant to [Va. Code § 16.1-282](#) and a permanency planning hearing pursuant to [Va. Code § 16.1-282.1](#), the court shall consider appointing counsel to represent the child’s parent or guardian.

Transportation of incarcerated witness: If the presence of a prisoner is essential to the just adjudication and disposition of a case involving a child whose parent or parents desire to be relieved of his care and custody, the judge may issue a district court form DC-354, CUSTODIAL TRANSPORTATION ORDER upon the request of a party or the court’s motion. The order may direct the Director of the [Department of Corrections](#) or the administrator of the state, local or regional correctional institution to deliver the witness from a state, local or regional correctional institution to the sheriff of the jurisdiction of the court issuing the order. The order shall be executed in accordance with [Va. Code § 8.01-410](#). [Va. Code § 16.1-276.2](#).

Hearing on Petition for Relief of Custody

Standards for granting and burden of proof applicable to petitions for relief of custody:

- The court shall make a finding, based upon a preponderance of the evidence whether there is good cause shown for the petitioner’s desire to be relieved of the child’s care and custody, in the case of a

petition to be relieved of custody temporarily. [Va. Code § 16.1-277.02 \(C\)](#).

- The court shall make a finding, based upon clear and convincing evidence, whether termination of parental rights of the petitioner is in the best interest of the child, if the petition seeks permanent relief of custody and termination of parental rights. [Va. Code § 16.1-277.02 \(C\)](#).

The local board, the child, the child's parents, guardian, legal custodian or other person standing *in loco parentis* and any other family or household member of the child to whom notice was given shall have the right to confront and cross-examine all adverse witnesses and evidence and to present evidence on their own behalf. [Va. Code § 16.1-277.02 \(B\)](#).

Dispositional alternatives at the hearing on the petition for relief of custody: If the court makes either finding in accordance with [Va. Code § 16.1-277.02 \(C\)](#), the court may enter, pursuant to [Va. Code § 16.1-277.02 \(C\)\(1\)-\(4\)](#):

A district court form DC-527, PRELIMINARY CHILD PROTECTIVE ORDER pursuant to [Va. Code § 16.1-253](#); (upon entry of a Preliminary Child Protective Order the court shall forthwith but in all cases no later than the end of business on the day the order is issued enter the information into the VCIN system and forthwith forward a copy of the order to law enforcement responsible for service).

- An order that requires the local board to provide services to the family as required by law;
- An order that is consistent with any of the dispositional alternatives pursuant to [Va. Code § 16.1-278.3](#); or
- Any combination of these orders.

The district court form DC-553, DISPOSITIONAL ORDER FOR UNDERLYING PETITION; FOSTER CARE PLAN should be used to enter the disposition on the petition.

- Any order transferring legal custody of the child shall include, but need not be limited to, the following findings:

Federal regulations promulgated March 27, 2000 interpreting the Adoption and Safe Families Act of 1997, P. L. 105-89, require that certain key judicial determinations, including that continued placement in the home would be contrary to the welfare of the child and reasonable efforts to prevent removal, be explicitly documented, made on a case-by-case basis and stated in the court's order. 45 C.F.R. § 1356.21(d).

- That there is no less drastic alternative to granting the requested relief; and
 - That reasonable efforts have been made to prevent removal and that continued placement in the home would be contrary to the welfare of the child, if the order transfers legal custody of the child to the [Department of Social Services](#).
- When transferring *temporary custody* of the child to person with a legitimate interest for partial disposition pursuant to [Va. Code § 16.1-277.02 \(C\)](#), the district court form DC-559, SUPPLEMENT TO ORDER TRANSFERRING CUSTODY should be used for the findings and orders required by [Va. Code § 16.1-277.02 \(C\)\(1\)](#):
 - The court shall find that the prospective custodian is one who: is willing and qualified to receive and care for the child; is willing to have a positive, continuous relationship with the child; and is willing and has the ability to protect the child from abuse and neglect.
 - The court's order should further provide for compliance with any preliminary protective order entered on behalf of the child in accordance with the provisions of [Va. Code § 16.1-253](#); and, as appropriate, ongoing provision of social services to the child and the child's custodian; and court review of the child's placement.
 - When transferring custody of the child to a person with a legitimate interest for final disposition pursuant to [Va. Code § 16.1-277.02 \(C\)](#), the district court form DC-559, SUPPLEMENT TO ORDER

TRANSFERRING CUSTODY should be used for the findings and orders required by [Va. Code § 16.1-277.02 \(C\)\(1\)](#):

- The court shall find, after an investigation, that the prospective custodian is one who: is willing and qualified to receive and care for the child; is willing to have a positive, continuous relationship with the child; is willing and has the ability to protect the child from abuse and neglect; and is committed to providing a permanent, suitable home for the child.
- The court's order should further provide for compliance with any preliminary protective order entered on behalf of the child in accordance with the provisions of [Va. Code § 16.1-253](#); and, as appropriate, ongoing provision of social services to the child and the child's custodian; and court review of the child's placement.

Any order terminating parental rights shall be accompanied by an order:

- Continuing or granting custody to a local board of social services, to a licensed child-placing agency or the granting of custody or guardianship to person with a legitimate interest; and
- Indicating whether the board or agency shall have the authority to place the child for adoption and consent thereto, if the order of termination continues or grants to the local board of social services or to a licensed child-placing agency.

Use the district court form DC-534, Order for Voluntary Termination of Residual Parental Rights.

Post-hearing Procedures

The court shall schedule a subsequent hearing within sixty days of the hearing held pursuant to [Va. Code § 16.1-277.02](#) at which the court determines that there is good cause for the petitioner's desire to be relieved of custody or that permanent relief of custody and termination of residual parental rights is in the best interest of the child:

- If a final order is not entered at the hearing held on the Petition for Relief of Custody, to enter a final order of disposition pursuant to [Va. Code § 16.1-278.3](#);
- If the child is placed in foster care, for review of the foster care plan filed pursuant to [Va. Code § 16.1-281](#).
- The [Department of Social Services](#) shall file the foster care plan in accordance with the provisions of [Va. Code § 16.1-281](#).

Notice provisions applicable to the disposition hearing held pursuant to [Va. Code § 16.1-278.3](#):

- Notice of the dispositional hearing shall be provided to DSS, the guardian *ad litem* for the child, the child if at least twelve years of age, and the child's parents, custodian or other person standing *in loco parentis*. [Va. Code § 16.1-278.3 \(B\)](#).
- If a party is required to be present at the subsequent disposition hearing held pursuant to [Va. Code § 16.1-278.3](#) and
 - is present at the hearing held on the petition pursuant to [Va. Code § 16.1-277.02](#), the party shall be given notice of the date and time set for the subsequent hearing and should sign and receive a copy of a district court form DC-508, ACKNOWLEDGMENT OF NOTICE OF NEXT HEARING DATE.
 - is not present at the hearing held on the petition pursuant to [Va. Code § 16.1-277.02](#), the party shall be summoned using the DC-510, SUMMONS as provided in [Va. Code § 16.1-263](#). [Va. Code § 16.1-277.02 \(C\)](#)
- The presence of a party whose parental rights have been terminated by court order at the hearing pursuant to [Va. Code § 16.1-277.02](#) is not required at the subsequent hearing to be held pursuant to [Va. Code § 16.1-278.3](#). [Va. Code § 16.1-278.3 \(B\)](#).
- The hearing on the petition shall be held although a parent fails to appear and is not represented by counsel, provided personal or substituted service was made on the parent, or the court determines that such person cannot be found, after reasonable effort, or in the case of a person who is without the

Commonwealth, the person cannot be found or his post office address cannot be ascertained, after reasonable effort. [Va. Code § 16.1-277.02 \(A\)\(3\)](#). Use the district court form DC-509, AFFIDAVIT/CERTIFICATION OF PARENTAL IDENTITY OR LOCATION.

Disposition Hearing. [Va. Code § 16.1-278.3](#).

(Use the district court form DC-553, DISPOSITIONAL ORDER FOR UNDERLYING PETITION; FOSTER CARE PLAN for entering the disposition on the petition.)

If final disposition is not entered at the conclusion of the hearing on the petition for relief of custody held pursuant to [Va. Code § 16.1-277.02](#), a dispositional hearing shall be held within sixty days of the initial hearing on the petition.

The court may enter any order of disposition permitted in a case involving an abused or neglected child pursuant to [Va. Code § 16.1-278.2](#).

Any order transferring legal custody of the child shall include, but need not be limited to, the following findings:

- That there is no less drastic alternative to granting the requested relief; and
- That reasonable efforts have been made to prevent removal and that continued placement in the home would be contrary to the welfare of the child, if the order transfers legal custody of the child to a local board of social services.

Federal regulations promulgated March 27, 2000 interpreting the Adoption and Safe Families Act of 1997, P. L. 105-89, require that certain key judicial determinations, including that continued placement in the home would be contrary to the welfare of the child and reasonable efforts to prevent removal, be explicitly documented, made on a case-by-case basis and stated in the court's order. 45 C.F.R. § 1356.21(d).

When transferring custody of the child to a person with a legitimate interest for disposition pursuant to [Va. Code § 16.1-278.3 \(C\)](#) or (D), the district court form DC-559, SUPPLEMENT TO ORDER TRANSFERRING CUSTODY should be used for the findings and orders required by [Va. Code § 16.1-278.3 \(D1\)](#):

- The court shall find, after an investigation, that the prospective custodian is one who: is willing and qualified to receive and care for the child; is willing to have a positive, continuous relationship

with the child; is committed to providing a permanent, suitable home for the child; and is willing and has the ability to protect the child from abuse and neglect. The court's order shall state these findings.

- The court's order should further provide for, as appropriate: any terms or conditions which would promote the child's interest and welfare; ongoing provision of social services to the child and the child's custodian; and court review of the child's placement.

The court shall review any district court form DC-527, PRELIMINARY CHILD PROTECTIVE ORDER entered on behalf of the child. Finalize the preliminary protective order by entry of a district court form DC-532, CHILD PROTECTIVE ORDER and incorporate such order, as appropriate, in the dispositional order. Upon entry of a Child Protective Order the court shall **forthwith** but in all cases no later than the end of business on the day the order is issued enter the information into the VCIN system and **forthwith** forward a copy of the order to law enforcement responsible for service.

The court shall review the foster care plan for the child filed by the local board of social services or child welfare agency in accordance with [Va. Code § 16.1-281](#), if the child has been placed in foster care.

The court may enter an order terminating a parent's parental rights using the district court form DC-534, ORDER FOR VOLUNTARY TERMINATION OF RESIDUAL PARENTAL RIGHTS, pursuant to [Va. Code § 16.1-278.3 \(D\)](#) if:

- That parent petitioned for permanent relief of custody; and
- The court has made a finding by clear and convincing evidence that termination of the parent's parental rights is in the best interest of the child.

If the remaining parent has not petitioned for permanent relief of custody, the remaining parent's parental rights may be terminated in accordance with the provisions of [Va. Code § 16.1-283](#).

Any order terminating parental rights shall be accompanied by an order:

- Continuing or granting custody to a local board of social services, to a licensed child-placing agency or the granting of custody or guardianship to a person with a legitimate interest; and
- Indicating whether the board or agency shall have the authority to place the child for adoption and consent thereto, if the order of termination continues or grants to the local board of social services or to a licensed child-placing agency.

If the court enters an order terminating parental rights and granting authority to the local board or licensed child-placing agency to place the child for adoption:

- The court shall schedule a date by which the board or agency shall file the first Adoption Progress Report required by this section. [Va. Code § 16.1-277.02 \(D\)](#).
- The [Department of Social Services](#) or child welfare agency shall file an Adoption Progress Report on the progress being made to place the child in an adoptive home with the court every 6 months from the date of the final order terminating parental rights until a final order of adoption is entered on behalf of the child in the circuit court.
- A copy of the Adoption Progress Report shall be sent by the court to the guardian *ad litem* for the child.
- The court may schedule a hearing on the report with or without the request of a party.

Appeal

An order of disposition entered pursuant to [Va. Code § 16.1-278.3](#) is a final order from which an appeal may be taken in accordance with [Va. Code § 16.1-296](#). [Va. Code § 16.1-278.3 \(F\)](#).

The appeal should be noted on the district court form DC-581, NOTICE OF APPEAL – JUVENILE CIVIL APPEALS. This form provides for the style of the case to reflect “In Re: the child’s name” in addition to the appellant’s name and appellant’s relationship to the child. The district court form DC-581, NOTICE OF APPEAL – JUVENILE CIVIL APPEALS gives notice to the parents and court staff that the matter is a civil juvenile appeal. The notice of appeal also requires

information regarding the name of the Guardian *ad litem* and the attorneys representing the parties as well as an estimation of the time needed for a hearing. There is no bond or fee requirement for the appeal of an order for relief of custody.

Petition for Approval of Entrustment Agreement

[Va. Code §§ 16.1-277.01, 63.2-903](#)

Initiation. Filing requirements pursuant to [Va. Code § 16.1-277.01 \(A\)](#).

Pursuant to [Va. Code § 63.2-903](#), in any case in which a child has been entrusted pursuant to [Va. Code § 63.2-900](#) to the local board of social services (DSS) or [Va. Code § 63.2-1817](#) to a child welfare agency:

- For less than ninety days, the board or agency shall file a petition for approval of the entrustment agreement within a reasonable period, no later than eighty-nine days after the execution of the agreement, if the child is not returned to the caretaker from whom the child was entrusted within the entrustment period.
- For ninety days or longer or for an unspecified period of time, the board or agency shall file a petition for approval of the entrustment agreement no later than thirty days after the execution of the entrustment agreement, unless the agreement provides for the termination of all parental rights and responsibilities with respect to the child.
- By a permanent entrustment agreement that provides for the termination of all parental rights and responsibilities with respect to the child, the board or agency may file a petition for court approval of the entrustment agreement.

The petition for approval of an entrustment agreement should state the specific facts that necessitate the custodian being relieved of custody and the facts that necessitate approval of the entrustment agreement. A copy of the entrustment agreement should be filed with the DC-511, PETITION. The local board of social services or child welfare agency shall file a foster care plan pursuant to [Va. Code § 16.1-281](#) to be heard with any petition for approval of an entrustment agreement.

The petition for approval of an entrustment agreement should state the specific facts that necessitate the custodian being relieved of custody and

the facts that necessitate approval of the entrustment agreement. A copy of the entrustment agreement should be filed with the DC-511, PETITION.

The local board of social services or child welfare agency shall file a foster care plan pursuant to [Va. Code § 16.1-281](#) to be heard with any petition for approval of an entrustment agreement.

Pretrial

The court shall, in accordance with [Va. Code § 16.1-277.01 \(B\)](#), schedule the matter for a hearing to be held as follows:

- within forty-five days of the filing of the petition; or
- within seventy-five days of the filing of the petition, if an order of publication is necessary. (See Miscellaneous Chapter of this manual for Order of Publication procedures.)

Upon the filing of a petition for approval of an entrustment agreement, the court shall appoint a guardian *ad litem* (GAL) using the district court form DC-514, ORDER FOR APPOINTMENT OF GUARDIAN AD LITEM, to represent the child in accordance with the provisions of [Va. Code § 16.1-266](#). [Va. Code § 16.1-277.01 \(A\)](#). Pursuant to [Va. Code § 16.1-266.1](#), check the list of qualified guardians *ad litem* maintained by the Office of the Executive Secretary of the Supreme Court before selecting a guardian *ad litem*. However, if no attorney who is on the list is reasonably available, the judge has discretion to appoint any discreet and competent attorney admitted to practice law in Virginia.

Pursuant to [Va. Code § 16.1-267](#), when a guardian *ad litem* is appointed for a child by Commonwealth, the juvenile and domestic relations district court or circuit court, shall order the parent, parents, adoptive parent, or adoptive parents of the child or another party with a legitimate interest therein who has filed a petition with the court, to reimburse the Commonwealth the costs of such services in an amount not to exceed the amount awarded the guardian *ad litem* by the court. If the court determines such party is unable to pay, the required reimbursement may be reduced or eliminated.

The court may appoint a Court Appointed Special Advocate (CASA) in accordance with the provisions of [Va. Code § 9.1-153](#) and local practice. Use the district court form DC-544, ORDER FOR COURT - APPOINTED SPECIAL ADVOCATE (CASA).

Notice provisions applicable to a petition for approval of an entrustment agreement:

- The court shall provide notice of the hearing and a copy of the petition to the following, each of whom shall be a party entitled to participate in the proceeding. [Va. Code § 16.1-277.01 \(B\)\(1\)-\(4\)](#).

Notice of the right to counsel should be provided to the parents or guardian prior to the hearing on the petition for approval of an entrustment agreement. [Va. Code § 16.1-266 \(C\)](#). The district court form DC-510, SUMMONS includes notice of the right to counsel.

- The local board of social services.
- The child, if twelve years of age or older;
- The guardian *ad litem* for the child;
- The child's parents, custodian or other person standing *in loco parentis* to the child. A birth father shall be given notice of the proceedings if he is an acknowledged father pursuant to [§ 20-49.1](#), adjudicated pursuant to [§ 20-49.8](#), or presumed pursuant to [§ 63.2-1202](#), or has registered with the Virginia Birth Father Registry pursuant Article 7 ([§ 63.2-1249 et seq.](#)). An affidavit of the mother that the identity of the father is not reasonably ascertainable shall be sufficient evidence of this fact, provided there is no other evidence before the court which would refute such an affidavit. Failure to register with the Virginia Birth Father Registry pursuant to Article 7 ([§ 63.2-1249 et seq.](#)) of Chapter 12 of Title 63.2 shall be evidence that the identity of the father is not reasonably ascertainable.

Note: The court should provide a copy of the Petition and notice of the date and time of the hearing to any attorneys of record.

- After the filing of a petition, the court shall direct a district court form DC-510, SUMMONS to the child, if they are twelve years of age or older, and another to the parent, guardian, legal custodian or other person standing *in loco parentis*, and to other persons as appear to the Court to be proper or necessary parties to the proceedings. [Va. Code § 16.1-263](#).

Proper and necessary parties may include individuals, whose names appear on the petition, including foster parents.

In accordance with [Va. Code § 9.1-155](#), the provisions of [Va. Code § 16.1-264](#) regarding notice to parties shall apply to ensure that the CASA is notified of hearings and other proceedings concerning the case to which they are assigned.

- No summons or notification of a parent or guardian shall be required if the judge certifies on the record that the identity of a parent or guardian is not reasonably ascertainable. An affidavit of the mother that the identity of the father is not reasonably ascertainable shall be sufficient evidence of this fact, provided there is no other evidence before the court which would refute such an affidavit. [Va. Code § 16.1-263 \(E\)](#). See district court form DC-509, AFFIDAVIT/CERTIFICATION OF PARENTAL IDENTITY OR LOCATION.

The Court Improvement Program recommends filing an “Affidavit of Efforts to Locate Absent Parent” with the district court form DC-435 [AFFIDAVIT AND PETITION FOR ORDER OF PUBLICATION](#). It should include language from district court form DC-535, NOTICE OF TERMINATION OF RESIDUAL PARENTAL RIGHTS in the order of publication.

- The hearing on the petition shall be held although a parent fails to appear and is not represented by counsel, provided personal or substituted service was made on the parent, or the court determines that such person cannot be found, after reasonable effort, or in the case of a person who is without the Commonwealth, the person cannot be found or his post office address cannot be ascertained, after reasonable effort. [Va. Code § 16.1-277.01 \(B\)\(4\)](#).
- In the case of a hearing for approval of a permanent entrustment agreement that provides for the termination of all parental rights and responsibilities with respect to the child.
- Notice to the parent whose rights may be affected shall be provided in accordance with the provisions of [Va. Code §§ 16.1-263 and 16.1-264](#), including by order of publication as appropriate.

The summons or notice of hearing shall clearly state the consequences of a termination of residual parental rights by including the district court form DC-535, NOTICE OF TERMINATION OF RESIDUAL PARENTAL RIGHTS.

In accordance with [Va. Code § 16.1-277.01 \(B\)\(4\)](#), the remaining parent's parental rights may be terminated even though that parent has not entered into an entrustment agreement if the court finds by clear and convincing evidence that:

- the identity of the parent is not reasonably ascertainable; or
- the identity and whereabouts of the parent are known or reasonably ascertainable, and the parent is personally served with notice of the termination proceeding pursuant to [Va. Code §§ 8.01-296](#) or [8.01-320](#); or
- the whereabouts of the parent are not reasonably ascertainable and the parent is given notice of the termination proceedings by certified or registered mail to the last known address and such parent fails to object to the proceedings within fifteen days of the mailing of such notice; or
- the whereabouts of the parent are not reasonably ascertainable and the parent is given notice of the termination proceedings through an order of publication pursuant to [Va. Code §§ 8.01-316](#) and [8.01-317](#), and such parent fails to object to the proceedings.

The Court Improvement Program recommends filing an "Affidavit of Efforts to Locate Absent Parent" with the district court form DC-435, [AFFIDAVIT AND PETITION FOR ORDER OF PUBLICATION](#). It should include language from district court form DC-535, NOTICE OF TERMINATION OF RESIDUAL PARENTAL RIGHTS in the order of publication.

Pursuant to [Va. Code § 16.1-264](#), the court may order service by publication in accordance with the provisions of [Va. Code §§ 8.01-316](#) and [8.01-317](#).

The party who seeks service by order of publication must file a district court form DC-435, [AFFIDAVIT AND PETITION FOR ORDER OF PUBLICATION](#) stating one of the following grounds:

- The party to be served is a nonresident; or
- That diligence has been used without effect to ascertain the location of the party to be served; or
- That the last known residence of the party to be served was in the county or city where service is sought and a return of service has been filed by the sheriff that the service of process has been in his hands for twenty-one days and has been unable to make service; or
- If the identity of the party to be served is unknown (for example if the identity of the father is unknown) and the party to be served has been identified as unknown in the pleadings.

Every district court form DC-435, [AFFIDAVIT AND PETITION FOR ORDER OF PUBLICATION](#) shall state the last known post office address of the party to be served or if such address is unknown, the Affidavit shall so state.

Every district court form DC-436, ORDER OF PUBLICATION shall state the following:

- Style of the suit: “In the Juvenile and Domestic Relations District Court, In Re (name of child),” the names of the adult parties (or that the respondent is unknown); and
- Object of the suit: “To terminate the residual parental rights of the Respondent;” and
- That the defendants or parties unknown are to appear and protect their interests on or before the date stated in the district court form DC-436, ORDER OF PUBLICATION, which is the date set in the courtroom or by the clerk and the date is to be no sooner than fifty days after entry of the order of publication. (See Miscellaneous Chapter of this manual for Order of Publication procedures.)

Note: The discretionary authority of the court pursuant to [Va. Code § 16.1-266 \(E\)](#) to appoint a discreet and competent attorney at law to represent a child, children, parent or guardian as counsel or guardian *ad litem* “in all other cases” may be interpreted to mean (i) cases other than those in

which a parent or guardian is charged with abuse/neglect or could be subjected to the loss of residual parental rights and responsibilities; or (ii) cases in which a parent or guardian cannot be informed of an exercise or waive his right to counsel. The latter interpretation would support the appointment of an attorney as counsel or guardian *ad litem* to represent the interests of a parent whose identity or whereabouts is unknown. Such a parent or guardian could also be subjected to the loss of residual parental rights and responsibilities. See [Va. Code § 16.1-266 \(C\)](#); but see Fredericksburg Dep't of Social Servs. v. Brown and Williams, Record Nos. 1969-99-2, 2008-99-2 (Va. Ct. App. 2000) (affirming on other grounds the trial court's denial of petitions to terminate the parents' residual parental rights, where the children entered foster care based upon an invalid entrustment agreement).

The trial court had denied the petitions based upon failure to appoint attorneys to represent the parents). A parent or guardian whose identity or whereabouts is unknown may also be under a disability in that they are unable to defend their legal rights. See [Va. Code § 8.01-2](#) (defining "person under a disability"). See also Norfolk Div. of Social Servs. v. Unknown Father, 2 Va. App. 420, (1986) (in proceedings involving custody of a child of an unwed minor, guardian *ad litem* for the unknown father had standing to appeal the entrustment agreement decision by the juvenile and domestic relations district court).

Parties shall be informed of their right to counsel in accordance with [Va. Code § 16.1-266](#). Prior to the adjudicatory hearing by the court of a petition in which a child is alleged to be abused or neglected or at risk of abuse or neglect as provided in [Va. Code § 16.1-241 \(A\)\(2a\)](#), prior to the hearing of any case involving any other adult charged with abuse or neglect of a child, and prior to a hearing at which a parent could be subjected to the loss of residual parental rights, the child's parent or guardian or the other adult shall be informed by a judge, clerk or probation officer of his right to counsel and be given an opportunity to (i) retain counsel; (ii) if qualified, have counsel appointed; (iii) waive counsel using district court form DC-536, TRIAL WITHOUT A LAWYER - WAIVER OF RIGHT TO BE REPRESENTED BY A LAWYER. [Va. Code § 16.1-266 \(C\)](#).

In the court's discretion, a discreet and competent attorney at law may be appointed as counsel or guardian *ad litem* to represent the interests of a parent or guardian. [Va. Code § 16.1-266 \(D\)](#). If an attorney is to be appointed as a guardian *ad litem* for a parent or guardian (as opposed to appointment as "counsel"), reference should be made from the list of qualified guardians *ad litem* maintained by the Office of the Executive

Secretary of the Supreme Court, as is the case for appointment of a guardian *ad litem* for a child. This list can be found at www.vacourts.gov. The court may appoint a guardian *ad litem* to represent a party, usually a parent, who is under the age of eighteen years or under a disability such as incarceration or mental illness. The district court form DC-514, ORDER FOR APPOINTMENT OF GUARDIAN AD LITEM, should be used for this appointment.

The court shall consider appointing an attorney-at-law:

- If the identity or location of a parent or guardian is not reasonably ascertainable or a parent or guardian fails to appear, the court shall consider appointing an attorney-at-law to represent the interests of the absent parent or guardian, and the hearing may be held. [Va. Code § 16.1-266 \(C\)](#).
- Prior to a hearing at which a child is the subject of an initial foster care plan filed pursuant to [Va. Code § 16.1-281](#), a foster care review hearing pursuant to [Va. Code § 16.1-282](#) and a permanency planning hearing pursuant to [Va. Code § 16.1-282.1](#), the court shall consider appointing counsel to represent the child's parent or guardian.

Transportation of incarcerated witness:

If the presence of a prisoner is essential to the just adjudication and disposition of a petition for approval of an entrustment agreement, the judge may issue a district court form DC-354, CUSTODIAL TRANSPORTATION ORDER upon the request of a party or the court's motion. The order may direct the Director of the [Department of Corrections](#) or the administrator of the state, local or regional correctional institution to deliver the witness from a state, local or regional correctional institution to the sheriff of the jurisdiction of the court issuing the order. The order shall be executed in accordance with [Va. Code § 8.01-410](#). [Va. Code § 16.1-276.2](#).

Hearing

Standards for granting and burden of proof applicable to a petition for approval of an entrustment agreement:

- The court shall make a finding, based upon a preponderance of the evidence, whether approval of the entrustment agreement is in the

best interest of the child in the case of a petition for approval of a temporary entrustment agreement. [Va. Code § 16.1-277.01 \(D\)](#).

- The court shall make a finding, based upon clear and convincing evidence, whether termination of parental rights of the petitioner is in the best interest of the child, if the petition seeks approval of a permanent entrustment agreement that provides for the termination of all parental rights and responsibilities with respect to the child. [Va. Code § 16.1-277.01 \(D\)](#).

A parent under the age of eighteen years has legal capacity to execute an entrustment agreement, including an agreement which provides for the termination of all parental rights and responsibilities with respect to the child, and shall be as fully bound thereby as if the parent had attained the age of eighteen years. [Va. Code § 63.2-903 \(B\)](#).

At the hearing on the petition for approval of the entrustment agreement, the court shall review the foster care plan filed pursuant to [Va. Code § 16.1-281](#).

Disposition

Dispositional alternatives: At the conclusion of the hearing on the petition for approval of the entrustment agreement, the court may, in accordance with [Va. Code § 16.1-277.01 \(D\)](#), make any of the orders of disposition permitted in a case involving an abused or neglected child pursuant to [Va. Code § 16.1-278.2](#) using the district court form DC-553, DISPOSITIONAL ORDER FOR UNDERLYING PETITION; FOSTER CARE PLAN.

Any order transferring legal custody of the child shall include, but need not be limited to, the following findings:

- That there is no less drastic alternative to granting the requested relief; and
- That reasonable effort has been made to prevent removal and that continued placement in the home would be contrary to the welfare of the child, if the order transfers legal custody of the child to DSS.

When transferring custody of the child to a person with a legitimate interest for disposition pursuant to [Va. Code § 16.1-277.01 \(D\)](#) the district

court form DC-559, SUPPLEMENT TO ORDER TRANSFERRING CUSTODY should be used for the findings and orders required by [Va. Code § 16.1-277.01 \(D1\)](#):

- The court shall find, after an investigation, that the prospective custodian is one who: is willing and qualified to receive and care for the child; is willing to have a positive, continuous relationship with the child; is committed to providing a permanent, suitable home for the child; and is willing and has the ability to protect the child from abuse and neglect. The court's order shall state these findings.
- The court's order should further provide for, as appropriate: any terms or conditions which would promote the child's interest and welfare; ongoing provision of social services to the child and the child's custodian; and court review of the child's placement.

Any district court form DC-534, ORDER FOR VOLUNTARY TERMINATION OF RESIDUAL PARENTAL RIGHTS shall be accompanied by an order:

- Continuing or granting custody to a local board of social services, to a licensed child-placing agency or the granting of custody or guardianship to a person with a legitimate interest; and
- Indicating whether the board or agency shall have the authority to place the child for adoption and consent thereto, if the order of termination continues or grants to the local board of social services or to a licensed child-placing agency.

Effect of the court's entry of a final order approving a permanent entrustment agreement, after making a finding by clear and convincing evidence that such approval is in the best interest of the child:

- The residual parental rights of the entrusting parent are thereby terminated.
- The parental rights of the remaining parent are thereby terminated, provided that the notice provisions specified in [Va. Code § 16.1-277.01 \(B\)\(4\)](#) are satisfied.
- The entrustment agreement is rendered irrevocable.

If the court enters an order terminating parental rights and granting authority to the local board or licensed child-placing agency to place the child for adoption:

- The court shall schedule a date by which the board or agency shall file the first Adoption Progress Report required by this section. [Va. Code § 16.1-277.01 \(E\)](#).
- DSS shall file an Adoption Progress Report on the progress being made to place the child in an adoptive home with the court every six months from the date of the final order terminating parental rights until a final order of adoption is entered on behalf of the child in the circuit court.
- A copy of the Adoption Progress Report shall be sent by the court to the guardian *ad litem* for the child.
- The court may schedule a hearing on the report with or without the request of a party.

An order of disposition entered pursuant to [Va. Code § 16.1-277.01](#) is a final order from which an appeal may be taken in accordance with [Va. Code § 16.1-296](#). [Va. Code § 16.1-277.01 \(D\)](#).

Foster Care and Permanency Planning

[Va. Code §§ 16.1-281](#), [16.1-282](#), [16.1-282.1](#) and [16.1-282.2](#)

***Federal regulations, which were promulgated effective March 27, 2000 to interpret the Adoption and Safe Families Act of 1997, P. L. 105-89, state that a judicial determination of reasonable efforts to prevent removal “must be made no later than 60 days from the date the child is removed from the home” pursuant to a judicial order. C.F.R. § 1356.21(b)(1)(i). See also C.F.R. § 1356.21(k).**

For voluntary placements, including non-custodial foster care placements through DSS, federal financial participation is available beyond the first 180 days of placement only if a judicial determination has been made within the first 180 days of the placement to the effect that the continued voluntary placement is in the best interests of the child. 45 C.F.R. § 1356.22(b). To obtain this finding in a timely manner, a hearing should be held within sixty days of the placement of a child by DSS through an agreement where the parent or guardian retains legal custody. A petition is required to initiate a child’s case.

[Va. Code § 16.1-260 \(A\)](#). The foster care plan pursuant to [Va. Code § 16.1-281](#) should be filed by the agency having placement and care responsibility for the child within forty-five days of the child's placement, to allow fifteen days for the court to send a copy of the plan to the parties.

Non-Custodial Foster Care Placement Court's Procedures

- DSS files a DC-511 Petition alleging a child is in need of services. An Initial Foster Care Plan is also filed. The court appoints counsel and a Guardian ad Litem to represent the child and docket a hearing within 60 days of the placement of the child. The court must consider the appointment of counsel for parents in the foster care case in the event the matter reaches the permanency planning stage. At the 60-day hearing, the court adjudicates and disposes of the petition by entering the DC-563 Child in Need of Services Order and the DC-553 Dispositional Order for Underlying Petition; Foster Care Plan.

Transportation of Incarcerated Witness

If the presence of a prisoner is essential to the just adjudication and disposition of an initial foster care plan filed pursuant to [Va. Code § 16.1-281](#), a petition for foster care review hearing filed pursuant to [Va. Code § 16.1-282](#) or [Va. Code § 16.1-282.2](#), or a petition for permanency planning hearing filed pursuant to [Va. Code § 16.1-282.1](#), the judge may issue a district court form DC-354, CUSTODIAL TRANSPORTATION ORDER upon the request of a party or the court's motion. The order may direct the Director of the [Department of Corrections](#) or the administrator of the state, local or regional correctional institution to deliver the witness from a state, local or regional correctional institution to the sheriff of the jurisdiction of the court issuing the order. The order shall be executed in accordance with [Va. Code § 8.01-410](#). [Va. Code § 16.1-276.2](#).

Foster Care Plan. [Va. Code §16.1-281](#).

The local Department of Social Services (DSS) or child welfare agency shall prepare a foster care plan for each child in the legal custody of the public or private child-placing agency. [Va. Code § 16.1-281 \(A\)](#).

A foster care plan should also be prepared in those cases in which DSS places a child through an agreement with the parent/guardian whereby the parent/guardian retains legal custody. In this case the local Department of Social Services shall prepare a foster care plan. [Va. Code § 16.1-281 \(A\)](#).

Time requirements for the filing of foster care plans pursuant to [Va. Code § 16.1-281](#):

- A foster care plan shall be filed with the court by the local Department of Social Services within forty-five days following the transfer of custody or placement of the child.

The Court Improvement Program suggests that the public or private caseworker should provide the current street address, including any apartment number, for the individuals whose addresses are listed. "Parental rights terminated" or "deceased," as appropriate, should be written on the transmittal form where parent's address is listed. In the event that the clerk's office receives a pleading in a case in which parental rights have been terminated or the parent is deceased, this information should be included in place of the parent's address in the address field.

- The local Department of Social Services or child welfare agency shall file a foster care plan in accordance with [Va. Code § 16.1-277.01](#) with a petition for approval of an entrustment agreement.

Documents filed with the foster care plan:

- The district court form DC-552, FOSTER CARE SERVICE PLAN TRANSMITTAL should be included with the foster care plan when it is filed.
- The district court form DC-5065, MOTION TO REVIEW INITIAL FOSTER CARE PLAN should be included when the hearing on the docket is the initial foster care review.
- A district court form DC-620, [AFFIDAVIT \(UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT\)](#) UCCJEA is filed with the initial foster care plan if one has not previously been filed in the proceeding, or to amend the affidavit that was previously filed if additional information is available. Pursuant to [Va. Code § 20-146.1](#), a "child custody proceeding" includes a dependency proceeding in which legal custody, physical custody or visitation with respect to a child is an issue. District court form DC-621, [NON-DISCLOSURE ADDENDUM](#), must be completed to protect identifying information. A district court form [DC-418, AFFIDAVIT-DEFAULT JUDGMENT SERVICEMEMBERS CIVIL RELIEF ACT](#). Pursuant to [Va. Code § 8.01-15.2](#), in any civil action or proceeding in which the defendant does not make an appearance, the court shall not enter a judgment by default until the plaintiff files with the court an affidavit (i)

stating whether or not the defendant is in military service and showing necessary facts to support the affidavit; or (ii) if the plaintiff is unable to determine whether or not the defendant is in military service, stating that the plaintiff is unable to determine whether or not the defendant is in military service.

“Foster care services” as defined in [Va. Code § 16.1-228](#) means the provision of a full range of casework, treatment and community services for a planned period of time to a child who is abused or neglected as defined in [Va. Code § 63.2-100](#) or in need of services as defined in this section and his family when the child:

- Has been identified as needing services to prevent or eliminate the need for foster care placement,
- Has been placed through an agreement between the local board of social services and the parents or guardians,
- Has been committed or entrusted to a local board of social services or child welfare agency, or
- Has been placed under the supervisory responsibility of the local board pursuant to [Va. Code § 16.1-293](#).

As to the matters that should be included in the foster care plan, the representatives of DSS shall involve the child’s parents in the development of the plan, except when parental rights have been terminated or the designated agency has made diligent efforts to locate the parent(s), who cannot be located, and with any other person *in loco parentis* at the time the agency obtained custody or placed the child. The child should be involved in the development of the plan, if such involvement is consistent with the best interest of the child. If the child’s parents or the child is not involved in the development of the plan, the department, agency or team shall include in the plan a full description of the reasons why. [Va. Code § 16.1-281 \(A\)](#).

If consistent with the child’s health and safety, the foster care plan shall be designed to support reasonable efforts that lead to the return of the child to his parents or other prior custodians within the shortest practicable time, which time shall be specified in the plan. [Va. Code § 16.1-281 \(B\)](#).

The child's health and safety shall be the paramount concern of the court and the agency throughout the placement, case planning, service provision and review process. [Va. Code § 16.1-281 \(B\)](#).

Pursuant to [Va. Code § 16.1-281 \(B\)](#), the foster care plan shall describe:

- The programs, care, services and other support which will be offered to the child and his parents and other prior custodians;
- The participation and conduct which will be sought from the child's parents and other prior custodians;
- The visitation and other contacts which will be permitted between the child and his parents and other prior custodians;
- The nature of the placement or placements which will be provided for the child; and
- In writing and where appropriate for children age sixteen or over, the programs and services that will help the child prepare for the transition from foster care to independent living for the child who has been admitted to the United States as a refugee or asylee.

There shall be a separate section of the foster care plan if DSS concludes that it is not reasonably likely that the child can be returned to his prior family within a practicable time consistent with the best interests of the child. This section shall:

- Include a full description of the reasons for this conclusion;
- Provide information on the opportunities for placing the child with a relative or in an adoptive home;
- Design the plan to lead to the child's successful placement with a relative if a subsequent transfer of custody to the relative is planned, or in an adoptive home within the shortest practicable time; and
- If neither of such placements is feasible, explain why permanent foster care is the plan for the child or independent living is the plan

for the child in cases involving children admitted to the United States as refugees or asylees who are sixteen years of age or older.

With such proposed plan the department may include a petition seeking termination of parental rights pursuant to [Va. Code § 16.1-283](#).

If the child has been found by the court to be abused or neglected and placed in foster care, the court shall review a foster care plan at the dispositional hearing. [Va. Code § 16.1-278.2 \(B\)](#).

The court shall review a foster care plan at the hearing to approve an entrustment agreement. [Va. Code § 16.1-277.01 \(C\)](#).

A dispositional hearing shall be held for the purpose of reviewing and approving the foster care plan within sixty days of:

- The initial foster care placement if the child was placed through an agreement between the parents/guardians and local DSS or child welfare agency;
- The preliminary removal hearing, if the child was placed in foster care, even if an adjudicatory hearing is requested separate from the preliminary removal order hearing;
- The disposition hearing at which the child was placed in foster care in an abuse or neglect case in which there was no emergency or preliminary removal;
- The disposition hearing at which the child was placed in foster care in a case involving a child in need of services or supervision, a delinquent child, or a status offender. District court form DC-562, ORDER FOR CUSTODY TRANSFER TO AGENCY should be used for ordering placement or custody of the child with an agency dispositionally in these case types.

A dispositional hearing shall be held for the purpose of reviewing and approving the foster care plan within forty-five days of filing a petition pursuant to [Va. Code § 16.1-278.3](#) for approval of an entrustment agreement, except where an order of publication has been ordered by the court. If an order of publication has been ordered, the hearing shall be held within seventy-five days of the filing of the petition.

Whenever any minor who has been separated from the custody of his parent or guardian is in need of surgical or medical treatment, authority commensurate with that of a parent in like cases is conferred, for the purpose of giving consent to such treatment, upon the local director of social services or designee with respect to minors who are committed to the care and custody of the local board, taken into custody pursuant to [Va. Code § 63.2-1517](#), and entrusted to the local board by the parent, parents or guardian, when the consent of the parent or guardian cannot be obtained immediately and, in the absence of such consent, a court order for such treatment cannot be obtained immediately. [Va. Code § 54.1-2969](#).

Appointment of Guardian *Ad litem* and Right to Counsel

[Va. Code § 16.1-281 \(F\)](#) requires the appointment of a guardian *ad litem* (GAL) to represent the child pursuant to [Va. Code § 16.1-266](#) any time a hearing is held to review the foster care plan or to review the child's foster care status. Pursuant to [Va. Code § 16.1-266.1](#), check the list of qualified guardians *ad litem* maintained by the Office of the Executive Secretary of the Supreme Court before selecting a guardian *ad litem*. However, if no attorney who is on the list is reasonably available, the judge has discretion to appoint any discreet and competent attorney admitted to practice law in Virginia.

The Court Improvement Program suggests that the GAL who has previously represented the child in related proceedings concerning the child's placement in foster care should continue to represent the child in subsequent foster care and permanency planning proceedings. Use the district court form DC-514, ORDER FOR APPOINTMENT OF GUARDIAN AD LITEM, to appoint the GAL. The clerk should inform the GAL of the date and time of any hearing to review the child's foster care plan or status in foster care, including foster care hearings held pursuant to [Va. Code §§ 16.1-281, 16.1-282](#) and [16.1-282.2](#), and permanency planning hearings held pursuant to [Va. Code § 16.1-282.1](#). The GAL should attend all of these hearings. The Department of Social Services (DSS) and the child's parents should be provided with a copy of the district court form DC-514, ORDER FOR APPOINTMENT OF GUARDIAN AD LITEM when it is entered.

Parties shall be informed of their right to counsel: Prior to the adjudicatory hearing by the court of a petition in which a child is alleged to be abused or neglected or at risk of abuse or neglect as provided in [Va. Code § 16.1-241 \(A\)\(2a\)](#), prior to the hearing of any case involving any other adult charged with abuse or neglect of a child, and prior to a hearing at which a parent could be subjected to the loss of residual parental rights, the child's parent

or guardian or the other adult shall be informed by a judge, clerk or probation officer of his right to counsel and be given an opportunity to (i) retain counsel; (ii) if qualified, have counsel appointed; (iii) waive counsel using the district court form DC-536, TRIAL WITHOUT A LAWYER - WAIVER OF RIGHT TO BE REPRESENTED BY A LAWYER. [Va. Code § 16.1-266 \(C\)](#).

Note: The discretionary authority of the court pursuant to [Va. Code § 16.1-266 \(E\)](#) to appoint a discreet and competent attorney at law to represent a child, children, parent or guardian as counsel or guardian *ad litem* “in all other cases” may be interpreted to mean (i) cases other than those in which a parent or guardian is charged with abuse/neglect or could be subjected to the loss of residual parental rights and responsibilities; or (ii) cases in which a parent or guardian cannot be informed of an exercise or waive his right to counsel. The latter interpretation would support the appointment of an attorney as counsel or guardian *ad litem* to represent the interests of a parent whose identity or whereabouts is unknown. Such a parent or guardian could also be subjected to the loss of residual parental rights and responsibilities. See [Va. Code § 16.1-266 \(C\)](#); but see *Fredericksburg Dep’t of Social Servs. v. Brown and Williams*, Record Nos. 1969-99-2, 2008-99-2 (Va. Ct. App. 2000) (affirming on other grounds the trial court’s denial of petitions to terminate the parents’ residual parental rights, where the children entered foster care based upon an invalid entrustment agreement. The trial court had denied the petitions based upon failure to appoint attorneys to represent the parents). A parent or guardian whose identity or whereabouts is unknown may also be under a disability in that they are unable to defend their legal rights. See [Va. Code § 8.01-2](#) (defining “person under a disability”). See also *Norfolk Div. of Social Servs. v. Unknown Father*, 2 Va. App. 420, (1986) (in proceedings involving custody of a child of an unwed minor, guardian *ad litem* for the unknown father had standing to appeal the entrustment agreement decision by the juvenile and domestic relations district court).

The court shall consider appointing an attorney-at-law:

- If the identity or location of a parent or guardian is not reasonably ascertainable or a parent or guardian fails to appear, the court shall consider appointing an attorney-at-law to represent the interests of the absent parent or guardian, and the hearing may be held. [Va. Code § 16.1-266 \(C\)](#).
- Prior to a hearing at which a child is the subject of an initial foster care plan filed pursuant to [Va. Code § 16.1-281](#), a foster care review hearing pursuant to [Va. Code § 16.1-282](#) and a permanency

planning hearing pursuant to [Va. Code § 16.1-282.1](#), the court shall consider appointing counsel to represent the child's parent or guardian.

Paternity

If paternity has not previously been established, a petition for a determination of parentage pursuant to [Va. Code § 16.1-241 \(Q\)](#) should be filed such that paternity may be placed on the docket as an issue to be resolved.

Notice Provisions Applicable to the Hearing on the Foster Care Plan

The Court Improvement Program recommends that a copy of the foster care plan shall be served upon the following so that there will be proof of receipt of the plan:

- the child's parents, except it shall not be served on those parents whose residual parental rights have been terminated;
- any other person standing *in loco parentis* at the time child was placed;
- the child, if twelve or more years of age. [Va. Code § 16.1-263 \(A\)](#).

Pursuant to [Va. Code § 16.1-281 \(C\)](#), the court shall send a copy of the entire foster care plan to:

- the child, if twelve years of age or older,
- the guardian *ad litem* for child;
- the attorney for the child's parents or for any other person standing *in loco parentis* at the time the board or child welfare agency obtained custody or the board or public agency placed the child;
- the parents or other person standing *in loco parentis*, except a copy shall not be sent to a parent whose parental rights have been terminated;

- the foster parents;
- the other persons who appear to the court to have a proper interest in the plan, such as:
 - the attorney for DSS;
 - the other attorneys of record;
 - the Court Appointed Special Advocate.

Foster Care Plan Hearing and Order

If applicable, a reasonable efforts finding should be made pursuant to the Adoption and Safe Families Act of 1997, P.L. 105-89. This law makes federal funding to the states for child welfare services contingent upon documentation of social service agencies having made “reasonable efforts” to prevent the removal of children from their homes and “reasonable efforts” to finalize the child’s permanent placement. A formal and systematic plan must be developed for services to remedy the problems that threaten the family ties of each child, outlining specific treatment services and action that will be expected of agencies and family members to make reunification possible. 42 U.S.C. § 671(a)(15)(B)(i) (C). Reasonable efforts to reunite the child with a parent shall not be required if the court makes any of the following findings:

- the residual parental rights of the parent regarding a sibling of the child have previously been involuntarily terminated;
- the parent has been convicted of an offense under the laws of the Commonwealth of Virginia or a substantially similar law of any other state, the United States or any foreign jurisdiction which constitutes murder or voluntary manslaughter, or a felony attempt, conspiracy or solicitation to commit any such offense, if the victim of the offense was a child of the parent, a child with whom the parent resided at the time such offense occurred or the other parent of the child;
- the parent has been convicted of an offense under the laws of the Commonwealth of Virginia or a substantially similar law of any other state, the United States or any foreign jurisdiction which constitutes felony assault resulting in serious bodily injury or felony bodily wounding resulting in serious bodily injury or felony sexual

assault, if the victim of the offense was a child of the parent or a child with whom the parent resided at the time of such offense;

- based on clear and convincing evidence, the parent has subjected any child to aggravated circumstances, or abandoned a child under circumstances that would justify the termination of residual parental rights pursuant to [Va. Code § 16.1-283](#). [Va. Code § 16.1-281 \(B\)](#). See also 42 U.S.C. § 671(a)(15)(D)(i).

Definitions relevant to determination that reasonable efforts to reunite the child with a parent are not required:

- “Aggravated circumstances” means torture, chronic or severe abuse, or chronic or severe sexual abuse, if the victim of such conduct was a child of the parent or child with whom the parent resided at the time such conduct occurred, including the failure to protect such a child from such conduct, which conduct or failure to protect: (i) evinces a wanton or depraved indifference to human life, or (ii) has resulted in the death of such a child or in serious bodily injury to such a child.”
- “Chronic abuse” or “chronic sexual abuse” means recurring acts of physical abuse that place the child’s health, safety and well-being at risk.
- “Serious bodily injury” means bodily injury which involves substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ or mental faculty.
- “Severe abuse” or “severe sexual abuse” may include an act or omission that occurred only once, but otherwise meets the definition of “aggravated circumstances.”

The court shall hold a permanency planning hearing pursuant to [Va. Code §16.1-282.1](#) within thirty days of making a determination that reasonable efforts to reunite the child with the parents are not required. See Permanency Planning, later in this chapter.

The district court form DC-553, DISPOSITIONAL ORDER FOR UNDERLYING PETITION; FOSTER CARE PLAN should be used to enter the disposition of the foster care plan pursuant to [Va. Code § 16.1-281](#).

If the order entered at the conclusion of the hearing has the effect of achieving a permanent goal for the child by: (i) terminating residual parental rights pursuant to [Va. Code §§ 16.1-277.01](#), [16.1-277.02](#), [16.1-278.3](#) or [16.1-283](#); (ii) placing the child in permanent foster care pursuant to [Va. Code § 16.1-282.1 \(A\)\(iv\)](#); or (iii) if the child has attained the age of sixteen years or over and the child has been admitted to the United States as a refugee or asylee, direct the board or agency to provide the child with services to transition from foster care pursuant to [Va. Code § 16.1-282.1 \(A\)\(v\)](#) the order shall state whether reasonable efforts have been made to place the child in a timely manner in accordance with the foster care plan and to complete the steps necessary to finalize the permanent placement of the child. [Va. Code § 16.1-281 \(C2\)](#).

When transferring custody of the child to a relative other than the child's prior family, the district court form DC-559, SUPPLEMENT TO ORDER TRANSFERRING CUSTODY should be used for the findings and orders required by [Va. Code § 16.1-281 \(C1\)](#)

- The court shall find, after an investigation, that the prospective custodian is one who: is willing and qualified to receive and care for the child; is willing to have a positive, continuous relationship with the child; is committed to providing a permanent, suitable home for the child; and is willing and has the ability to protect the child from abuse and neglect. The court's order shall state these findings.
- The court's order should further provide for, as appropriate: any terms or conditions which would promote the child's interest and welfare; ongoing provision of social services to the child and the child's custodian; and court review of the child's placement.
- If the judge makes revisions to the foster care plan, a copy of the revisions shall be sent to all parties who received a copy of the original plan. [Va. Code § 16.1-281 \(C\)](#).

At the conclusion of the hearing at which the initial foster care plan is reviewed, the court shall schedule a foster care review hearing to be held within four months in accordance with [Va. Code § 16.1-282](#). However, if the order entered at the conclusion of the hearing has the effect of

achieving a permanent goal for the child pursuant to [Va. Code § 16.1-281 \(C2\)](#) where a public or private child-placing agency will retain legal custody of the child, the court shall schedule an annual foster care hearing to be held within twelve months of the entry of such order in accordance with the provisions of [Va. Code § 16.1-282.2](#).

All parties present should receive a copy of the court's order. The parties also should sign and receive a copy of the district court form DC-508, ACKNOWLEDGMENT OF NOTICE OF NEXT HEARING DATE for the foster care review hearing. The court's order should be issued and served on any party who did not receive a copy of the order at the foster care service plan dispositional hearing. This order should be served with a summons for the foster care review hearing to parties not present at the initial foster care plan hearing. See [Va. Code § 16.1-281 \(E\)](#).

The order issued by the court at the conclusion of the hearing on the underlying petition and foster care plan (dispositional hearing) will normally be the first appealable order entered in a child abuse/neglect case where removal of a child has been ordered preliminarily. [Va. Code § 16.1-278.2 \(D\)](#).

Note: The dispositional hearing date that is the basis for setting the foster care review date may not necessarily be the same date as the date at which the foster care plan was approved. If the court disapproves the original foster care plan and sets a hearing for review of a revised plan, the date for the foster care review hearing should be based on the original dispositional hearing date.

Upon appeal to the circuit court of any case involving a child placed in foster care and in any appeal to the Court of Appeals or Supreme Court of Virginia, the juvenile court shall retain jurisdiction to continue to hear petitions filed pursuant to [Va. Code §§ 16.1-282](#) and [16.1-282.1](#). Orders of the juvenile court in such cases shall continue to be reviewed and enforced by the juvenile court until the circuit court, Court of Appeals or Supreme Court rules otherwise. [Va. Code § 16.1-242.1](#).

Foster Care Review Petition [Va. Code § 16.1-282](#).

The local board of social services, or child welfare agency shall file a district court form DC-554, [PETITION FOR FOSTER CARE REVIEW HEARING](#) for each child who was the subject of a foster care plan pursuant to [Va. Code § 16.1-281](#) and who: was placed through an agreement between the parents or guardians and the board or public agency where legal custody remains with the parents or guardians and such agreement has not been dissolved by

court order; or is in the legal custody of the board or a child welfare agency and has not had a petition to terminate parental rights granted, filed or ordered to be filed on the child's behalf; has not been placed in permanent foster care and is age sixteen or over.

Any interested party, including the parent, guardian or person standing *in loco parentis* prior to the assumption of legal custody by the board or a child welfare agency, or the placement of the child pursuant to a non-custodial foster care agreement by DSS, may file the petition for foster care review hearing at any time after the initial foster care placement of the child. The board, public agency or child-placing agency shall file this same petition within three months of the dispositional hearing at which the foster care plan was reviewed pursuant to [Va. Code § 16.1-281](#).

The petition for foster care review hearing shall:

- Be filed in the court in which the foster care plan was reviewed and approved. However, upon order of the court the petition for foster care review hearing may be filed in the court of the county/city in which the board or child welfare agency having legal custody or having placed the child has its principal office or where the child resides. [Va. Code § 16.1-282 \(B\)\(1\)](#).
 - State, if such is reasonably obtainable, the current address of the child's parents;
 - State, if such is reasonably obtainable, the current address of the person standing *in loco parentis* when DSS or child welfare agency obtained legal custody;
 - Describe the child's placement or placements while in foster care;
 - Describe the services or programs offered to the child and his parents and, if applicable, the person standing *in loco parentis*;
 - Describe the nature and frequency of the contacts between the child and parents and, if applicable, person *in loco parentis*;
 - Set forth in detail the manner in which the foster care plan is/was not complied with and the extent to which goals have been met;
 - Set forth the disposition sought and grounds therefore, however,

In the case of a child who has attained age sixteen and who has been admitted to the United States as a refugee or asylee, the services needed to assist the child to transition from foster care to independent living.

Documents filed with the petition for foster care review hearing:

- The district court form DC-552, FOSTER CARE SERVICE PLAN TRANSMITTAL should be included with the petition for foster care review foster care plan when it is filed.

A district court form DC-620, [AFFIDAVIT \(UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT\)](#) UCCJEA is filed with the petition for foster care review hearing. Pursuant to [Va. Code § 20-146.1](#), a “child custody proceeding” includes a dependency proceeding in which legal custody, physical custody or visitation with respect to a child is an issue. District court form DC-621, [NON-DISCLOSURE ADDENDUM](#), must be completed to protect identifying information

- A district court form [DC-418, AFFIDAVIT-DEFAULT JUDGMENT SERVICEMEMBERS CIVIL RELIEF ACT](#). Pursuant to [Va. Code § 8.01-15.2](#), in any civil action or proceeding in which the defendant does not make an appearance, the court shall not enter a judgment by default until the plaintiff files with the court an affidavit (i) stating whether or not the defendant is in military service and showing necessary facts to support the affidavit; or (ii) if the plaintiff is unable to determine whether or not the defendant is in military service, stating that the plaintiff is unable to determine whether or not the defendant is in military service.

The Court Improvement Program suggests that the public or private agency caseworker should provide the current street address, including any apartment number, for the individuals whose addresses are listed. “Parental rights terminated” or “deceased,” as appropriate, should be written on the transmittal form where parent’s address is listed. In the event that the clerk’s office receives a pleading in a case in which parental rights have been terminated or the parent is deceased, this information should be included in place of the parent’s address in the address field.

The local board of public welfare or social services or other child welfare agency shall identify for the court such persons, including those listed in [Va. Code § 16.1-282 \(C\)\(1\)-\(6\)](#), as have a legitimate interest in the hearing, including but not limited to pre-adoptive parents for a child in foster care.

The court hearing shall be held within thirty days of receipt of the district court form DC-554, [PETITION FOR FOSTER CARE REVIEW HEARING](#) if a hearing date was not set at the foster care plan hearing. A foster care review hearing shall be held within four months of the dispositional hearing at which the foster care plan was reviewed.

Note: The discretionary authority of the court pursuant to [Va. Code § 16.1-266 \(E\)](#) to appoint a discreet and competent attorney at law to represent a child, children, parent or guardian as counsel or guardian *ad litem* “in all other cases” may be interpreted to mean (i) cases other than those in which a parent or guardian is charged with abuse/neglect or could be subjected to the loss of residual parental rights and responsibilities; or (ii) cases in which a parent or guardian cannot be informed of an exercise or waive his right to counsel. The latter interpretation would support the appointment of an attorney as counsel or guardian *ad litem* to represent the interests of a parent whose identity or whereabouts is unknown. Such a parent or guardian could also be subjected to the loss of residual parental rights and responsibilities. See [Va. Code § 16.1-266 \(C\)](#); but see *Fredericksburg Dep’t of Social Servs. v. Brown and Williams*, Record Nos. 1969-99-2, 2008-99-2 (Va. Ct. App. 2000) (affirming on other grounds the trial court’s denial of petitions to terminate the parents’ residual parental rights, where the children entered foster care based upon an invalid entrustment agreement. The trial court had denied the petitions based upon failure to appoint attorneys to represent the parents). A parent or guardian whose identity or whereabouts is unknown may also be under a disability in that they are unable to defend their legal rights. See [Va. Code § 8.01-2](#) (defining “person under a disability”). See also *Norfolk Div. of Social Servs. v. Unknown Father*, 2 Va. App. 420, (1986) (in proceedings involving custody of a child of an unwed minor, guardian *ad litem* for the unknown father had standing to appeal the entrustment agreement decision by the juvenile and domestic relations district court).

Appointment of Guardian *Ad Litem* and Right to Counsel

[Va. Code § 16.1-281 \(F\)](#) requires the appointment of a guardian *ad litem* (GAL) to represent the child pursuant to [Va. Code § 16.1-266](#) any time a hearing is held to review the foster care plan or to review the child’s foster care status. Pursuant to [Va. Code § 16.1-266.1](#), check the list of qualified guardians *ad litem* maintained by the Office of the Executive Secretary of the Supreme Court before selecting a guardian *ad litem*. However, if no attorney who is on the list is reasonably available, the judge has discretion to appoint any discreet and competent attorney admitted to practice law in Virginia.

The Court Improvement Program suggests that the GAL who has previously represented the child in related proceedings concerning the child's placement in foster care should continue to represent the child in subsequent foster care and permanency planning proceedings. Use the district court form DC-514, ORDER FOR APPOINTMENT OF GUARDIAN AD LITEM to appoint the GAL. The clerk should inform the GAL of the date and time of any hearing to review the child's foster care plan or status in foster care, including foster care hearings held pursuant to [Va. Code §§ 16.1-281, 16.1-282](#) and [16.1-282.2](#), and permanency planning hearings held pursuant to [Va. Code § 16.1-282.1](#). The GAL should attend all of these hearings. The Department of Social Services (DSS) and the child's parents should be provided with a copy of the district court form DC-514, ORDER FOR APPOINTMENT OF GUARDIAN AD LITEM when it is entered.

Parties shall be informed of their right to counsel: Prior to the adjudicatory hearing by the court of a petition in which a child is alleged to be abused or neglected or at risk of abuse or neglect as provided in [Va. Code § 16.1-241 \(A\)\(2a\)](#), prior to the hearing of any case involving any other adult charged with abuse or neglect of a child, and prior to a hearing at which a parent could be subjected to the loss of residual parental rights, the child's parent or guardian or the other adult shall be informed by a judge, clerk or probation officer of his right to counsel and be given an opportunity to (i) retain counsel; (ii) if qualified, have counsel appointed; (iii) waive counsel using district court form DC-536, TRIAL WITHOUT A LAWYER - WAIVER OF RIGHT TO BE REPRESENTED BY A LAWYER. [Va. Code §16.1-266 \(C\)](#).

In the court's discretion, a discreet and competent attorney at law may be appointed as counsel or guardian *ad litem* to represent the interests of a parent or guardian. [Va. Code § 16.1-266 \(D\)](#). If an attorney is to be appointed as a guardian *ad litem* for a parent or guardian (as opposed to appointment as "counsel"), reference should be made from the list of qualified guardians *ad litem* maintained by the Office of the Executive Secretary of the Supreme Court, as is the case for appointment of a guardian *ad litem* for a child. This list can be found at <http://www.vacourts.gov>. The court may appoint a guardian *ad litem* to represent a party, usually a parent, who is under the age of eighteen years or under a disability such as incarceration or mental illness.

The court shall consider appointing an attorney-at-law:

- If the identity or location of a parent or guardian is not reasonably ascertainable or a parent or guardian fails to appear, the court shall

consider appointing an attorney-at-law to represent the interests of the absent parent or guardian, and the hearing may be held. [Va. Code § 16.1-266 \(C\)](#).

- Prior to a hearing at which a child is the subject of an initial foster care plan filed pursuant to [Va. Code § 16.1-281](#), a foster care review hearing pursuant to [Va. Code § 16.1-282](#) and a permanency planning hearing pursuant to [Va. Code § 16.1-282.1](#), the court shall consider appointing counsel to represent the child's parent or guardian.

Notice Provisions Applicable to the Foster Care Review Hearing

The court shall provide notice of the hearing and a copy of the petition for foster care review hearing to the following, each of whom shall be a party entitled to participate in the proceeding. [Va. Code § 16.1-282 C \(1\)\(6\)](#):

- the child, if age twelve or older;
- the guardian *ad litem* for child;
- the child's parents; however, no such notification shall be required if the Judge certifies on the record that the identity of the parent or guardian is not reasonably ascertainable. An affidavit of the mother that the identity of the father is not reasonably ascertainable shall be sufficient evidence of this fact, provided there is no other evidence that would refute such an affidavit.

Note: The clerk's office should not send to a parent a DC-510, SUMMONS or other notice of any proceeding that involves a child in relation to whom that parent's parental rights have been terminated.

- any person standing *in loco parentis* at the time the child came into custody;
- the foster parents;
- the petitioning DSS or public agency or child welfare agency;
- any other interested parties as the court, in its discretion, may direct such as:
 - the attorney for parents, if represented by counsel;
 - the attorney for DSS;
 - the other attorneys of record;
 - the pre-adoptive parents for child;
 - the Court Appointed Special Advocate.

Pursuant to [Va. Code § 16.1-282 \(C\)\(3\)](#), if a parent or guardian of the child did not appear at the dispositional hearing and was not noticed to return for the foster care review hearing in accordance with [Va. Code § 16.1-281 \(E\)](#), the parent or guardian shall be summoned to appear at the foster care review hearing in accordance with [Va. Code § 16.1-263](#).

Foster Care Review Hearing and Order

The foster care review hearing shall be held although a parent or guardian fails to appear and is not represented by counsel, provided personal or substituted service was made on the parent or guardian, or the court deems that such person cannot be found, after reasonable effort, or in the case of a person who is without the Commonwealth, the person cannot be found or his post office address cannot be ascertained after reasonable effort.

The Court Improvement Program recommends that DSS provide the court with a notarized affidavit of efforts to locate the whereabouts of an absent parent.

Pursuant to [Va. Code § 16.1-282 \(D\)](#), at the conclusion of the foster care review hearing, the court shall enter a district court form DC-555, FOSTER CARE REVIEW ORDER consistent with the dispositional alternatives available to court at the time of the original hearing. Refer to the appropriate statutes as indicated below for dispositional alternatives in the following case types:

- [Va. Code § 16.1-278.2](#) for abused/neglected children in foster care;
- [Va. Code § 16.1-277.01](#) for children entering foster care as a result of an entrustment agreement;
- [Va. Code §§ 16.1-277.02](#) and [16.1-278.3](#) for children entering foster care as a result of a petition to be relieved of custody;
- [Va. Code § 16.1-278.4](#) for CHINS services children in foster care;
- [Va. Code § 16.1-278.5](#) for CHINS supervision children in foster care;
- [Va. Code § 16.1-278.6](#) for status offenders in foster care;
- [Va. Code § 16.1-278.8](#) for delinquent children in foster care.

The court order shall state whether reasonable efforts, if applicable, have been made to reunite the child with his parents, guardian or other person standing *in loco parentis* to the child. [Va. Code § 16.1-282 \(D\)](#).

Reasonable efforts to reunite the child with a parent shall not be required if the court makes any of the following findings:

- The residual parental rights of the parent regarding a sibling of the child have previously been involuntarily terminated;
- The parent has been convicted of an offense under the laws of the Commonwealth of Virginia or a substantially similar law of any other state, the United States or any foreign jurisdiction which constitutes murder or voluntary manslaughter, or a felony attempt, conspiracy or solicitation to commit any such offense, if the victim of the offense was a child of the parent, a child with whom the parent resided at the time such offense occurred or the other parent of the child;
- The parent has been convicted of an offense under the laws of the Commonwealth of Virginia or a substantially similar law of any other state, the United States or any foreign jurisdiction which constitutes felony assault resulting in serious bodily injury or felony bodily wounding resulting in serious bodily injury or felony sexual assault, if the victim of the offense was a child of the parent or a child with whom the parent resided at the time of such offense;
- Based on clear and convincing evidence, the parent has subjected any child to aggravated circumstances, or abandoned a child under

circumstances that would justify the termination of residual parental rights pursuant to [Va. Code § 16.1-283](#). [Va. Code § 16.1-281 \(B\)](#). See also 42 U.S.C. § 671(a)(15)(D)(i).

Definitions relevant to determination that reasonable efforts to reunite the child with a parent are not required:

- “Aggravated circumstances” means torture, chronic or severe abuse, or chronic or severe sexual abuse, if the victim of such conduct was a child of the parent or child with whom the parent resided at the time such conduct occurred, including the failure to protect such a child from such conduct, which conduct or failure to protect: (i) evinces a wanton or depraved indifference to human life, or (ii) has resulted in the death of such a child or in serious bodily injury to such a child.
- “Chronic abuse” or “chronic sexual abuse” means recurring acts of physical abuse that place the child’s health, safety and well-being at risk.
- “Serious bodily injury” means bodily injury [that] involves substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ or mental faculty.
- “Severe abuse” or “severe sexual abuse” may include an act or omission that occurred only once, but otherwise meets the definition of “aggravated circumstances.”

The court shall hold a permanency planning hearing pursuant to [Va. Code § 16.1-282.1](#) within thirty days of making a determination that reasonable efforts to reunite the child with the parents are not required.

When transferring custody of the child to a relative other than the child’s prior family, the district court form DC-559, SUPPLEMENT TO ORDER TRANSFERRING CUSTODY should be used for the findings and orders required by [Va. Code § 16.1-282 \(D1\)](#):

- The court shall find, after an investigation, that the prospective custodian is one who: is willing and qualified to receive and care for the child; is willing to have a positive, continuous relationship

with the child; is committed to providing a permanent, suitable home for the child; and is willing and has the ability to protect the child from abuse and neglect. The court's order shall state these findings.

- The court's order should further provide for, as appropriate: any terms or conditions which would promote the child's interest and welfare; ongoing provision of social services to the child and the child's custodian; and court review of the child's placement.

If the court disapproves the foster care plan, DSS should submit a new plan within a reasonable period of time not to exceed thirty days. A hearing shall be held with notice to all appropriate parties to review and approve the revised plan. In the event a foster care plan is disapproved and a subsequent hearing to approve the plan is required, the date for the permanency planning hearing pursuant to [Va. Code § 16.1-282.1](#) is still set based on the original date for the foster care review hearing.

If the order entered at the conclusion of the hearing has the effect of achieving a permanent goal for the child by: (i) terminating residual parental rights pursuant to [Va. Code §§ 16.1-277.01](#), [16.1-277.02](#), [16.1-278.3](#) or [16.1-283](#); (ii) placing the child in permanent foster care pursuant to [Va. Code § 16.1-282.1 \(A\)\(iv\)](#), or (iii) if the child has attained the age of sixteen years or over and the plan is independent living for a child who has been admitted to the United States as a refugee or asylee, direct the board or agency to provide the child with services to transition from foster care pursuant to [Va. Code § 16.1-282.1 \(A\)\(v\)](#), the order shall state whether reasonable efforts have been made to place the child in a timely manner in accordance with the foster care plan and to complete the steps necessary to finalize the permanent placement of the child. [Va. Code § 16.1-282 \(E\)](#).

The court shall possess continuing jurisdiction so long as the child remains in foster care or, when a child is returned to his prior family subject to conditions imposed by the court, for as long as such conditions are effective. [Va. Code § 16.1-282 \(E\)](#).

Upon appeal to the circuit court of any case involving a child placed in foster care and also in any appeal to the Court of Appeals or Supreme Court of Virginia, the juvenile court shall retain jurisdiction to continue to hear petitions filed pursuant to [Va. Code §§ 16.1-282](#) and [16.1-282.1](#). Orders of the juvenile court in such cases shall continue to be reviewed and enforced by the juvenile court until the circuit, Court of Appeals or Supreme Court rules otherwise. [Va. Code § 16.1-242.1](#).

The court shall schedule a permanency planning hearing on the case to be held:

- Five months after the foster care review hearing ([Va. Code § 16.1-282 \(E\)](#)); or
- Within thirty days upon the petition of any party entitled to notice of the proceedings under [Va. Code § 16.1-282](#), when the judge determines that there is good cause for the hearing ([Va. Code § 16.1-282 \(E\)](#)); or
- Within thirty days upon the petition of a board, public agency or child welfare agency, when a determination has been made that the child's need for long-term residential treatment for the child's disabling condition is eliminated, such that placement in another planned permanent living arrangement is no longer in the child's best interests and another permanent plan goal must be selected and approved for the child ([Va. Code § 16.1-282.1 \(A1\)](#));
- Within thirty days of making a determination that reasonable efforts to reunite the child with the parents are not required. [Va. Code § 16.1-281 \(B\)](#).

All parties present at the foster care review hearing should receive a copy of the court's order. The parties also should sign and receive a copy of the district court form DC-508, ACKNOWLEDGMENT OF NOTICE OF NEXT HEARING DATE for the permanency planning hearing. The court's order should be issued and served on any party who did not receive a copy of the order at the foster care plan hearing. This order should be served with a summons for the permanency planning hearing to parties not present at the foster care review hearing.

Permanency Planning Petition [Va. Code § 16.1-282.1](#)

The local board of social services, or child welfare agency shall file a district court form DC-556, [PETITION FOR PERMANENCY PLANNING HEARING](#) pursuant to [Va. Code § 16.1-282.1 \(A\)](#) in the case of a child who was the subject of a foster care plan at which the child (a) was placed through an agreement between the parents or guardians and the local board of social services where legal custody remains with the parents or guardians and such agreement has not been dissolved by court order; or (b) is under the legal custody of a local board of social services or a child welfare agency and has not had a petition to terminate parental rights filed on the child's behalf, has not been placed in permanent foster care, or is age sixteen or over and the plan for the child is not independent living.

A district court form DC-620, [AFFIDAVIT \(UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT\)](#) UCCJEA is filed with the petition for permanency planning hearing. Pursuant to [Va. Code § 20-146.1](#), a “child custody proceeding” includes a dependency proceeding in which legal custody, physical custody or visitation with respect to a child is an issue. District court form DC-621, [NON-DISCLOSURE ADDENDUM](#) must be completed to protect identifying information. A district court form [DC-418, AFFIDAVIT-DEFAULT JUDGMENT SERVICEMEMBERS CIVIL RELIEF ACT](#). Pursuant to [Va. Code § 8.01-15.2](#), in any civil action or proceeding in which the defendant does not make an appearance, the court shall not enter a judgment by default until the plaintiff files with the court an affidavit (i) stating whether or not the defendant is in military service and showing necessary facts to support the affidavit; or (ii) if the plaintiff is unable to determine whether or not the defendant is in military service, stating that the plaintiff is unable to determine whether or not the defendant is in military service.

The purpose of the permanency planning hearing is to establish a permanent goal for the child and either to achieve the permanent goal or to defer such action through the approval of an interim plan for the child.

To achieve the permanent goal, the permanency planning petition shall request that the court order one of the following:

- Transfer custody of the child to his prior family or dissolve the board’s or public agency’s placement agreement and return the child to his prior family;
- Transfer custody of the child to a relative other than the child’s prior family;
- Terminate residual parental rights pursuant to [Va. Code §§ 16.1-277.01](#) or [16.1-283](#);
- Place the child in permanent foster care;
- If the child has attained the age of sixteen years or over, direct the board or agency to provide the child with independent living services to transition from foster care, if the child has been admitted to the United States as a refugee or asylee.

Note: [Virginia Code § 16.1-281 \(B\)](#) references design of a plan that includes “the programs and services which help the child prepare for the transition from foster care to independent living”, if the child has been admitted to the United States as a refugee or asylee.

- Place the child in another planned permanent living arrangement in accordance with [Va. Code § 16.1-282.1 \(A2\)](#).

For approval of an interim plan, which may be approved by the court for a maximum of six months, the petition for a permanency planning hearing shall seek to:

- Continue DSS custody or continue placement with the board or public agency through parental agreement; or
- Transfer custody to the board or child welfare agency from the parents or guardian of a child who has been in foster care through an agreement whereby the parent/guardian retains legal custody.

If the board or child welfare agency petitions for approval of an interim plan to continue agency custody, continue placement through a parental agreement, or transfer custody to the board or agency from the parents or guardian, the board or agency shall also file a foster care plan which:

- Identifies a permanent goal for the child that corresponds with one of the alternatives for achieving a permanent goal;
- Includes provisions for accomplishing the permanent goal within six months; and
- Summarizes the investigation conducted of the placement alternatives listed below and states why they are not in the best interest of the child, if these goals have not been chosen:
 - Transfer custody of the child to his prior family or dissolve the board's or public agency's placement agreement and return the child to his prior family;
 - Transfer custody of the child to a relative other than the child's prior family;
 - Terminate parental rights pursuant to [Va. Code §§ 16.1-277.01](#) or [16.1-293](#);
 - If the child has attained the age of sixteen years or over, placement of the child in an independent living arrangement, which provides the child with services to transition from foster

care if the child has been admitted to the United States as a refugee or asylee.

The following requirements apply to the selection and approval of another planned permanent living arrangement as the permanent goal for the child:

- The board, public agency or child welfare agency shall petition to place the child in another planned permanent living arrangement only if:
 - The child has a severe and chronic emotional, physical or neurological disabling condition for which the child requires long-term residential treatment; and
 - The board or agency has thoroughly investigated the feasibility of placement in, and determined that the child's best interests would not be served by, any of the following: returning the child to the child's prior family, transferring custody of the child to a relative other than the child's prior family, terminating residual parental rights, if the child has attained the age of sixteen years or over and has been admitted to the United States as a refugee or asylee, placement of the child in an independent living arrangement, and placing the child in permanent foster care.
 - The child is 16 years of age or older.
- With the petition filed pursuant to [Va. Code § 16.1-282.1 \(A\)](#), the board or agency shall file a foster care plan that documents the following, in accordance with the provisions of [Va. Code § 16.1-282.1 \(A1\)](#):
 - the investigation conducted of the placement alternatives listed in clauses (i) through (v) of subsection A and why each of these is not currently in the best interest of the child;
 - at least one compelling reason why none of the alternatives listed in clauses (i) through (v) of subsection A is achievable for the child at the time placement in another planned permanent

- living arrangement is selected as the permanent goal for the child;
- the identity of the long-term residential treatment service provider;
- the nature of the child's disability;
- the anticipated length of time required for the child's treatment; and
- the status of the child's eligibility for admission and long-term treatment.
- Before approving another planned permanent living arrangement as the plan for the child, the court shall find:
 - that the child has a severe and chronic emotional, physical or neurological disabling condition;
 - that the child requires long-term residential treatment for the disabling condition; and
 - that none of the placement alternatives listed in clauses (i) through (v) of subsection A is achievable for the child at the time placement in another planned permanent living arrangement is approved as the permanent goal for the child.
- the child is 16 years of age or older.
- Another planned permanent living arrangement may be approved as the permanent plan for the child. District court form DC-557, PERMANENCY PLANNING ORDER should be used to approve this plan. At the conclusion of the hearing at which another planned permanent living arrangement is approved as the permanent plan, the court shall schedule a hearing to be held within six months to review the child's placement.
- All parties present at the hearing at which another planned permanent living arrangement is approved as the permanent plan for the child shall be given notice of the date scheduled for the foster care review hearing. Parties not present shall be summoned to appear as provided in [Va. Code § 16.1-263](#).
- If at any time during the allowable six-month approval period a determination is made by treatment providers that the child's need

for long-term residential treatment for the child's disabling condition is eliminated, the board or agency shall:

- begin immediately to plan for post-discharge services; and
- file a petition for a permanency planning hearing pursuant to [Va. Code § 16.1-282.1 \(A\)](#) within thirty days of determining that the child's need for long-term treatment for the child's disabling condition is eliminated.

As to the petition filed for the permanency planning hearing, the following provisions of [Va. Code § 16.1-282 \(B\)](#), subdivisions 1 through 7 apply in accordance with [Va. Code §§ 16.1-282.1 \(A1\)](#) and [16.1-282.1 \(B\)](#):

- Petition to be filed in the court in which the foster care service plan was reviewed and approved. However, upon order of the court the petition for foster care review hearing may be filed in the court of the county/city in which the board or child welfare agency having legal custody or having placed the child has its principal office or where the child resides. [Va. Code § 16.1-282 \(B\)\(1\)](#).
- Petition to state, if such is reasonably obtainable, the current address of the child's parents;
- Petition to state, if such is reasonably obtainable, the current address of the person standing *in loco parentis* when DSS or child welfare agency obtained legal custody;
- Petition to describe child's placement(s) while in foster care;
- Petition to describe the services or programs offered to the child and his parents and, if applicable, the persons standing *in loco parentis*;
- Petition to set forth in detail manner in which the foster care plan was/was not complied with and extent to which goals have been met;
- Petition to set forth the disposition sought and grounds therefore;

The Court Improvement Program recommends that any plan that contemplates the termination of residual parental rights should document that "termination of parental rights is in the best interests of the child." [Va. Code § 16.1-283 \(A\)](#).

The Court Improvement Program suggests that the public or private agency caseworker should provide the current street address, including any apartment number, for the individuals

whose addresses are listed. "Parental rights terminated" or "deceased," as appropriate, should be written on the Transmittal form where parent's address is listed. In the event that the clerk's office receives a pleading in a case in which parental rights have been terminated or the parent is deceased, this information should be included in place of the parent's address in the address field.

- If continuation of foster care is recommended, a foster care plan shall be included with the petition and shall address:
 - Role current foster parents or care providers will play in the future planning for the child, and;
 - In the case of a child sixteen or older, the services and programs needed to assist the child to make a transition from foster care to independent living, for the child who has been admitted to the United States as a refugee or asylee.

The local board of public welfare or social services or other child welfare agency shall identify for the court such persons, including those listed in [Va. Code § 16.1-282 \(C\) \(1\)-\(6\)](#), as have a legitimate interest in the hearing, including but not limited to pre-adoptive parents for a child in foster care.

Upon receipt of the petition for permanency planning hearing, the court shall schedule a hearing within thirty days unless one has previously been scheduled.

The Court Improvement Program suggests that the GAL who has previously represented the child in related proceedings concerning the child's placement and status in foster care should continue to represent the child in subsequent foster care review and permanency planning hearings. The clerk should inform the GAL of the date and time of any hearing to review the child's foster care plan or status in foster care, including foster care hearings held pursuant to [Va. Code §§ 16.1-281](#) and [16.1-282](#), and permanency planning hearings held pursuant to [Va. Code § 16.1-282.1](#). The GAL should attend all of these hearings. The Department of Social Services (DSS) and the child's parents should be provided with a copy of the district court form DC-514, ORDER FOR APPOINTMENT OF GUARDIAN AD LITEM when it is entered.

This hearing shall be held:

- Within six months at which the foster care plan was reviewed pursuant to [Va. Code § 16.1-281](#) (foster care plan hearing) [Va. Code § 16.1-282.1 \(B\)](#); or
- Within thirty days upon the petition of a board, public agency or child welfare agency, when a determination has been made that the child's need for long-term residential treatment for the child's disabling condition is eliminated, such that placement in another planned permanent living arrangement is no longer in the child's best interests and another permanent plan goal must be selected and approved for the child ([Va. Code § 16.1-282.1 \(A1\)](#));
- Within thirty days of making a determination that reasonable efforts to reunite the child with the parents are not required. [Va. Code § 16.1-281 \(B\)](#).

Appointment of Guardian *Ad litem* and Right to Counsel-Permanency Planning Hearing (PPH)

[Virginia Code § 16.1-281 \(F\)](#) requires the appointment of a guardian *ad litem* (GAL) to represent the child pursuant to [Va. Code § 16.1-266](#) any time a hearing is held to review the foster care plan or to review the child's foster care status. Pursuant to [Va. Code § 16.1-266.1](#), check the list of qualified guardians *ad litem* maintained by the Office of the Executive Secretary of the Supreme Court before selecting a guardian *ad litem*. However, if no attorney who is on the list is reasonably available, the judge has discretion to appoint any discreet and competent attorney admitted to practice law in Virginia.

Note: The discretionary authority of the court pursuant to [Va. Code § 16.1-266 \(E\)](#) to appoint a discreet and competent attorney at law to represent a child, children, parent or guardian as counsel or guardian *ad litem* "in all other cases" may be interpreted to mean (i) cases other than those in which a parent or guardian is charged with abuse/neglect or could be subjected to the loss of residual parental rights and responsibilities; or (ii) cases in which a parent or guardian cannot be informed of an exercise or waive his right to counsel. The latter interpretation would support the appointment of an attorney as counsel or guardian *ad litem* to represent the interests of a parent whose identity or whereabouts is unknown. Such a parent or guardian could also be subjected to the loss of residual parental rights and responsibilities. See [Va. Code § 16.1-266 \(C\)](#); but see *Fredericksburg Dep't of Social Servs. v. Brown and Williams*, Record Nos. 1969-99-2, 2008-99-2 (Va. Ct. App. 2000) (affirming on other grounds the trial court's denial of petitions to terminate the parents' residual parental rights, where the children entered foster care based upon an invalid entrustment agreement. The

trial court had denied the petitions based upon failure to appoint attorneys to represent the parents). A parent or guardian whose identity or whereabouts is unknown may also be under a disability in that they are unable to defend their legal rights. See [Va. Code § 8.01-2](#) (defining “person under a disability”). See also *Norfolk Div. of Social Servs. v. Unknown Father*, 2 Va. App. 420, (1986) (in proceedings involving custody of a child of an unwed minor, guardian *ad litem* for the unknown father had standing to appeal the entrustment agreement decision by the juvenile and domestic relations district court).

Parties shall be informed of their right to counsel: Prior to the adjudicatory hearing by the court of a petition in which a child is alleged to be abused or neglected or at risk of abuse or neglect as provided in [Va. Code § 16.1-241 \(A\)\(2a\)](#)), prior to the hearing of any case involving any other adult charged with abuse or neglect of a child, and prior to a hearing at which a parent could be subjected to the loss of residual parental rights, the child’s parent or guardian or the other adult shall be informed by a judge, clerk or probation officer of his right to counsel and be given an opportunity to (i) retain counsel; (ii) if qualified, have counsel appointed; (iii) waive counsel using district court form DC-536, TRIAL WITHOUT A LAWYER - WAIVER OF RIGHT TO BE REPRESENTED BY A LAWYER. [Va. Code § 16.1-266 \(C\)](#).

In the court’s discretion, a discreet and competent attorney at law may be appointed as counsel or guardian *ad litem* to represent the interests of a parent or guardian. [Va. Code § 16.1-266 \(D\)](#). The attorney appointed must be selected from the list of attorneys who qualify as a guardian *ad litem*. If no attorney is available, the judge may appoint any competent attorney who is admitted to practice law in Virginia. The court may appoint a guardian *ad litem* to represent a party, usually a parent, who is under the age of eighteen years or under a disability such as incarceration or mental illness. The district court form DC-514, ORDER FOR APPOINTMENT OF GUARDIAN AD LITEM should be used for this appointment.

The court shall consider appointing an attorney-at-law:

- If the identity or location of a parent or guardian is not reasonably ascertainable or a parent or guardian fails to appear, the court shall consider appointing an attorney-at-law to represent the interests of the absent parent or guardian, and the hearing may be held. [Va. Code § 16.1-266 \(C\)](#).
- Prior to a hearing at which a child is the subject of an initial foster care plan filed pursuant to [Va. Code § 16.1-281](#), a foster care review hearing pursuant to [Va. Code § 16.1-282](#) and a permanency planning hearing pursuant to [Va. Code § 16.1-282.1](#), the court shall

consider appointing counsel to represent the child's parent or guardian.

Notice Provisions Applicable to the Permanency Planning Hearing

In accordance with [Va. Code §§ 16.1-282.1 \(A2\)](#) and [16.1-282.1 \(B\)](#), the following provisions of [Va. Code § 16.1-282 \(C\)](#) apply. The court shall provide notice of the hearing and a copy of the petition to the following; each of who shall be a party entitled to participate in the proceeding:

- the child, if twelve years of age or older;
- the guardian *ad litem* for child;
- the child's parents however, no such notification shall be required if the judge certifies on the record that the identity of the parent or guardian is not reasonably ascertainable. An affidavit of the mother that the identity of the father is not reasonably ascertainable shall be sufficient evidence of this fact, provided there is no other evidence that would refute such an affidavit

Note: The clerk's office should not send to a parent a summons or other notice of any proceeding that involves a child in relation to whom that parent's parental rights have been terminated.

- the person standing *in loco parentis* at the time the child came into custody;

The Court Improvement Program recommends that DSS provide the courts with a notarized affidavit of efforts to locate the whereabouts of an absent parent.

- the foster parents;
- the petitioning DSS or public agency or child welfare agency;
- Other interested parties as the court, in its discretion, may direct such as:
 - the attorney for parents, if represented by counsel;
 - the attorney for DSS;
 - any other attorneys of record;
 - the pre-adoptive parents for child;
 - the Court Appointed Special Advocate.

If a parent or guardian of the child did not appear at the previous foster care hearing and was not noticed to return for the permanency planning

hearing, the parent or guardian shall be summoned to appear in accordance with [Va. Code § 16.1-263](#). [Va. Code § 16.1-282 \(C\)](#).

Permanency Planning Hearing and Order

The permanency planning hearing shall be held although a parent or guardian fails to appear and is not represented by counsel, provided personal or substituted service was made on the parent or guardian, or the court deems 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.

Before approving a continuation of foster care or the transfer to DSS custody of a child placed by parental agreement:

- When returning home remains the plan for the child, the court shall find:
 - That the parent has made marked progress toward reunification with the child, and
 - That the parent has maintained a close and positive relationship with the child, and
 - That the child is likely to return home within the near future, although it is premature to set an exact date for return at the time of this hearing; or
- When returning home is not the plan for the child, the court shall find:
 - That marked progress is being made to achieve the permanent goal identified by the board, public agency or child welfare agency, and
 - That it is premature to set an exact date for accomplishing the goal at the time of this hearing.

At the conclusion of the permanency planning hearing, if the following alternatives are the interim plan, the court shall schedule a hearing to be held within six months called a “second permanency planning hearing” to determine that the new permanent goal is accomplished:

- Continue DSS custody or continue placement with the board or public agency through parental agreement; or

- Transfer custody to the board or child welfare agency from the parents or guardian of a child who has been in foster care through an agreement whereby the parent/guardian retains legal custody.

The court shall enter an order that states whether reasonable efforts have been made to reunite the child with their family, if returning home remains the plan for the child; or whether reasonable efforts have been made to achieve the permanent goal identified by the board, when returning home is not the plan for the child. The district court form DC-557, PERMANENCY PLANNING ORDER is used for this purpose.

All parties present at the first permanency planning hearing should receive a copy of the court's order. The parties also should sign and receive a copy of the district court form DC-508, ACKNOWLEDGMENT OF NOTICE OF NEXT HEARING DATE for the second permanency planning hearing. The court's order should be issued and served on any party who did not receive a copy of the order at the first permanency planning hearing. This order shall contain a summons for the second permanency planning hearing for parties not present at the first permanency planning hearing.

At the second permanency planning hearing, the court shall enter a district court form DC-557, PERMANENCY PLANNING ORDER consistent with one of the following alternatives:

- Transfer custody of the child to their prior family or dissolve the board's or public agency's placement agreement and return the child to their prior family;
- Transfer custody of the child to a relative other than the child's prior family;
- Terminate residual parental rights pursuant to [Va. Code §§ 16.1-277.01](#) or [16.1-283](#), after serving parents according to [Va. Code § 16.1-264](#);
- Place the child in permanent foster care;
- or, if the child has attained the age of sixteen years and the plan for the child is independent living for the child admitted to the United States as a refugee or asylee, directing the board or agency to provide the necessary services to transition from foster care.

When transferring custody of the child to a relative other than the child's prior family, the district court form DC-559, SUPPLEMENT TO

ORDER TRANSFERRING CUSTODY should be used for the findings and orders required by [Va. Code § 16.1-282.1 \(A1\)](#):

- The court shall find, after an investigation, that the prospective custodian is one who: is willing and qualified to receive and care for the child; is willing to have a positive, continuous relationship with the child; is committed to providing a permanent, suitable home for the child; and is willing and has the ability to protect the child from abuse and neglect. The court's order shall state these findings.

The court's order should further provide for, as appropriate: any terms or conditions that would promote the child's interest and welfare. A subsequent permanency planning hearing may be scheduled within thirty days upon the petition of any party entitled to notice in proceedings under this section when the judge determines there is good cause shown for such a hearing. [Va. Code §§ 16.1-282.1 \(B\)](#), [16.1-282 \(E\)](#).

Note: [Virginia Code § 16.1-281 \(B\)](#) references design of a plan that includes "the programs and services which help the child prepare for the transition from foster care to independent living, for the child admitted to the United States as a refugee or asylee."

In the case of a child placed in permanent foster care after a hearing held pursuant to [Va. Code § 63.2-908](#), there is no subsequent permanency planning hearings so long as that court order is in effect. Permanent foster care is an approved permanent goal for a child. [Va. Code §§ 16.1-282.1 \(B\)](#), [16.1-282 \(E\)](#).

The court shall possess continuing jurisdiction so long as the child remains in a foster care placement or, when a child is returned to his prior family, subject to conditions imposed by the court for as long as such conditions are effective. [Va. Code §§ 16.1-282.1 \(B\)](#), [16.1-282 \(E\)](#).

Upon appeal to the circuit court of any case involving a child placed in foster care and also in any appeal to the Court of Appeals or Supreme Court of Virginia, the juvenile court shall retain jurisdiction to continue to hear petitions filed pursuant to [Va. Code §§ 16.1-282](#) and [16.1-282.1](#). Orders of the juvenile court in such cases shall continue to be reviewed and enforced by the juvenile court until the circuit court, Court of Appeals or Supreme Court rules otherwise. [Va. Code § 16.1-242.1](#).

Post Permanency Planning Review of Children in the Legal Custody of the Board or Agency

The court shall review a foster care plan for any child who is placed in another planned permanent living arrangement every six months from the date of the permanency planning hearing at which another planned permanent living arrangement is approved as the permanent plan for the child.

- The board, public agency or child welfare agency shall file district court form DC-554, [PETITION FOR FOSTER CARE REVIEW HEARING](#), pursuant to the provisions of [Va. Code § 16.1-282](#) and shall, in addition, include the following information, in accordance with the provisions of [Va. Code § 16.1-282.1 \(A2\)](#):
 - the investigation conducted of the placement alternatives listed in clauses (i) through (v) of subsection A and why each of these is not currently in the best interest of the child;
 - at least one compelling reason why none of the alternatives listed in clauses (i) through (v) of subsection A is achievable for the child at the time placement in another planned permanent living arrangement is selected as the permanent goal for the child;
 - the identity of the long-term residential treatment service provider;
 - the nature of the child's disability;
 - the anticipated length of time required for the child's treatment; and
 - the status of the child's eligibility for admission and long-term treatment.
- The board or agency shall file the petition no later than thirty days prior to the foster care review hearing that has been scheduled pursuant to [Va. Code § 16.1-282.1 \(A1\)](#).
- The court order entered at the conclusion of the hearing held on such petition for review shall state whether reasonable efforts were made to place the child in a timely manner in accordance

with the permanency plan and to monitor the child's status in another planned permanent living arrangement.

The court shall review a foster care plan every twelve months from the date of the permanency planning hearing, so long as the child remains in the custody of the board, public agency or child welfare agency, in accordance with the following requirements:

The children for whom the court shall review a foster care plan every twelve months include any child who remains in the custody of the board, public agency or child welfare agency and:

- on whose behalf a petition to terminate parental rights has been granted, filed or ordered to be filed;
- who is placed in permanent foster care; or
- who is age sixteen or over and for whom the plan is independent living for the child who has been admitted to the United States as a refugee or asylee.
- The board, public agency or child welfare agency shall file district court form DC-554, [PETITION FOR FOSTER CARE REVIEW HEARING](#), pursuant to the provisions of [Va. Code § 16.1-282](#) for this foster care review hearing.
- The court shall provide notice of the foster care review hearing in accordance with the provisions of [Va. Code § 16.1-282](#).
- The court order entered at the conclusion of the hearing held on such petition for review shall state whether reasonable efforts were made to place the child in a timely manner in accordance with the permanency plan and to complete the steps necessary to finalize the permanent placement of the child.

A written Adoption Progress Report shall be filed with the juvenile court by the local board or licensed child-placing agency within six months from the date of the final order terminating parental rights and every six months thereafter until a final order of adoption is entered. [Va. Code §§ 16.1-277.01 \(E\), 16.1-277.02 \(D\), 16.1-278.3 \(E\), 16.1-283 \(F\)](#).

- The report should detail the progress being made to place the child in an adoptive home.
 - The court may schedule a hearing on the Adoption Progress Report with or without the request of a party.
 - The court order entered at the following hearing shall indicate the date upon which the first report is due to be filed by the agency having authority to place the child for adoption:
-
- Annual foster care review hearing held pursuant to [Va. Code § 16.1-282.2](#) in case of a child on whose behalf a petition to terminate parental rights has been granted, filed or ordered to be filed but who remains in the legal custody of a local board of social services or a child welfare agency.
 - Hearing to approve an entrustment agreement that provides for the termination of parental rights pursuant to [Va. Code § 16.1-277.01](#).
 - Hearing at which parental rights are terminated pursuant to a petition to be relieved of custody permanently pursuant to [Va. Code §§ 16.1-277.02](#) or [16.1-278.3](#).
 - Hearing on a petition to terminate residual parental rights pursuant to [Va. Code § 16.1-283](#).

[§ 63.2-910.2](#). Petition to Terminate Parental Rights

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

- At the option of the local board, the child is being cared for by a relative;

- The local board has determined that the filing of such a petition would not be in the best interests of the child and has documented a compelling reason for such determination in the child's foster care plan; or
- The local board has not provided to the family of the child, within the time period established in the child's foster care plan, services deemed necessary for the child's safe return home or has not otherwise made reasonable efforts to return the child home, if required under § 473(a)(15)(B)(ii) of Title IV-E of the Social Security Act (42 U.S.C. § 673).

Permanent Foster Care [Va. Code § 63.2-908](#).

A local Department of Social Services or child placing agency shall have authority pursuant to court order to place a child over whom it has legal custody in a permanent foster care placement where the child shall remain until they reach the age of majority or thereafter, until the age of twenty-one years, if such placement is a requisite to providing funds for the care of such child, so long as the child is a participant in an educational, treatment or training program approved pursuant to rules and regulations of the [State Board of Social Services](#). [Va. Code § 63.2-908 \(A\)](#).

“Permanent foster care placement” is defined in [Va. Code § 16.1-228](#) as follows: The place of residence in which a child resides and in which he has been placed pursuant to the provisions of [Va. Code §§ 63.2-900](#) and [63.2-908](#) with the expectation and agreement between the placing agency and the place of permanent foster care that the child shall remain in the placement until he reaches the age of majority unless modified by court order or unless removed pursuant to [Va. Code §§ 16.1-251](#) or [63.2-1517](#). A permanent foster care placement may be a place of residence of any natural person or persons deemed appropriate to meet a child’s needs on a long-term basis.

A child may remain in permanent foster care until the age of twenty-one years, if such placement is requisite to providing funds for the care of such child, so long as the child is a participant in an educational, treatment or training program approved pursuant to rules and regulations of the State Board of Social Services. [Va. Code § 63.2-908 \(A\)](#).

The court shall not order a permanent foster care placement using the district court form DC-558, PERMANENT FOSTER CARE PLACEMENT ORDER unless it finds that:

- Diligent efforts have been made by DSS to place the child with their natural parents and such efforts have been unsuccessful; and
- Diligent efforts have been made by DSS to place the child for adoption and such efforts have been unsuccessful or adoption is not a reasonable alternative for a long-term placement for the child under the circumstances.

Refer to the procedures in this outline regarding court proceedings pursuant to [Va. Code § 16.1-282.1](#) to establish and achieve permanent foster care as the permanent goal for a child.

At the conclusion of the permanency planning hearing at which the permanent foster care goal is achieved and a district court form DC-557, PERMANENCY PLANNING ORDER is entered, the court shall enter a separate order which specifies the names of the permanent foster care parents and establishes the permanent foster care placement.

Once a district court form DC-558, PERMANENT FOSTER CARE PLACEMENT ORDER has been entered, the child cannot be removed from the physical custody of the permanent foster parents except by court order or based on an emergency removal for abuse or neglect under [Va. Code §§ 16.1-251](#) or [63.2-1517](#).

The permanent foster parents shall have the authority to consent to surgery, entrance into the armed forces, marriage, application for a motor vehicle and driver's license, application for admission into college, and any other such activities which require parental consent, unless this authority is modified by court order. The permanent foster parents have the responsibility to inform the placing agency of any such action to which they consent on the child's behalf. [Va. Code § 63.2-908 \(B\)](#).

If the child continues to have a relationship with his parents, DSS shall involve them in the planning of a permanent foster care placement, and the court order establishing permanent foster care shall set out visitation provisions with the natural parents. [Va. Code § 63.2-908 \(G\)](#).

The permanent foster parents, DSS or other appropriate party may file a petition or motion with the court that ordered the placement to request a change in the placement of the child in permanent foster care or in the responsibilities of the foster parents for the child. [Va. Code § 63.2-908 \(H\)](#).

A district court form DC-556, [PETITION FOR PERMANENCY PLANNING HEARING](#) pursuant to [Va. Code § 16.1-282.1](#) must be filed by the agency to change the permanent plan for the child.

A district court form DC-554, [PETITION FOR FOSTER CARE REVIEW HEARING](#) shall be filed annually from the time a permanent foster care placement is established, so long as the child remains in the legal custody of a local board of social services or a child welfare agency. [Va. Code §16.1-282.2](#).

- At the annual foster care review hearing, the court shall give consideration to the appropriateness of the services being provided to the child and permanent foster parents, to any change in circumstances since the entry of the order placing the child in permanent foster care, and to such other factors as the court deems proper. [Va. Code § 16.1-282 \(B\)](#).
- At the conclusion of the annual foster care review hearing, the court shall enter a district court form DC-555, FOSTER CARE REVIEW ORDER which states whether reasonable efforts have been made to place the child in a timely manner in accordance with the approved foster care plan that established a permanent goal for the child and to complete the steps necessary to finalize the permanent placement of the child.

Interstate Compact on the Placement of Children. [Va. Code §§ 63.2-1100, 63.2-1101, 63.2-1102, 63.2-1103](#)

If a child has been committed to the custody of the local Department of Social Services or is otherwise in “court custody,” the Interstate Compact on the Placement of Children (“ICPC”) applies to an interstate placement in “foster care” or in a prospective adoptive placement.

- The ICPC must be followed whenever a local agency has custody of a child and the child goes to another state to live.
- The term “foster care” should be construed broadly to include homes that are reimbursed for services to children and those that are not reimbursed (i.e., both paid and unpaid “foster” homes).
- Rationale of ICPC: The intent of the Act is to protect children moving across state lines and offer services, consistent with the best interests of the child.

ICPC does not apply to the interstate placement of a child in a psychiatric or other hospital for acute medical care, except for placement in a residential

treatment program or, if upon discharge from acute care, the child will be placed in a program for residential treatment.

If a foster child is subject to placement out of state, the sending state must follow ICPC procedures including the request of a home study, and the receiving state must approve the prospective placement.

“Priority placement” designation under Regulation 7, adopted in 1996, entitles the sending state to an expedited home study and recommendation on the prospective placement from the receiving state.

The Court Improvement Program’s suggestion is to include within the applicability of the ICPC a “non-offending” parent or relative who lives out of state and wants custody of the subject child. However, note that the United States Third Circuit Court of Appeals has held, and other courts have agreed, that the Compact does not apply to out-of-state placements with parents. See 934 F.2d 474 (3rd Cir. 1991).

- The contemplated out-of-state placement must be with a relative who would otherwise be exempt from the Compact under ICPC Article VIII(a) and the child:
 - Is under two years of age; and/or
 - Is in emergency shelter care; and/or
 - Has spent substantial time with the relative.
- Whenever a court determines that a proposed priority placement of a child from one state to another state is necessary, the court shall enter an order embodying that finding and include the basis therefor.

Termination of Residual Parental Rights

[Va. Code § 16.1-283](#)

Petition for Termination of Parental Rights

Filed by the local Department of Social Services (DSS) or licensed child-placing agency having custody of the child, by an attorney on behalf of the agency, or by the guardian *ad litem* for the child. See [Va. Code § 16.1-260](#). See also *Stanley v. Fairfax County Dep’t of Social Servs.*, 10 Va. App. 596, (1990), *affd*, *Stanley v. Fairfax County Dep’t of Social Servs.*, 242 Va. 60, (1991) (guardian *ad litem* has standing to file a petition for termination of parental rights as such action is implicit in the general charge of authority

to represent faithfully the interests of the individual under disability for whom they are appointed).

A district court form DC-620, [AFFIDAVIT \(UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT\)](#) UCCJEA is filed with the petition. Pursuant to [Va. Code § 20-146.1](#), a “child custody proceeding” means a proceeding in which legal custody, physical custody or visitation with respect to a child is an issue, including termination of parental rights cases. District court form DC-621, [NON-DISCLOSURE ADDENDUM](#), must be completed to protect identifying information. A district court form [DC-418, AFFIDAVIT-DEFAULT JUDGMENT SERVICEMEMBERS CIVIL RELIEF ACT](#). Pursuant to [Va. Code § 8.01-15.2](#), in any civil action or proceeding in which the defendant does not make an appearance, the court shall not enter a judgment by default until the plaintiff files with the court an affidavit (i) stating whether or not the defendant is in military service and showing necessary facts to support the affidavit; or (ii) if the plaintiff is unable to determine whether or not the defendant is in military service, stating that the plaintiff is unable to determine whether or not the defendant is in military service.

No petition to terminate the residual parental rights of a child’s parent shall be accepted by the court prior to the filing of a foster care plan, pursuant to [Va. Code § 16.1-281](#), which documents termination of residual parental rights as being in the best interests of the child. [Va. Code § 16.1-283 \(A\)](#).

- [Virginia Code § 16.1-283](#) procedures are inapplicable to disputes between parents over the custody of their children.
- Prior to accepting and processing the petition, the intake officer or clerk should review the court file and determine that a foster care plan that documents termination of parental rights as being in the best interests of the child has previously been filed, or is filed with the termination petition.

The court may hear and adjudicate a petition for termination of parental rights in the same proceeding in which the court has approved a foster care plan that documents that termination is in the best interests of the child. [Va. Code § 16.1-283 \(A\)](#). The petition for termination should be processed and served as separate pleadings from the foster care plan. See *Stanley v. Fairfax County Dep’t of Social Servs.*, 10 Va. App. 596, (1990), *affd*, *Stanley v. Fairfax County Dep’t of Social Servs.*, 242 Va. 60, (1991).

DSS need not have identified an available and eligible family to adopt a child for whom termination of parental rights is being sought prior to the entry of an order terminating parental rights. [Va. Code § 16.1-283 \(A\)](#).

There must be a separate petition for each parent, because the court may terminate the residual parental rights of one parent without affecting the rights of the other parent. [Va. Code § 16.1-283 \(A\)](#).

The Court Improvement Program recommends:

- Filing petitions for the permanency planning hearing and termination of residual parental rights at the same time.
- Specifying in the petition the subsection of [Va. Code § 16.1-283](#) (ground) under which termination is sought. The grounds need not be the same for the mother and father. Grounds may be pled in the alternative.
- That the court schedule a new date for the termination hearing to be held as soon as possible, if the petitions for the permanency planning hearing and termination of parental rights cannot be heard at the same time.
- Providing the clerk's office with the street address of the penal institution for proper service of process of an incarcerated parent.
- Providing child's actual address, not "care of" the agency.
- Providing current street addresses of parties to promote timely, effective service of process and adequate trial preparation time, and to avoid unnecessary delays.

Federal law: The Adoption and Safe Families Act of 1997, P. L. 105-89, provides that for children placed in foster care after July 1, 1998, petition(s) for termination of parental rights must be initiated for any child in foster care for fifteen of the last twenty-two months, unless one of the following exceptions applies: the child is being cared for by a relative; the agency has documented in the case plan a compelling reason for determining that filing such a petition would not be in the best interests of the child; or the agency has not provided services to the family of the child. 42 U.S.C. § 675(5)(E).

Pretrial (Right to counsel and appointment of guardian *ad litem*)

The Court Improvement Program recommends:

- The guardian *ad litem* who has previously been appointed for the child in removal hearings or in another proceeding which resulted in the child's placement in foster care, should continue to represent the child in the termination of parental rights proceeding. The

clerk should inform the guardian *ad litem* of the time and date for all related hearings.

- The Department of Social Services (DSS) and the child's parents should be provided with a copy of the district court form DC-514, ORDER FOR APPOINTMENT OF GUARDIAN AD LITEM for the child when the order is entered.

Note: The discretionary authority of the court pursuant to [Va. Code § 16.1-266 \(E\)](#) to appoint a discreet and competent attorney at law to represent a child, children, parent or guardian as counsel or guardian *ad litem* "in all other cases" may be interpreted to mean (i) cases other than those in which a parent or guardian is charged with abuse/neglect or could be subjected to the loss of residual parental rights and responsibilities; or (ii) cases in which a parent or guardian cannot be informed of an exercise or waive his right to counsel. The latter interpretation would support the appointment of an attorney as counsel or guardian *ad litem* to represent the interests of a parent whose identity or whereabouts is unknown. Such a parent or guardian could also be subjected to the loss of residual parental rights and responsibilities. See [Va. Code § 16.1-266 \(C\)](#); but see *Fredericksburg Dep't of Social Servs. v. Brown and Williams*, Record Nos. 1969-99-2, 2008-99-2 (Va. Ct. App. 2000) (affirming on other grounds the trial court's denial of petitions to terminate the parents' residual parental rights, where the children entered foster care based upon an invalid entrustment agreement. The trial court had denied the petitions based upon failure to appoint attorneys to represent the parents). A parent or guardian whose identity or whereabouts is unknown may also be under a disability in that they are unable to defend their legal rights. See [Va. Code § 8.01-2](#) (defining "person under a disability"). See also *Norfolk Div. of Social Servs. v. Unknown Father*, 2 Va. App. 420, (1986) (in proceedings involving custody of a child of an unwed minor, guardian *ad litem* for the unknown father had standing to appeal the entrustment agreement decision by the juvenile and domestic relations district court).

Upon the filing of a petition for termination of parental rights, the court shall appoint a guardian *ad litem* (GAL) to represent the child. [Va. Code § 16.1-266 \(A\)](#). Pursuant to [Va. Code § 16.1-266.1](#), check the list of qualified guardians *ad litem* maintained by the Office of the Executive Secretary of the Supreme Court before selecting a guardian *ad litem*. However, if no attorney who is on the list is reasonably available, the judge has discretion to appoint any discreet and competent attorney admitted to practice law in Virginia.

- Parties shall be informed of their right to counsel: Prior to the adjudicatory hearing by the court of a petition in which a child is alleged to be abused or neglected or at risk of abuse or neglect as provided in [Va. Code § 16.1-241 \(A\)\(2a\)](#), prior to the hearing of any case involving any other adult charged with abuse or neglect of a child, and prior to a hearing at which a parent could be subjected to the loss of residual parental rights, the child's parent or guardian or the other adult shall be informed by a judge, clerk or probation officer of his right to counsel and be given an opportunity to (i) retain counsel; (ii) if qualified, have counsel appointed; (iii) waive counsel using district court form DC-536, TRIAL WITHOUT A LAWYER - WAIVER OF RIGHT TO BE REPRESENTED BY A LAWYER. [Va. Code § 16.1-266 \(C\)](#).

Note: The district court form DC-510, SUMMONS includes notice of the right to counsel.

- In the court's discretion, a discreet and competent attorney at law may be appointed as counsel or guardian *ad litem* to represent the interests of a parent or guardian. [Va. Code § 16.1-266 \(D\)](#). If an attorney is to be appointed as a guardian *ad litem* for a parent or guardian (as opposed to appointment as "counsel"), reference should be made from the list of qualified guardians *ad litem* maintained by the Office of the Executive Secretary of the Supreme Court, as is the case for appointment of guardian *ad litem* for a child. This list can be found at www.courts.state.va.us. The court may appoint a guardian *ad litem* to represent a party, usually a parent, who is under the age of eighteen years or under a disability such as incarceration or mental illness. The district court form DC-514, ORDER FOR APPOINTMENT OF GUARDIAN AD LITEM should be used for this appointment.
- The court shall consider appointing an attorney-at-law:
 - If the identity or location of a parent or guardian is not reasonably ascertainable or a parent or guardian fails to appear, the court shall consider appointing an attorney-at-law to represent the interests of the absent parent or guardian, and the hearing may be held. [Va. Code § 16.1-266 \(C\)](#).
 - Prior to a hearing at which a child is the subject of an initial foster care plan filed pursuant to [Va. Code § 16.1-281](#), a foster care review hearing pursuant to [Va. Code § 16.1-282](#) and a

permanency planning hearing pursuant to [Va. Code § 16.1-282.1](#), the court shall consider appointing counsel to represent the child's parent or guardian.

Transportation of incarcerated witness: If the presence of a prisoner is essential to the just adjudication and disposition of a petition for termination of parental rights, the judge may issue a district court form DC-354, CUSTODIAL TRANSPORTATION ORDER upon the request of a party or the court's motion. The order may direct the Director of the [Department of Corrections](#) or the administrator of the state, local or regional correctional institution to deliver the witness from a state, local or regional correctional institution to the sheriff of the jurisdiction of the court issuing the order. The order shall be executed in accordance with [Va. Code § 8.01-410](#). [Va. Code § 16.1-276.2](#).

Notice provisions applicable to termination of parental rights proceedings:

- The summons shall be served upon the parent or parents and the other parties specified in [Va. Code § 16.1-263](#), as follows ([Va. Code § 16.1-283 \(A\)](#)):
 - The parent or parents, unless the judge certifies on the record pursuant to [Va. Code § 16.1-263 \(E\)](#) that the identity of a parent is not reasonably ascertainable;
 - The child, if twelve or more years of age;
 - The guardian, legal custodian or other person standing *in loco parentis*;
 - Such other persons as appear to the court to be proper or necessary parties.
- Documents to be served:
 - DC-510, Summons
 - DC-511, Petition
 - DC-535, Notice of Termination of Residual Parental Rights
- Service shall be made pursuant to [Va. Code § 16.1-264](#). [Va. Code § 16.1-283 \(A\)](#).
- Written notice of the hearing shall also be provided to the foster parents of the child, a relative providing care for the child, and any

pre-adoptive parents for the child informing them that they may appear as witnesses at the hearing to give testimony and otherwise participate in the proceeding. [Va. Code § 16.1-283 \(A\)](#).

The Court Improvement Program recommends:

- File a district court form DC-435, [AFFIDAVIT AND PETITION FOR ORDER OF PUBLICATION](#) with termination of parental rights petition to avoid delays. Consider as legal strategy when, during the course of the abuse/neglect, foster care, and termination stages, it is appropriate to provide notice by order of publication. For example, if a publication is run to provide notice of the abuse/neglect stage of the proceedings, such notice is insufficient to “continue” for termination proceeding. On the other hand, duplicating the district court form DC-436, ORDER OF PUBLICATION may be costly to the agency. Consider also that the court may proceed in abuse/neglect and foster care hearings on the basis of reasonable efforts to locate an absent parent.
- File a notarized affidavit of efforts to locate absent parent with the district court form DC-435, [AFFIDAVIT AND PETITION FOR ORDER OF PUBLICATION](#).
- Include language from district court form DC-535, NOTICE OF TERMINATION OF RESIDUAL PARENTAL RIGHTS in district court form DC-436, ORDER OF PUBLICATION.
- In accordance with [Va. Code § 9.1-157](#), the provisions of [Va. Code § 16.1-264](#) regarding notice to parties shall apply to ensure that the Court Appointed Special Advocate is notified of hearings and other proceedings concerning the case to which they are assigned.
- The summons or notice of hearing shall clearly state the consequences of a termination of residual parental rights. [Va. Code § 16.1-283 \(A\)](#). Pursuant to [Va. Code § 16.1-264](#), the court

may order service by publication in accordance with the provisions of [Va. Code §§ 8.01-316](#) and [8.01-317](#).

- The party who seeks service by order of publication must file an district court form DC-435, [AFFIDAVIT AND PETITION FOR ORDER OF PUBLICATION](#) stating one of the following grounds:
 - The party to be served is a nonresident; or
 - That diligence has been used without effect to ascertain the location of the party to be served; or
 - That the last known residence of the party to be served was in the county or city where service is sought and a return of service has been filed by the sheriff that the service of process has been in their hands for 21 days and that they have been unable to make service; or
 - The identity of the party to be served is unknown (for example if the identity of the father is unknown) and the party to be served has been identified as unknown in the pleadings.
- Every district court form DC-435, [AFFIDAVIT AND PETITION FOR ORDER OF PUBLICATION](#) shall state the last known post office address of the party to be served or if such address is unknown, the Affidavit shall so state.

Every district court form DC-436, ORDER OF PUBLICATION shall state the following:

- Style of the suit: “In the Juvenile and Domestic Relations District Court, In Re (name of child),” the names of the adult parties (or that the Respondent is unknown); and
- Object of the suit: “To terminate the residual parental rights of the Respondent”; and
- That the defendants or parties unknown are to appear and protect their interests on or before the date stated in the district court form DC-436, ORDER OF PUBLICATION, which is the date set in the courtroom or by the clerk and the date is to be no sooner than fifty days after entry of the district court form DC-436, ORDER OF PUBLICATION. (See Miscellaneous Chapter of this manual for Order of

Publication procedures.) The clerk should send a copy of the pleadings and written notice of the hearing to:

- the attorneys for parents;
- the DSS counsel;
- the GAL for child;
- any other attorneys of record.

Hearing

Burden of proof: at the hearing on petition(s) to terminate parental rights, the petitioner must produce clear and convincing evidence of grounds for termination of parental rights and that such termination is in the best interests of the child. [Va. Code § 16.1-283](#) (B), (C), (D), (E).

The Court Improvement Program suggests that at the beginning of the termination proceeding, the court should make a threshold determination whether the child is of the age of discretion, if the child is under fourteen years of age. If the child is age fourteen or found to be of the age of discretion, the court should make a finding whether the child objects to the termination of parental rights. The method for determining whether the child objects to the termination is up to the discretion of the court. It is not necessary to ask the child directly whether or not they desire termination of parental rights, if the record is otherwise clear on the child's wishes. Both findings should be included in the court's order. See *Deahl v. Winchester Dep't of Social Servs.*, 224 Va. 664, 299 S.E.2d 863 (1983).

Child's objection to termination of parental rights pursuant to [Va. Code § 16.1-283 \(G\)](#): Notwithstanding any other provisions of [Va. Code § 16.1-283](#), residual parental rights of a parent of a child shall not be terminated if it is established that the child objects to the termination and one of the following is true:

- The child is fourteen years of age or older; or
- The child is otherwise of an age of discretion as determined by the court.

However, the court may terminate the residual parental rights of a parent over the objection of the child if the court finds that any disability of the child reduces the child's developmental age and that the child is not otherwise of an age of discretion.

Interpretations of an “age of discretion”:

- The test for “age of discretion” is whether the child is sufficiently mature to have intelligent views and wishes on the subject. *See* Deahl v. Winchester Dep’t of Social Servs., 224 Va. 664, (1983).
- To determine whether the child is sufficiently mature, [Va. Code § 16.1-283](#) requires the trial court to assess “the particular child’s circumstances, including their capacity, information, intelligence, and judgment.” *See* Pamela J. Hawks, a/k/a Pamela J. Walker v. Dinwiddie Dep’t of Social Servs., 25 Va. App. 247, (1997).

Grounds for termination of residual parental rights, [Va. Code § 16.1-283](#) (B), (C), (D), (E):

Pursuant to [Va. Code § 16.1-283 \(B\)](#), residual parental rights of a parent of a child found by the court to be neglected or abused and placed in foster care as a result of court commitment, entrustment or other voluntary relinquishment by the parent or parents may be terminated if the court finds by clear and convincing evidence that it is in the best interests of the child and that:

- The neglect or abuse suffered by the child presented a serious and substantial threat to his life, health or development; and
- It is not reasonably likely that the conditions that resulted in such neglect or abuse can be substantially corrected or eliminated so as to allow the child’s safe return to his parent within a reasonable period of time.

To make this determination, the court shall take into consideration the efforts made to rehabilitate the parent by any public or private social, medical, mental health or other rehabilitative agencies prior to the child’s initial placement in foster care.

Proof of any of the following shall constitute *prima facie* evidence of this condition:

- The parent is suffering from a mental or emotional illness or mental deficiency of such severity that there is no reasonable expectation that the parent will be able to undertake responsibility

for the care needed by the child in accordance with his age and stage of development; or

- The parent has habitually abused or is addicted to intoxicating liquors, narcotics or other dangerous drugs to the extent that proper parental ability has been seriously impaired and the parent, without good cause, has not responded to or followed through with recommended and available treatment that could have improved the capacity for adequate parental functioning; or
- The parent, without good cause, has not responded to or followed through with appropriate, available and reasonable rehabilitative efforts on the part of social, medical, mental health or other rehabilitative agencies designed to reduce, eliminate or prevent the neglect or abuse of the child.

Note: See [Va. Code § 16.1-228 \(A\)](#) for definition of “abused or neglected child.”

Pursuant to [Va. Code § 16.1-283 \(C\)\(1\)](#), the residual parental rights of a parent of a child placed in foster care as a result of court commitment, an entrustment agreement or other voluntary relinquishment by the parent may be terminated if the court finds, based upon clear and convincing evidence, that it is in the best interests of the child, and that:

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

Pursuant to [Va. Code § 16.1-283 \(C\)\(2\)](#), the residual parental rights of a parent of a child placed in foster care as a result of court commitment, an entrustment agreement or other voluntary relinquishment by the parent may be terminated if the court finds, based upon clear and convincing evidence, that it is in the best interests of the child, and:

- The parent, without good cause and notwithstanding the reasonable and appropriate efforts of social, medical, mental health or other rehabilitative agencies, has been unwilling or unable within a reasonable period not to exceed twelve months from the date the child was placed in foster care to remedy substantially the conditions that led to or required continuation of the child's foster care placement.
- To make this determination, the court shall take into consideration the efforts made to rehabilitate the parent by any public or private social, medical, mental health or other rehabilitative agencies prior to the child's initial placement in foster care.
- Proof that the parent, without good cause, has failed or been unable to make substantial progress towards elimination of the conditions that led to or required continuation of the child's foster care placement in accordance with their obligations under and within the time limits or goals set forth in a foster care plan filed with the court or any other plan jointly designed and agreed to by the parent and agency shall constitute *prima facie* evidence of this condition.

[Virginia Code § 16.1-283 \(D\)](#). The residual parental rights of a parent of a child found by the court to be neglected or abused upon the ground of abandonment may be terminated if the court finds by clear and convincing evidence that it is in the best interests of the child and that all of the following prongs are satisfied:

- Child was abandoned under such circumstances that either the identity or the whereabouts of the parents or parents cannot be determined; and
- Child's parent, guardian or relatives have not come forward to identify such child and claim a relationship to the child within three months following the issuance of a court order placing the child in foster care; and
- Diligent efforts have been made to locate the child's parent or parents without avail.

Pursuant to [Va. Code § 16.1-283 \(E\)](#), residual parental rights of a parent of a child who is in the custody of a local board or licensed agency may be terminated by the court if the court finds by clear and convincing evidence that it is in the best interests of the child and the court makes any of the

following findings. The custodial agency may not be required to make reasonable efforts to reunite the child with a parent under these circumstances:

- The residual parental rights of the parent regarding a sibling of the child have previously been involuntarily terminated; or

The Court Improvement Program recommends that consideration be given to consider the type of evidence required to prove the underlying criminal offense that provides the ground for termination of parental rights, e.g., certified copy of criminal conviction and proof of relationship.

- The parent has been convicted of an offense under the laws of the Commonwealth of Virginia or a substantially similar law of any other state, the United States or any foreign jurisdiction which constitutes murder or voluntary manslaughter, or a felony attempt, conspiracy or solicitation to commit any such offense, if the victim of the offense was a child of the parent, a child with whom the parent resided at the time such offense occurred or the other parent of the child;
- The parent has been convicted of an offense under the laws of the Commonwealth of Virginia or a substantially similar law of any other state, the United States or any foreign jurisdiction which constitutes felony assault resulting in serious bodily injury or felony bodily wounding resulting in serious bodily injury or felony sexual assault, if the victim of the offense was a child of the parent or a child with whom the parent resided at the time of such offense;
or
“Serious bodily injury” means bodily injury which involves substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ or mental faculty.
- The parent has subjected any child to aggravated circumstances.

Terms of the district court form DC-531, ORDER FOR INVOLUNTARY TERMINATION OF RESIDUAL PARENTAL RIGHTS:

A separate order is needed for each parent.

- The order shall continue or grant custody to DSS or grant custody or guardianship to a person with a legitimate interest. In such cases the court shall give consideration to relatives of the child, including grandparents. [Va. Code § 16.1-283 \(A\)](#).
- The order continuing or granting custody to a local board of public welfare or social services or to a licensed child-placing agency shall indicate whether that board or agency shall have the authority to place the child for adoption and consent thereto. [Va. Code § 16.1-283 \(A\)](#).
- When transferring custody of the child to a person with a legitimate interest the district court form DC-559, SUPPLEMENT TO ORDER TRANSFERRING CUSTODY should be used for the findings and orders required by [Va. Code § 16.1-283 \(A1\)](#):
 - The court shall find, after an investigation, that the prospective custodian is one who: is willing and qualified to receive and care for the child; is willing to have a positive, continuous relationship with the child; is committed to providing a permanent, suitable home for the child; and is willing and has the ability to protect the child from abuse and neglect. The court's order shall state these findings.
 - The court's order should further provide for, as appropriate: any terms or conditions that would promote the child's interest and welfare.

The juvenile court shall schedule a date by which the board or agency shall file the first written Adoption Progress Report at the conclusion of the hearing at which termination of parental rights is ordered and authority is given to the local board or agency to place the child for adoption. [Va. Code § 16.1-283 \(F\)](#).

The Court Improvement Program recommends that the order be entered as expeditiously as possible in a termination of parental rights case to promote finality, and so that subsequent actions related to the entry of the order, including appeal and filing of the Adoption Progress Report, are not delayed.

The effective date of an order terminating residual parental rights is the date the order is entered, or signed by the judge. Supreme Court of Virginia Rule 1:1.

§ 63.2-910.2. Petition to Terminate Parental Rights

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

- At the option of the local board, the child is being cared for by a relative;
- The local board has determined that the filing of such a petition would not be in the best interests of the child and has documented a compelling reason for such determination in the child's foster care plan; or
- The local board has not provided to the family of the child, within the time period established in the child's foster care plan, services deemed necessary for the child's safe return home or has not otherwise made reasonable efforts to return the child home, if required under § 473(a)(15)(B)(ii) of Title IV-E of the Social Security Act (42 U.S.C. § 673).

Post-hearing (Adoption Progress Report)

A written Adoption Progress Report shall be filed with the juvenile court by the local board or licensed child-placing agency within six months from the date of the final order terminating parental rights and every six months thereafter until a final order of adoption is entered. [Va. Code § 16.1-283 \(F\)](#).

- The report should detail the progress being made to place the child in an adoptive home.
- A copy of the Adoption Progress Report shall be sent by the court to the guardian *ad litem* for the child.

The court may schedule a hearing on the report with or without the request of a party.

Pursuant to [Va. Code §16.1-282.2](#), the court shall review a foster care plan every twelve months from the date of the permanency planning hearing held pursuant to [Va. Code § 16.1-282.1](#) for any child on whose behalf a petition to terminate parental rights has been granted, filed or ordered to be filed but who remains in the legal custody of a local board of social services or a child welfare agency.

- DSS shall file a district court form DC-554, [PETITION FOR FOSTER CARE REVIEW HEARING](#) pursuant to the provisions of [Va. Code § 16.1-282](#).
- DSS shall file a written Adoption Progress Report pursuant to [Va. Code § 16.1-283 \(F\)](#) with the petition for foster care review hearing. [Va. Code §16.1-282.2 \(A\)](#).
- The district court form DC-555, FOSTER CARE REVIEW ORDER entered at the conclusion of the hearing held on such petition for review shall state whether reasonable efforts were made to place the child in a timely manner in accordance with the approved foster care plan that established a permanent goal for the child and to complete the steps necessary to finalize the permanent placement of the child. [Va. Code §16.1-282.2 \(A\)](#).

Appeals of Termination of Residual Parental Rights Cases - Relevant Statutes and Procedures

- Notice of Appeal
A district court form DC-581, NOTICE OF APPEAL – JUVENILE CIVIL APPEALS must be completed by each appellant to perfect an appeal of a termination of parental rights case. The district court form DC-581 provides for the style of the case to reflect “In Re: the child’s name” in addition to the appellant’s name and appellant’s relationship to the child. This form gives notice to parents and

court staff that the matter is a civil juvenile appeal and, in the case of a termination of parental rights appeal, notice is given that the case should be set to be heard on the merits within ninety days of the date on the notice of appeal. The notice of appeal also requires information regarding the name of the Guardian *ad litem* and the attorneys representing the parties as well as an estimation of the time needed for a hearing. There is no bond or fee requirement for the appeal of termination of parental rights cases.

- Time Requirement

In the case of an appeal of a termination of parental rights case, the trial on the appeal is to be held within ninety days of the date an appeal is noted. [Va. Code § 16.1-296 \(D\)](#).

- Transmittal of File to Circuit Court

Upon the filing of the notice of appeal, the appeal file must be prepared for transmittal to the circuit court clerk's office. Since there is no statute authorizing the withdrawal of a civil juvenile appeal, these cases should be forwarded to the circuit court immediately. The juvenile court should not wait for expiration of the ten-day appeal period for preparation and transmittal of the appeal file. It is recommended that the transmittal of the appeal file be completed within three working days of the filing of the notice of appeal.

- Appeal File

The appeal file includes the district court form DC-575, Confidential Materials – Juvenile Case Appeal/Transfer Transmittal, district court form DC-581, Notice of Appeal – Juvenile Civil Appeals, district court form DC-531, Order for Involuntary Termination of Residual Parental Rights entered by the juvenile court, petition for the termination of parental rights and all exhibits and other papers filed in the trial of the termination of parental rights case in juvenile court. The documents in the file received from the juvenile court should not be reorganized by the circuit court clerk's office since evidence sent forward in the file is in the order received by the juvenile court during the trial.

- Disposition of Foster Care Case during Circuit Court Appeal

The juvenile court retains jurisdiction to hear petitions filed pursuant to [Va. Code §§ 16.1-282](#) (foster care review) and [16.1-](#)

[282.1](#) (permanency planning hearing) during the time of an appeal. Orders of the juvenile court shall continue to be reviewed and enforced by the juvenile court until a circuit court, Court of Appeals of Virginia or Supreme Court of Virginia rules differently. Notice of subsequent foster care proceedings involving the child is not provided to parents after termination of parental rights, by court order, in juvenile court. [Va. Code § 16.1-281 \(C\)](#).

- Remand of Appeal File

The circuit court clerk shall transmit a certified copy of the circuit court order to the juvenile court before or within twenty-one days of entry of the circuit court final order. [Va. Code § 16.1-297](#).

An appeal of the case to the Court of Appeals shall take precedence on the docket of the court. [Va. Code § 16.1-296 \(D\)](#).

Reversal of Voluntary Terminations of Parental Rights

A natural parent whose parental rights to a child have been voluntarily relinquished pursuant to a court proceeding may file a petition pursuant to [Va. Code § 16.1-241 \(K\)](#) to seek reversal of the court order terminating parental rights.

The court shall not accept a petition seeking reversal of a court order terminating parental rights after the child has been placed in the home of adoptive parents.

Transportation of incarcerated witness

- If the presence of a prisoner is essential to the just adjudication and disposition of a petition seeking reversal of a court order terminating parental rights, the judge may issue a district court form DC-354, CUSTODIAL TRANSPORTATION ORDER upon the request of a party or the court's motion.
- The transportation order may direct the Director of the [Department of Corrections](#) or the administrator of the state, local or regional correctional institution to deliver the witness from a state, local or regional correctional institution to the sheriff of the jurisdiction of the court issuing the order. The order shall be executed in accordance with [Va. Code § 8.01-410](#). [Va. Code § 16.1-276.2](#).

Restoration of Parental Rights

If a child is in the custody of the local Department of Social Services and a pre-adoptive parent or parents have not been identified and approved for the child, the child's guardian

ad litem or the local board of social services may file a petition to restore the previously terminated parental rights of the child's parent [Va. Code § 16.1-283.2](#), under the following circumstances:

- The child is at least 14 years of age;
- The child was previously adjudicated to be an abused or neglected child, child in need of services, child in need of supervision, or delinquent child;
- The parent's rights were terminated under a final order pursuant to subsection B, C, or D of [Va. Code § 16.1-283](#) at least two years prior to the filing of the petition to restore parental rights;
- The child has not achieved his permanency goal or the permanency goal was achieved but not sustained; and
- The child, if 14 years of age or older, and the parent whose rights are to be reinstated consent to the restoration of the parental rights.

Notwithstanding the provisions of subsection A, the court may accept (i) a petition involving a child younger than 14 years of age if (a) the child is the sibling of a child for whom a petition for restoration of parental rights has been filed and the child who is younger than 14 years of age meets all other criteria for restoration of parental rights set forth in subsection A, or (b) the child's guardian *ad litem* and the local Department of Social Services jointly file the petition for restoration; or (ii) a petition filed before the expiration of the two-year period following termination of parental rights if the child will turn 18 before the expiration of the two-year period, and the court finds that accepting such a petition is in the best interest of the child.

- Enter the petition in the juvenile civil division.
 - Case type: **RR** (Restoration of Parental Rights)
 - Hearing type: **AJ**
- Serve notice of the hearing along with a copy of the petition on:
 - The former parent of the child whose rights are the subject of the petition,
 - Any other parent who retains legal rights to the child,
 - CASA (if appointed),
 - Either the GAL or DSS, whichever is not the petitioner.

- Appoint counsel for parent whose rights are the subject of the petition.
- At the initial hearing, if the petition is granted, the court will enter the district court form DC-566, PARENTAL PLACEMENT ORDER FOR RESTORATION OF PARENTAL RIGHTS.
- Continuance code: **CPP** (Child Placed with Parent)

Within 60 days of the filing of the petition and prior to the entry of the order, DSS shall develop a written placement plan for the child. Such plan shall be incorporated into the court order. Following the placement DSS will make three visits within six months to evaluate the placement. Upon completion of the visitation required, DSS shall make a written report to the court. Upon receipt of the report, the court shall serve notice of the hearing, along with a copy of the report on:

- The former parent of the child whose rights are the subject of the petition,
- Any other parent who retains legal rights to the child,
- CASA (if appointed),
- GAL.

If the petition is granted, the court shall enter an order, Notice of district court form DC-567, ORDER FOR RESTORATION OF PARENTAL RIGHTS, restoring the parental rights of the child's parent.

For good cause shown, the court may revoke its order permitting the placement of a child with their former parent at any time prior to the entry of an order restoring parental rights to the former parent of the child. A petition for restoration filed while the child is younger than 18 shall not become invalid because the child reaches 18 prior to the entry of an order of restoration. The granting of a petition under this section does not vacate the findings of fact or conclusion of law contained in the original order that terminated the parental rights of the child's parent.

Petition for Approval of Voluntary Continuing Services and Support Agreement (Fostering Futures Program)

Va. Code § 16.1-283.3

The petition is filed by the local Department of Social Services (DSS) on behalf of a person between the ages of 18 and 21 who was formerly in foster care as a minor to enter into an agreement with the local DSS to continue receiving services until age 21.

The DC-595, PETITION FOR APPROVAL OF VOLUNTARY CONTINUING SERVICES AND SUPPORT AGREEMENT is indexed in the civil division using the case type **'VA'**. The court may consider appointing counsel to represent the young adult. If counsel is appointed, the court should consider

appointing the attorney who previously served as guardian *ad litem*. If a hearing is not currently scheduled, set the hearing within 45 days. Valid final dispositions are PA-plan approved, PD-plan disapproved or W-withdrawn. The court enters the order on the DC-596, ORDER APPROVING VOLUNTARY CONTINUING SERVICES AND SUPPORT AGREEMENT.

Qualified Residential Treatment (QRT) Placement

The process will be applicable in foster care cases in which the children are in agency custody and the child is placed in a Qualified Residential Treatment (QRTP) facility. The process does not apply to cases in which the child is still in parental custody.

DSS must file the DC-5060, Petition For Foster Care Placement Hearing (Qualified Residential Treatment Program) within 60 days of the child being admitted to the facility. This petition can be filed in conjunction with an existing petition such as foster care review, permanency planning hearing, etc). The hearing for the QRTP can be heard with other petitions as long as the hearing date is within the 60-day timeframe.

The order for approving the placement is the DC-5062, Qualified Residential Treatment Program (QRTP) Placement Supplemental Order. The petitions and orders associated with the placement have places where the agency can indicate the child is in a QRT facility and a place for the court to indicate the supplemental order is attached.

The agency can also file the DC-5060, Petition For Foster Care Placement Hearing (Qualified Residential Treatment Program) and schedule a stand-alone hearing in order to comply with the 60-day timeframe. In these cases, the court would enter the DC-5061, Foster Care Placement Order (Qualified Residential Treatment Program).

The DC-5062, QRTP Placement Supplemental Order is to be used as the initial court approval of the placement if heard in conjunction with another foster care hearing as well as to be used for subsequent court reviews of the placement.

The case type for these petitions will be 'QR'-Qualified Residential and the valid dispositions will be 'G'-Granted, 'D'-Dismissed and 'W'-Withdrawn.

The DC-5062 Qualified Residential Treatment Plan Supplemental page is a new tab within the DC-553 Disposition Order, DC-555 Foster Care Review Order, and the DC-557 Permanency Planning Order.

If the child's placement in a Qualified Residential Treatment Program is disrupted and the child is placed in a new QRTP, the process for approving the placement begins again with the filing of the DC-5060 Petition For Foster Care Placement Hearing (Qualified Residential Treatment Program) and a hearing within 60 days of placement.

Foster Care Youth Committed to DJJ And Returning to the Custody of DSS

[Virginia Code § 16.1-278.7](#) provides that “No juvenile court or circuit court shall order the commitment of any child jointly to the Department of Juvenile Justice and to a local board of social services or transfer the custody of a child jointly to a court service unit of a juvenile court and to a local board of social services.” Therefore, if a youth, who is in the custody of the local department of social services (DSS), is found guilty on a delinquency charge and is committed to DJJ, custody of the youth by the DSS ceases for the period of time that the youth is committed to DJJ. The DC-572, JUVENILE COMMITMENT ORDER, operates to transfer responsibility for the youth from the DSS to DJJ. It is not necessary or appropriate for the DSS to request to be relieved of custody of the youth given the possibility of the youth returning to the custody of the DSS upon their release from DJJ and benefiting from the permanency planning process.

Post DJJ Commitment – Foster Care Youth Released Prior to Attaining 18 Years of Age

The recommended process for returning to the DSS a youth who has not yet attained the age of 18 and who was in the custody of the DSS immediately prior to commitment to DJJ is provided below. This process supports the responsibilities of the DSS and DJJ identified in a Memorandum of Agreement (MOA) entered into by the Virginia Department of Social Services and Virginia Department of Juvenile.

Justice on August 31, 2015. A youth returning to the custody of the DSS from DJJ is not eligible for Title IV-E funding.

Applicable Code

A youth who was in foster care immediately prior to commitment to DJJ and who is released from commitment prior to attaining 18 years of age shall return to the custody of the DSS, unless an alternative arrangement for the custody of the youth has been made and communicated to DJJ in writing. [Va. Code § 16.1-293](#), provides: In the event that the person was in the custody of the local department of social services immediately prior to his commitment to the Department and has not attained the age of 18 years, the local department of social services shall resume custody upon the person’s release from commitment, unless an alternative arrangement for the custody of the person has been made and communicated in writing to the Department.

At least 90 days prior to the person’s release from commitment on parole supervision, (i) the court services unit shall consult with the local department of social services concerning return of the person to the locality and the placement of the person and (ii) the local department of social services and the court services unit shall collaborate to develop a plan that prepares the person for successful transition from the

Department's commitment to the custody of the local department of social services or to an alternative custody arrangement if applicable. The plan shall identify the services necessary for such transition and how the services are to be provided. The court services unit will be responsible for supervising the person's terms and conditions of parole.

Forms

- DC-554, Petition For Foster Care Review Hearing
- DC-555, Foster Care Review Order
- DC-556, Petition For Permanency Planning Hearing
- DC-557, Permanency Planning Order

Timing Considerations

- The DSS, in collaboration with DJJ, will coordinate a Family Partnership Meeting to be held six (6) months and again, at ninety (90) days prior to the youth's anticipated release date. The individuals invited to participate, as well as the items to be discussed and addressed during these meetings are outlined in the MOA.
- The DSS and DJJ will conduct a conference call thirty (30) days prior to the youth's scheduled release date to review the re-entry plan and the youth's progress with services. The individuals required to participate, as well as the items to be discussed and confirmed, are outlined in the MOA.
- The DSS will file a DC-554, PETITION FOR FOSTER CARE REVIEW HEARING, in accordance with [§ 16.1-282](#) or DC-556, PETITION FOR PERMANENCY PLANNING HEARING, in accordance with [§ 16.1-282.1](#), as appropriate, 30 days prior to the youth's anticipated release date to docket the case in the appropriate Juvenile and Domestic Relations District Court.
- The Court will schedule a hearing on petition to be held within 30 days of the filing.
- The Court will hold the hearing on petition within 30 days of the filing of the petition.

Court's Role

- Docket the DC-554, PETITION FOR FOSTER CARE REVIEW HEARING, or DC-556, PETITION FOR PERMANENCY PLANNING HEARING for a hearing and hold a hearing on the petition. Such hearing should be docketed and held within 30 days of the agency's filing of the petition. At this

hearing, the court will enter a DC-555, FOSTER CARE REVIEW ORDER, or DC-557, PERMANENCY PLANNING ORDER, as appropriate, to dispose of the petition.

- Satisfy general notice provisions in state law related to the filing of a DC-554, PETITION FOR FOSTER CARE REVIEW HEARING, or DC-556, PETITION FOR PERMANENCY PLANNING HEARING.
- Hold subsequent foster care review hearings and permanency planning hearings within the required timelines once the above initial court hearing is held.

Post DJJ Commitment – Foster Care Youth Released After Attaining 18 Years of Age

If a youth is released from DJJ after attaining 18 years of age, and the DSS will no longer have placement and care responsibility for the youth, the foster care case with the court should be closed. While practice varies across the state, recommended best practice is for the DSS to notify the court of the youth's status, preferably by motion. The DC-630, MOTION TO AMEND OR REVIEW (CUSTODY), could be used, completed with information on the reason(s) that closure of the case and removal from the court's docket is requested. Some DSS's notify the court of such change in the case by letter. Established procedures for handling and following up on such a request should be followed.