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SENATE BILL NO. 412

Offered January 12, 2022

Prefiled January 11, 2022

A BILL to amend and reenact §§ 16.1-283 and 63.2-910.2 of the Code of Virginia, relating to termination of parental rights; murder of child.

Patron—Morrissey

Referred to Committee on the Judiciary

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-283 and 63.2-910.2 of the Code of Virginia are amended and reenacted as follows:

§ 16.1-283. Termination of residual parental rights.

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

Any order terminating residual parental rights shall be accompanied by an order continuing or granting custody to a local board of social services or to a licensed child-placing agency or transferring custody to a person with a legitimate interest. However, in such cases, the court shall give a consideration to granting custody to a person with a legitimate interest, and if custody is not granted to a person with a legitimate interest, the judge shall communicate to the parties the basis for such decision either orally or in writing. An order continuing or granting custody to a local board of social services or to a licensed child-placing agency shall indicate whether that board or agency shall have the authority to place the child for adoption and consent thereto.

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

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

B. The residual parental rights of a parent or parents of a child found by the court to be neglected or abused and placed in foster care as a result of (i) court commitment; (ii) an entrustment agreement entered into by the parent or parents; or (iii) other voluntary relinquishment by the parent or parents 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:

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

2. It is not reasonably likely that the conditions which resulted in such neglect or abuse can be substantially corrected or eliminated so as to allow the child's safe return to his parent or parents within a reasonable period of time. In making this determination, the court shall take into consideration the efforts made to rehabilitate the parent or parents by any public or private social, medical, mental health or other rehabilitative agencies prior to the child's initial placement in foster care.

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

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

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

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

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

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

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

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

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

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

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

104 E. The residual parental rights of a parent or parents of a child who is in the custody of a local
105 board or licensed child-placing agency may be terminated by the court if the court finds, based upon
106 clear and convincing evidence, that it is in the best interests of the child and that (i) the residual
107 parental rights of the parent regarding a sibling of the child have previously been involuntarily
108 terminated; (ii) the parent has been convicted of an offense under the laws of the Commonwealth or a
109 substantially similar law of any other state, the United States or any foreign jurisdiction that constitutes
110 murder or voluntary manslaughter, or a felony attempt, conspiracy or solicitation to commit any such
111 offense, if the victim of the offense was a child of the parent, a child with whom the parent resided at
112 the time such offense occurred or the other parent of the child; (iii) the parent has been convicted of an
113 offense under the laws of the Commonwealth or a substantially similar law of any other state, the
114 United States or any foreign jurisdiction that constitutes felony assault resulting in serious bodily injury
115 or felony bodily wounding resulting in serious bodily injury or felony sexual assault, if the victim of the
116 offense was a child of the parent or a child with whom the parent resided at the time of such offense; or
117 (iv) the parent has subjected any child to aggravated circumstances. *The residual parental rights of a*
118 *parent shall be terminated by the court if the court finds, based upon clear and convincing evidence,*
119 *that it is in the best interests of the child and that the parent has been convicted of an offense under the*
120 *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, and the victim of the offense was the child of the parent over whom parental rights would be terminated.

As used in this section:

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

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

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

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

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

F. The local board or licensed child-placing agency to which authority is given to place the child for adoption and consent thereto after an order terminating parental rights is entered shall file a written Adoption Progress Report with the juvenile court on the progress being made to place the child in an adoptive home. The report shall be filed with the court every six months from the date of the final order terminating parental rights until a final order of adoption is entered on behalf of the child in the circuit court. At the conclusion of the hearing at which termination of parental rights is ordered and authority is given to the local board or licensed child-placing agency to place the child for adoption, the juvenile court shall schedule a date by which the board or agency shall file the first written Adoption Progress Report required by this section. A copy of the Adoption Progress Report shall be sent by the court to the guardian ad litem for the child. The court may schedule a hearing on the report with or without the request of a party.

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

§ 63.2-910.2. Petition to terminate parental rights.

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

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

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

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

B. *The local board shall file a petition to terminate the parental rights of a parent who has been*

182 *convicted of an offense under the laws of the Commonwealth or a substantially similar law of any other*
183 *state, the United States, or any foreign jurisdiction that constitutes murder or voluntary manslaughter,*
184 *or a felony attempt, conspiracy, or solicitation to commit any such offense, if the victim of the offense*
185 *was the child of the parent over whom parental rights would be terminated.*

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