



COMMONWEALTH OF VIRGINIA

Commission on Youth

# Study of the Restoration of Parental Rights

October 17, 2012

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# Study Mandate



- During the 2012 General Assembly Session, Delegate Toscano and Senators Barker and Favola each introduced legislation for the restoration of parental rights.
- The Senate and House Courts of Justice Committees reviewed these bills and, determining that further study of this issue would be appropriate, requested the Commission on Youth to explore the issue.
- On May 14, 2012, the Commission on Youth adopted a study plan to study the feasibility of creating a procedure for the restoration of terminated parental rights and the policy implications of such a procedure.



## Advisory Group Membership

- Catholic Charities of Eastern Virginia
- Commission on Youth Members
- Comprehensive Services Act Coordinators
- CASA Representatives
- FACES of Virginia Families
- Family Foundation
- General Assembly Members
- Guardians ad Litem
- Juvenile and Domestic Relations Court Judges
- Local Departments of Social Services
- Office of Comprehensive Services
- Special Advisor to the Governor
- Supreme Court of Virginia
- United Methodist Family Services
- Virginia Department of Aging
- Virginia Department of Social Services
- Virginia Poverty Law Center
- Voices for Virginia's Children



## Advisory Group Meeting Dates

August 20, 2012

September 17, 2012

# Identified Issues



## Older Youth in Foster Care

- Foster care is intended to be a temporary safety net for children who are abused or neglected. Ideally, children exit foster care by reunifying with a birth parent, living with a guardian, or being adopted.
- Unfortunately, the child welfare system does not locate a family for every child. In 2010, 11% of children exiting the system did so by “aging out,” meaning they were emancipated from foster care at age 18 or older without a safe and permanent family. Virginia ranks first among the states in the percent of children who age out of foster care without a permanent placement.
- In 2011, the Virginia Department of Social Services reported that 18 youth aged out of foster care following the termination of their parents’ parental rights.
- When youth age out of foster care, they lack the moral and financial support of parents, relatives, and other supportive adults. These children face especially difficult odds as they transition to adulthood, finding themselves at risk for homelessness, exposure to or involvement in the criminal justice system, and reliance on public assistance.

# Termination of Parental Rights



## Virginia Code § 16.1-283(A)

- A petition specifically requesting Termination of Parental Rights must be filed, but it shall not be accepted by the court prior to the filing of a foster care plan which documents termination as being in the child's best interests. The petition may be heard and adjudicated in the same proceeding in which the court approves the foster care plan.
- The local board of social services or licensed child-placing agency need not have identified an available and eligible family to adopt the child prior to the order terminating parental rights.
- An order terminating parental rights must 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 relative or other interested individual.

# Termination of Parental Rights



## Virginia Code § 16.1-283(B)

The court may terminate a parent's parental rights if the child is found to be neglected or abused and placed in foster care as a result of court commitment, an entrustment agreement, or other voluntary relinquishment, and:

- The neglect or abuse presented a serious and substantial threat to the child's life, health, or development, and
- It is not reasonably likely that the conditions can be substantially corrected or eliminated within a reasonable period of time. Proof of a parent's severe mental or emotional illness or intellectual disability; habitual abuse or addiction to intoxicating liquors, narcotics, or other dangerous drugs; or failure to respond to rehabilitative efforts constitutes prima facie evidence of such conditions.

# Termination of Parental Rights



## Virginia Code § 16.1-283(C)

The court may terminate a parent's parental rights if the child has been placed in foster care as a result of court commitment, an entrustment agreement, or other voluntary relinquishment, and despite the reasonable efforts of rehabilitative agencies:

- The parent has, without good cause, failed to maintain continuing contact with the child for a period of six months; or
- The parent has, without good cause, been unwilling or unable to remedy substantially the conditions which led to the child's foster care placement within a period of twelve months.

# Termination of Parental Rights



## Virginia Code § 16.1-283(D)

The court may terminate a parent's parental rights if the child was abandoned under such circumstances that either the identify or the whereabouts of the parent cannot be determined, and the child's parent or other relative has not come forward to identify the child and to claim a relationship to the child.

# Termination of Parental Rights



## Virginia Code § 16.1-283(E)

The court may terminate a parent's parental rights if:

- The residual parental rights to another child have been involuntarily terminated;
- The parent has subjected the child to aggravated circumstances, meaning torture, chronic/severe abuse, or chronic/severe sexual abuse, or the parent has failed to protect the child from such aggravated circumstances; or
- The parent has been convicted of murder or voluntary manslaughter of a child of the parent, a child with whom the parent resided, or another parent of the child; felony attempt, conspiracy, or solicitation to commit such an offense; or a felony assault that results in serious bodily injury, felony bodily wounding, or felony sexual assault, and the victim was a child of the parent or a child residing with the parent.

# 2012 Introduced Legislation



In the 2012 General Assembly Session, three related bills (HB 450, Toscano; SB 218, Barker; and SB 555, Favola) were introduced to add a section to the *Code of Virginia*, creating a procedure for restoring the parental rights of a parent whose rights to his or her child had been previously terminated, provided certain conditions exist.

All three bills required that a court must find by clear and convincing evidence that restoration was in the child's best interest.

# 2012 Introduced Legislation



The House and Senate bills differed in two areas: who is permitted to file a petition for restoration and who must consent to the restoration.

| HB 450   | SB 218/SB 555  |
|--|--|
| The petition may be filed by <i>the local board of social services</i> OR <u><i>the child's guardian ad litem.</i></u> | The petition may be filed by <i>the local board of social services</i> OR <u><i>the child's guardian ad litem jointly with the child's parent.</i></u> |
| <u><i>Both the child and the parent whose rights are to be restored must consent to the restoration.</i></u>           | <u><i>The child must consent to the restoration.</i></u>   |

# Policy Considerations



- When youth age out of foster care, they lack the moral and financial support of parents and relatives. Studies show they are at risk for homelessness, alcohol and substance abuse, involvement in the criminal justice system, and reliance on public assistance.
- Restoration of parental rights would provide judges with a tool to reunite these youth with their parents where it is safe and in their best interests.
- The availability of a restoration procedure might motivate a youth and/or a parent to resist or interfere with the youth's adoption.
- Restoration results in returning a youth to a home from which he or she was previously removed, raising safety concerns.

# Recommendation



**Amend the *Code of Virginia* by adding a section numbered 16.1-283.2, providing a procedure to restore the parental rights of a parent whose rights had been previously terminated, *with the following conditions:***

# Recommended Legislation—Policy Options

- Age of Juvenile  
**14 years of age**
- Exceptions to Age Requirement

## **Younger Sibling Exception**

*The juvenile must be a certain age, or a younger sibling of a juvenile of sufficient age for whom restoration is being sought, and the younger sibling independently meets the criteria for restoration.*

## **LDSS and GAL File Jointly**

*A restoration petition may be filed for a juvenile who does not meet the age requirement where his or her guardian ad litem and the local department of social services jointly file the petition for restoration.*

*continued*

# Recommended Legislation—Policy Options

- Who May File

**The local departments of social services (LDSS) OR**  
**The juvenile's guardian ad litem**

- Required Time Period Post-Termination

**Two years**

- Time Period Exception

**18<sup>th</sup> Birthday Exception**

*Where the required two year time period would expire after the juvenile's 18<sup>th</sup> birthday, the petition may be brought sooner.*

*continued*

# Recommended Legislation—Policy Options

- Who Must Consent
  - The juvenile AND
  - The parent whose rights are being restored
- Limit the availability of the restoration procedure for those cases in which a parent's parental rights were terminated pursuant to § 16.1-283(B), (C), or (D).
- Provide for a transitional period, during which the juvenile is in the physical custody of the parent and the legal custody of the local department of social services.