

# VIRGINIA ACTS OF ASSEMBLY -- 2000 SESSION

## CHAPTER 830

*An Act to amend and reenact §§ 16.1-241, 16.1-243, 16.1-262, 17.1-275, 17.1-405, 17.1-410, 20-124.1, 20-158, 20-160, 22.1-3, 63.1-195, 63.1-203, 63.1-204, 63.1-209 and 63.1-238.1 of the Code of Virginia, to amend the Code of Virginia by adding in Title 63.1 a chapter numbered 10.2, containing articles numbered 1 through 6, consisting of sections numbered 63.1-219.7 through 63.1-219.55, and to repeal Chapter 11 (§§ 63.1-220 through 63.1-238.02) of Title 63.1 of the Code of Virginia, relating to adoption; penalty.*

[S 685]

Approved April 9, 2000

### **Be it enacted by the General Assembly of Virginia:**

**1. That §§ 16.1-241, 16.1-243, 16.1-262, 17.1-275, 17.1-405, 17.1-410, 20-124.1, 20-158, 20-160, 22.1-3, 63.1-195, 63.1-203, 63.1-204, 63.1-209 and 63.1-238.1 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Title 63.1 a chapter numbered 10.2, containing articles numbered 1 through 6, consisting of sections numbered 63.1-219.7 through 63.1-219.55, as follows:**

#### **§ 16.1-241. Jurisdiction.**

The judges of the juvenile and domestic relations district court elected or appointed under this law shall be conservators of the peace within the corporate limits of the cities and the boundaries of the counties for which they are respectively chosen and within one mile beyond the limits of such cities and counties. Except as hereinafter provided, each juvenile and domestic relations district court shall have, within the limits of the territory for which it is created, exclusive original jurisdiction, and within one mile beyond the limits of said city or county, concurrent jurisdiction with the juvenile court or courts of the adjoining city or county, over all cases, matters and proceedings involving:

#### **A. The custody, visitation, support, control or disposition of a child:**

1. Who is alleged to be abused, neglected, in need of services, in need of supervision, a status offender, or delinquent except where the jurisdiction of the juvenile court has been terminated or divested;

2. Who is abandoned by his parent or other custodian or who by reason of the absence or physical or mental incapacity of his parents is without parental care and guardianship;

2a. Who is at risk of being abused or neglected by a parent or custodian who has been adjudicated as having abused or neglected another child in the care of the parent or custodian;

3. Whose custody, visitation or support is a subject of controversy or requires determination. In such cases jurisdiction shall be concurrent with and not exclusive of courts having equity jurisdiction, except as provided in § 16.1-244;

4. Who is the subject of an entrustment agreement entered into pursuant to § 63.1-56 or § 63.1-204 or whose parent or parents for good cause desire to be relieved of his care and custody;

5. Where the termination of residual parental rights and responsibilities is sought. In such cases jurisdiction shall be concurrent with and not exclusive of courts having equity jurisdiction, as provided in § 16.1-244; and

#### **6. Who is charged with a traffic infraction as defined in § 46.2-100.**

In any case in which the juvenile is alleged to have committed a violent juvenile felony enumerated in subsection B of § 16.1-269.1, and for any charges ancillary thereto, the jurisdiction of the juvenile court shall be limited to conducting a preliminary hearing to determine if there is probable cause to believe that the juvenile committed the act alleged and that the juvenile was fourteen years of age or older at the time of the commission of the alleged offense, and any matters related thereto. In any case in which the juvenile is alleged to have committed a violent juvenile felony enumerated in subsection C of § 16.1-269.1, and for all charges ancillary thereto, if the attorney for the Commonwealth has given notice as provided in subsection C of § 16.1-269.1, the jurisdiction of the juvenile court shall be limited to conducting a preliminary hearing to determine if there is probable cause to believe that the juvenile committed the act alleged and that the juvenile was fourteen years of age or older at the time of the commission of the alleged offense, and any matters related thereto. A determination by the juvenile court following a preliminary hearing pursuant to subsection B or C of § 16.1-269.1 to certify a charge to the grand jury shall divest the juvenile court of jurisdiction over the charge and any ancillary charge. In any case in which a transfer hearing is held pursuant to subsection A of § 16.1-269.1, if the juvenile court determines to transfer the case, jurisdiction of the juvenile court over the case shall be divested as provided in § 16.1-269.6.

In all other cases involving delinquent acts, and in cases in which an ancillary charge remains after a violent juvenile felony charge has been dismissed or a violent juvenile felony has been reduced to a

lesser offense not constituting a violent juvenile felony, the jurisdiction of the juvenile court shall not be divested unless there is a transfer pursuant to subsection A of § 16.1-269.1.

The authority of the juvenile court to adjudicate matters involving the custody, visitation, support, control or disposition of a child shall not be limited to the consideration of petitions filed by a mother, father or legal guardian but shall include petitions filed at any time by any party with a legitimate interest therein. A party with a legitimate interest shall be broadly construed and shall include, but not be limited to, grandparents, stepparents, former stepparents, blood relatives and family members. A party with a legitimate interest shall not include any person (i) whose parental rights have been terminated by court order, either voluntarily or involuntarily, or any other person whose interest in the child derives from or through such person whose parental rights have been so terminated, including, but not limited to, grandparents, stepparents, former stepparents, blood relatives and family members, if the child subsequently has been legally adopted, except where a final order of adoption is entered pursuant to ~~§ 63.1-231~~ § 63.1-219.48, or (ii) who has been convicted of a violation of subsection A of § 18.2-61, § 18.2-63 or subsection B of § 18.2-366 when the child who is the subject of the petition was conceived as a result of such violation. The authority of the juvenile court to consider a petition involving the custody of a child shall not be proscribed or limited where the child has previously been awarded to the custody of a local board of social services.

B. The admission of minors for inpatient treatment in a mental health facility in accordance with the provisions of Article 16 (§ 16.1-335 et seq.) of this chapter and the commitment of a mentally ill person or judicial certification of eligibility for admission to a treatment facility of a mentally retarded person in accordance with the provisions of Chapters 1 (§ 37.1-1 et seq.) and 2 (§ 37.1-63 et seq.) of Title 37.1. Jurisdiction of the commitment and certification of adults shall be concurrent with the general district court.

C. Except as provided in subsections D and H hereof, judicial consent to such activities as may require parental consent may be given for a child who has been separated from his parents, guardian, legal custodian or other person standing in loco parentis and is in the custody of the court when such consent is required by law.

D. Judicial consent for emergency surgical or medical treatment for a child who is neither married nor has ever been married, when the consent of his parent, guardian, legal custodian or other person standing in loco parentis is unobtainable because such parent, guardian, legal custodian or other person standing in loco parentis (i) is not a resident of this Commonwealth, (ii) has his whereabouts unknown, (iii) cannot be consulted with promptness, reasonable under the circumstances, or (iv) fails to give such consent or provide such treatment when requested by the judge to do so.

E. Any person charged with deserting, abandoning or failing to provide support for any person in violation of law.

F. Any parent, guardian, legal custodian or other person standing in loco parentis of a child:

1. Who has been abused or neglected;
2. Who is the subject of an entrustment agreement entered into pursuant to § 63.1-56 or § 63.1-204 or is otherwise before the court pursuant to subdivision A 4 of this section; or
3. Who has been adjudicated in need of services, in need of supervision, or delinquent, if the court finds that such person has by overt act or omission induced, caused, encouraged or contributed to the conduct of the child complained of in the petition.

G. Petitions filed by or on behalf of a child or such child's parent, guardian, legal custodian or other person standing in loco parentis for the purpose of obtaining treatment, rehabilitation or other services which are required by law to be provided for that child or such child's parent, guardian, legal custodian or other person standing in loco parentis. Jurisdiction in such cases shall be concurrent with and not exclusive of that of courts having equity jurisdiction as provided in § 16.1-244.

H. Judicial consent to apply for a work permit for a child when such child is separated from his parents, legal guardian or other person standing in loco parentis.

I. The prosecution and punishment of persons charged with ill-treatment, abuse, abandonment or neglect of children or with any violation of law which causes or tends to cause a child to come within the purview of this law, or with any other offense against the person of a child. In prosecution for felonies over which the court has jurisdiction, jurisdiction shall be limited to determining whether or not there is probable cause.

J. All offenses in which one family or household member is charged with an offense in which another family or household member is the victim and all offenses under § 18.2-49.1.

In prosecution for felonies over which the court has jurisdiction, jurisdiction shall be limited to determining whether or not there is probable cause. Any objection based on jurisdiction under this subsection shall be made before a jury is impaneled and sworn in a jury trial or, in a nonjury trial, before the earlier of when the court begins to hear or receive evidence or the first witness is sworn, or it shall be conclusively waived for all purposes. Any such objection shall not affect or be grounds for challenging directly or collaterally the jurisdiction of the court in which the case is tried.

K. Petitions filed by a natural parent, whose parental rights to a child have been voluntarily relinquished pursuant to a court proceeding, to seek a reversal of the court order terminating such

parental rights. No such petition shall be accepted, however, after the child has been placed in the home of adoptive parents.

L. Any person who seeks spousal support after having separated from his spouse. A decision under this subdivision shall not be res judicata in any subsequent action for spousal support in a circuit court. A circuit court shall have concurrent original jurisdiction in all causes of action under this subdivision.

M. Petitions filed for the purpose of obtaining an order of protection pursuant to § 16.1-253.1 or § 16.1-279.1.

N. Any person who escapes or remains away without proper authority from a residential care facility in which he had been placed by the court or as a result of his commitment to the Virginia Department of Juvenile Justice.

O. Petitions for emancipation of a minor pursuant to Article 15 (§ 16.1-331 et seq.) of this chapter.

P. Petitions for enforcement of administrative support orders entered pursuant to Chapter 13 (§ 63.1-249 et seq.) of Title 63.1, or by another state in the same manner as if the orders were entered by a juvenile and domestic relations district court upon the filing of a certified copy of such order in the juvenile and domestic relations district court.

Q. Petitions for a determination of parentage pursuant to Chapter 3.1 (§ 20-49.1 et seq.) of Title 20.

R. Petitions for the purpose of obtaining an emergency protective order pursuant to § 16.1-253.4.

S. Petitions filed by school boards against parents pursuant to §§ 16.1-241.2 and 22.1-279.3.

T. Petitions to enforce any request for information or subpoena that is not complied with or to review any refusal to issue a subpoena in an administrative appeal regarding child abuse and neglect pursuant to § 63.1-248.6:1.

U. Petitions filed in connection with parental placement adoption consent hearings, pursuant to ~~§ 63.1-220.3~~ § 63.1-219.40. Such proceedings shall be advanced on the docket so as to be heard by the court within ten days of filing of the petition, or as soon thereafter as practicable so as to provide the earliest possible disposition.

V. Petitions filed by a juvenile seeking judicial authorization for a physician to perform an abortion if a minor elects not to allow notice to an authorized person. After a hearing, a judge may authorize a physician to perform an abortion upon finding that the minor is mature and capable of giving informed consent to the proposed abortion. If the judge determines that the minor is not mature, the judge shall, after a hearing, determine whether the performance of an abortion upon the minor without notice to an authorized person would be in the minor's best interest, and if the court finds that the abortion would be in the minor's best interest, it shall so authorize a physician.

The minor may participate in the court proceedings on her own behalf, and the court may appoint a guardian ad litem for the minor. The court shall advise the minor that she has a right to counsel and shall, upon her request, appoint counsel for her.

Court proceedings under this subsection shall be confidential and shall be given precedence over other pending matters so that the court may reach a decision promptly and without delay in order to serve the best interests of the minor. Court proceedings under this subsection shall be heard as soon as practicable but in no event later than four days after the petition is filed.

Notwithstanding any other provision of law, an expedited confidential appeal to the circuit court shall be available to any minor for whom the court denies an order authorizing an abortion without notice. Any such appeal shall be heard and decided no later than five days after the appeal is filed. An order authorizing an abortion without notification shall not be subject to appeal.

No filing fees shall be required of the minor at trial or upon appeal.

If either the original court or the circuit court fails to act within the time periods required by this subsection, the court before which the proceeding is pending shall immediately authorize a physician to perform the abortion without notice to an authorized person.

A physician shall not knowingly perform an abortion upon an unemancipated minor unless notice has been given or the minor delivers to the physician a court order entered pursuant to this section. However, neither notice nor judicial authorization shall be required if the minor declares that she is abused or neglected and the attending physician has reason to suspect that the minor may be an abused or neglected child as defined in § 63.1-248.2 and reports the suspected abuse or neglect in accordance with § 63.1-248.3; or if, in the attending physician's good faith medical judgment, (i) the abortion is medically necessary immediately to avert the minor's death or (ii) there is insufficient time to provide the required notice or judicial authorization because a delay would create a serious risk of substantial impairment of a major bodily function or substantial physical injury. The attending physician shall certify the facts justifying the exception in the minor's medical record.

For purposes of this subsection:

"Authorized person" means (i) a parent or duly appointed legal guardian or custodian of the minor or (ii) a person standing in loco parentis, including, but not limited to, a grandparent or adult sibling with whom the minor regularly and customarily resides and who has care and control of the minor.

"Notice" means that (i) the physician or his agent has given actual notice of his intention to perform such abortion to an authorized person, either in person or by telephone, at least twenty-four hours previous to the performance of the abortion; or (ii) the physician or his agent, after a reasonable effort

to notify an authorized person, has mailed notice to an authorized person by certified mail, addressed to such person at his usual place of abode, with return receipt requested, at least seventy-two hours prior to the performance of the abortion; or (iii) at least one authorized person is present with the minor seeking the abortion; or (iv) the minor has delivered to the physician a written statement signed by an authorized person and witnessed by a competent adult that the authorized person knows of the minor's intent to have an abortion.

"Perform an abortion" means to interrupt or terminate a pregnancy by any surgical or nonsurgical procedure or to induce a miscarriage as provided in §§ 18.2-72, 18.2-73 or § 18.2-74.

"Unemancipated minor" means a minor who has not been emancipated by (i) entry into a valid marriage, even though the marriage may have been terminated by dissolution; (ii) active duty with any of the armed forces of the United States; (iii) willingly living separate and apart from his or her parents or guardian, with the consent or acquiescence of the parents or guardian; or (iv) entry of an order of emancipation pursuant to Article 15 (§ 16.1-331 et seq.) of this chapter.

W. Petitions filed pursuant to Article 17 (§ 16.1-349 et seq.) of this chapter relating to standby guardians for minor children.

The ages specified in this law refer to the age of the child at the time of the acts complained of in the petition.

Notwithstanding any other provision of law, no fees shall be charged by a sheriff for the service of any process in a proceeding pursuant to subdivision 3 of subsection A or subsection B, D, M or R of this section.

Notwithstanding the provisions of § 18.2-71, any physician who performs an abortion in violation of subsection V shall be guilty of a Class 3 misdemeanor.

#### § 16.1-243. Venue.

##### A. Original venue:

1. Cases involving children, other than support or where protective order issued: Proceedings with respect to children under this law, except support proceedings as provided in subdivision 2 of this subsection or family abuse proceedings as provided in subdivision 3 of this subsection, shall:

a. Delinquency: If delinquency is alleged, be commenced in the city or county where the acts constituting the alleged delinquency occurred or they may, with the written consent of the child and the attorney for the Commonwealth for both jurisdictions, be commenced in the city or county where the child resides;

b. Custody or visitation: In cases involving custody or visitation, be commenced in the court of the city or county which, in order of priority, (i) is the home of the child at the time of the filing of the petition, or had been the home of the child within six months before the filing of the petition and the child is absent from the city or county because of his removal or retention by a person claiming his custody or for other reasons, and a parent or person acting as a parent continues to live in the city or county, (ii) has significant connection with the child and in which there is substantial evidence concerning the child's present or future care, protection, training and personal relationships, (iii) is where the child is physically present and the child has been abandoned or it is necessary in an emergency to protect the child because he has been subjected to or threatened with mistreatment or abuse or is otherwise neglected or dependent, or (iv) it is in the best interest of the child for the court to assume jurisdiction as no other city or county is an appropriate venue under the preceding provisions of this subdivision;

c. Adoption: In parental placement adoption consent hearings pursuant to §§ 16.1-241 and ~~63.1-220.3, 63.1-219.40 and 63.1-219.44~~, be commenced (i) in the city or county where the child to be adopted was born, (ii) in the city or county where the birth parent(s) reside, or (iii) in the city or county where the prospective adoptive parent(s) reside; and

d. All other cases: In all other proceedings, be commenced in the city or county where the child resides or in the city or county where the child is present when the proceedings are commenced.

2. Support: Proceedings that involve child or spousal support or child and spousal support, exclusive of proceedings arising under Chapter 5 (§ 20-61 et seq.) of Title 20, shall be commenced in the city or county where either party resides or in the city or county where the respondent is present when the proceeding commences.

3. Family abuse: Proceedings in which an order of protection is sought as a result of family abuse shall be commenced where (i) either party has his or her principal residence, (ii) the abuse occurred, or (iii) a protective order was issued if at the time the proceeding is commenced the order is in effect to protect the petitioner or a family or household member of the petitioner.

##### B. Transfer of venue:

1. Generally: Except in custody, visitation and support cases, if the child resides in a city or county of the Commonwealth and the proceeding is commenced in a court of another city or county, that court may at any time, on its own motion or a motion of a party for good cause shown, transfer the proceeding to the city or county of the child's residence for such further action or proceedings as the court receiving the transfer may deem proper. However, such transfer may occur only after adjudication in delinquency proceedings.

2. Custody and visitation: In custody and visitation cases, if venue lies in one of several cities or counties, the court in which the motion for transfer is made shall determine which such city or county is the most appropriate venue unless the parties mutually agree to the selection of venue. In the consideration of the motion, the best interests of the child shall determine the most appropriate forum.

3. Support: In support proceedings, exclusive of proceedings arising under Chapter 5 (§ 20-61 et seq.) of Title 20, if the respondent resides in a city or county in the Commonwealth and the proceeding is commenced in a court of another city or county, that court may, at any time on its own motion or a motion of a party for good cause shown or by agreement of the parties, transfer the proceeding to the city or county of the respondent's residence for such further action or proceedings as the court receiving the transfer may deem proper. For the purposes of determining venue of cases involving support, the respondent's residence shall include any city or county in which the respondent has resided within the last six months prior to the commencement of the proceeding or in which the respondent is residing at the time that the motion for transfer of venue is made. If venue is transferable to one of several cities or counties, the court in which the motion for transfer is made shall determine which such city or county is the most appropriate venue unless the parties mutually agree to the selection of such venue.

When the support proceeding is a companion case to a child custody or visitation proceeding, the provisions governing venue in the proceeding involving the child's custody or visitation shall govern.

4. Subsequent transfers: Any court receiving a transferred proceeding as provided in this section may in its discretion transfer such proceeding to a court in an appropriate venue for good cause shown based either upon changes in circumstances or mistakes of fact or upon agreement of the parties. In any transfer of venue in cases involving children, the best interests of the child shall be considered in deciding if and to which court a transfer of venue would be appropriate.

5. Enforcement of orders for support, maintenance and custody: Any juvenile and domestic relations district court to which a suit is transferred for enforcement of orders pertaining to support, maintenance, care or custody pursuant to § 20-79 (c) may transfer the case as provided in this section.

C. Records: Originals of all legal and social records pertaining to the case shall accompany the transfer of venue. The transferor court may, in its discretion, retain such copies as it deems appropriate.

§ 16.1-262. Form and content of petition.

The petition shall contain the facts below indicated:

"Commonwealth of Virginia, In re ..... " a  
(name of child)

child under eighteen years of age.

"In the Juvenile and Domestic Relations District Court of the county  
(or city) of ....."

1. Statement of name, age, date of birth, if known, and residence of the child.
2. Statement of names and residence of his parents, guardian, legal custodian or other person standing in loco parentis and spouse, if any.
3. Statement of names and residence of the nearest known relatives if no parent or guardian can be found.
4. Statement of the specific facts which allegedly bring the child within the purview of this law. If the petition alleges a delinquent act, it shall make reference to the applicable sections of the Code which designate the act a crime.
5. Statement as to whether the child is in custody, and if so, the place of detention or shelter care, and the time the child was taken into custody, and the time the child was placed in detention or shelter care.

If any of the facts herein required to be stated are not known by the petitioner, the petition shall so state. The petition shall be verified, except that petitions filed under § ~~63.1-220.3~~ § 63.1-219.44 may be signed by the petitioner's counsel, and may be upon information.

In accordance with § 16.1-69.32, the Supreme Court may formulate rules for the form and content of petitions in the juvenile court concerning matters related to the custody, visitation or support of a child and the protection, support or maintenance of an adult where the provisions of this section are not appropriate.

§ 17.1-275. Fees collected by clerks of circuit courts; generally.

A. A clerk of a circuit court shall, for services performed by virtue of his office, charge the following fees:

1. When a writing is admitted to record under Chapter 2 (§ 17.1-200 et seq.) of this title, or Chapter 5 (§ 55-80 et seq.) or Chapter 6 (§ 55-106 et seq.) of Title 55, for everything relating to it, except the recording in the proper book; for receiving proof of acknowledgments, entering orders, endorsing clerk's certificate, and when required, embracing it in a list for the commissioner of the revenue, one dollar.

2. For recording and indexing in the proper book any writing and all matters therewith, or for recording and indexing anything not otherwise provided for, thirteen dollars, including the fee of one dollar set forth in subdivision A 1 for up to four pages and one dollar for each page over four pages,

and for recording plats too large to be recorded in the deed books, and for each sheet thereof, thirteen dollars. This fee shall be in addition to the fee for recording a deed or other instrument recorded in conjunction with such plat sheet or sheets including the fee of one dollar set forth in subdivision A 1. Only a single fee as authorized by this subdivision shall be charged for recording a certificate of satisfaction that releases the original deed of trust and any corrected or revised deeds of trust. In addition, a fee of one dollar shall be charged for indexing any document for each name indexed exceeding a total of ten in number. One dollar of the fee collected for recording and indexing shall be designated for use in preserving the permanent records of the circuit courts. The sum collected for this purpose shall be administered by The Library of Virginia in cooperation with the circuit court clerks.

3. For appointing and qualifying any personal representative, committee, trustee, guardian, or other fiduciary, in addition to any fees for recording allowed by this section, twenty dollars for estates not exceeding \$50,000, twenty-five dollars for estates not exceeding \$100,000 and thirty dollars for estates exceeding \$100,000. No fee shall be charged for estates of \$5,000 or less.

4. For entering and granting and for issuing any license, other than a marriage license or a hunting and fishing license, and administering an oath when necessary, ten dollars.

5. For issuing a marriage license, attaching certificate, administering or receiving all necessary oaths or affidavits, indexing and recording, ten dollars.

6. For making out any bond, other than those under § 17.1-267 or subdivision A 4 of this section, administering all necessary oaths and writing proper affidavits, three dollars.

7. For all services rendered by the clerk in any garnishment or attachment proceeding, the clerk's fee shall be fifteen dollars in cases not exceeding \$500 and twenty-five dollars in all other cases.

8. For making out a copy of any paper or record to go out of the office, which is not otherwise specifically provided for, a fee of fifty cents for each page. However, there shall be no charge to the recipient of a final order or decree to send an attested copy to such party.

9. For annexing the seal of the court to any paper, writing the certificate of the clerk accompanying it, the clerk shall charge two dollars and for attaching the certificate of the judge, if the clerk is requested to do so, the clerk shall charge an additional fifty cents.

10. In any case in which a person is convicted of a violation of any provision of Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, the clerk shall assess a fee of \$150 for each felony conviction and each felony disposition under § 18.2-251 which shall be taxed as costs to the defendant and shall be paid into the Drug Offender Assessment Fund.

11. a. Upon conviction in misdemeanor cases, the clerk shall charge the defendant twenty-six dollars in each case. Sums shall be collected for and paid to the benefit of the Virginia Crime Victim-Witness Fund as provided for in § 19.2-11.3 and one dollar of the amount collected hereunder shall be forwarded to the State Treasurer for deposit in the Regional Criminal Justice Academy Training Fund as provided in § 9-178.2, to be used for financial support of the regional criminal justice training academies, irrespective of whether the defendant was convicted of a misdemeanor chargeable under the Code of Virginia or pursuant to a local ordinance.

b. In addition, in each case in which a person is convicted of a violation of any provision of Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, the clerk shall assess (i) a fee of seventy-five dollars for each misdemeanor conviction which shall be taxed as costs to the defendant and shall be paid into the Drug Offender Assessment Fund, unless such fee has been assessed and taxed in the general district court as provided in § 16.1-69.48:3 and (ii) a fee of \$100 per case for any forensic laboratory analysis performed for use in prosecution of such violation which shall be taxed as costs to the defendant and shall be paid into the general fund of the state treasury.

c. In addition, for each misdemeanor case the clerk shall collect and tax as costs (i) the fees of the attorneys for the Commonwealth as provided for in § 15.2-1627.3, (ii) the compensation of court-appointed counsel as provided in § 19.2-163, (iii) the fees of the public defenders as provided for in § 19.2-163.2, (iv) the additional costs imposed under § 19.2-368.18 to be deposited into the Criminal Injuries Compensation Fund, and (v) in any court in which electronic devices are used for the purpose of recording testimony, a sum not to exceed five dollars for each day or part of a day of the trial to be paid by the clerk into a special fund to be used for the purpose of repairing, replacing or supplementing such electronic devices, or if a sufficient amount is available, to pay the purchase price of such devices in whole or in part. For the purpose of this subdivision, repairing shall include maintenance or service contracts.

d. In addition, a fee of twelve dollars shall be charged to a defendant found guilty in a criminal case in the circuit court as costs for (i) serving a warrant or summons other than on a witness when no arrest is made or (ii) making an arrest on a felony or misdemeanor charge, when such services are provided by the sheriff.

12. Upon the defendant's being required to successfully complete traffic school or a driver improvement clinic in lieu of a finding of guilty, the court shall charge the defendant fees and costs as if he had been convicted.

13. In all actions at law the clerk's fee chargeable to the plaintiff shall be fifty dollars in cases not exceeding \$50,000, \$100 in cases not exceeding \$100,000, and \$150 in cases exceeding \$100,000; and

in condemnation cases, a fee of twenty-five dollars, to be paid by the plaintiff at the time of instituting the action, this fee to be in lieu of any other fees. There shall be no fee charged for the filing of a cross-claim or setoff in any pending action. However, the fees prescribed by this subdivision shall be charged upon the filing of a counterclaim. The fees prescribed above shall be collected upon the filing of papers for the commencement of civil actions. This subdivision shall not be applicable to cases filed in the Supreme Court of Virginia.

14. In addition to the fees chargeable for actions at law, for the costs of proceedings for judgments by confession under §§ 8.01-432 through 8.01-440, the clerk shall tax as costs (i) the cost of registered or certified mail, (ii) the statutory writ tax, in the amount required by law to be paid on a suit for the amount of the confessed judgment, (iii) for the sheriff for serving each copy of the order entering judgment, twelve dollars, and (iv) for docketing the judgment and issuing executions thereon, the same fees as prescribed in subdivision A 17.

15. For qualifying notaries public, including the making out of the bond and any copies thereof, administering the necessary oaths, and entering the order, ten dollars.

16. For each habeas corpus proceeding, the clerk shall receive ten dollars for all services required thereunder. This subdivision shall not be applicable to such suits filed in the Supreme Court of Virginia.

17. For docketing and indexing a judgment from any other court of this Commonwealth, for docketing and indexing a judgment in the new name of a judgment debtor pursuant to the provisions of § 8.01-451, but not when incident to a divorce, for noting and filing the assignment of a judgment pursuant to § 8.01-452, a fee of five dollars; and for issuing an abstract of any recorded judgment, when proper to do so, a fee of five dollars; and for filing, docketing, indexing and mailing notice of a foreign judgment, a fee of twenty dollars.

18. For all services rendered by the clerk in any court proceeding for which no specific fee is provided by law, the clerk shall charge ten dollars, to be paid by the party filing said papers at the time of filing; however, this subdivision shall not be applicable in a divorce cause prior to and including the entry of a decree of divorce from the bond of matrimony.

19. For receiving and processing an application for a tax deed, ten dollars.

20. For all services rendered by the clerk in any condemnation proceeding instituted by the Commonwealth, twenty-five dollars.

21. For making the endorsements on a forthcoming bond and recording the matters relating to such bond pursuant to the provisions of § 8.01-529, one dollar.

22. For all services rendered by the clerk in any proceeding pursuant to § 57-8 or § 57-15, ten dollars.

23. For preparation and issuance of a subpoena duces tecum, five dollars.

24. For all services rendered by the clerk in matters under § 8.01-217 relating to change of name, twenty dollars; however, this subdivision shall not be applicable in cases where the change of name is incident to a divorce.

25. For providing court records or documents on microfilm, per frame, ten cents.

26. In all chancery causes, the clerk's fee chargeable to the plaintiff shall be fifty dollars to be paid by the plaintiff at the time of instituting the suit, which shall include the furnishing of a duly certified copy of the final decree. However, no fee shall be charged for the filing of a cross-bill in any pending suit. In divorce cases, when there is a merger of a divorce of separation a mensa et thoro into a decree of divorce a vinculo, the above mentioned fee shall include the furnishing of a duly certified copy of both such decrees.

27. For the acceptance of credit cards in lieu of money to collect and secure all fees, fines, restitution, forfeiture, penalties and costs in accordance with § 19.2-353.3, the clerk shall collect a service charge of four percent of the amount paid.

28. For the return of any check unpaid by the financial institution on which it was drawn or notice is received from the credit card issuer that payment will not be made for any reason, the clerk shall collect, if allowed by the court, a fee of twenty dollars or ten percent of the amount to be paid, whichever is greater, in accordance with § 19.2-353.3.

29. For all services rendered, except in cases in which costs are assessed pursuant to §§ 17.1-275.1, 17.1-275.2, 17.1-275.3, or § 17.1-275.4, in an adoption proceeding, a fee of twenty dollars, in addition to the fee imposed under ~~§ 63.1-236.1~~ § 63.1-219.53, to be paid by the petitioner or petitioners.

30. For issuing a duplicate license for one lost or destroyed as provided in § 29.1-334, a fee in the same amount as the fee for the original license.

31. For the filing of any petition as provided in §§ 33.1-124, 33.1-125 and 33.1-129, a fee of five dollars to be paid by the petitioner; and for the recordation of a certificate or copy thereof, as provided for in § 33.1-122, as well as for any order of the court relating thereto, the clerk shall charge the same fee as for recording a deed as provided for in this section, to be paid by the party upon whose request such certificate is recorded or order is entered.

32. For making up, certifying and transmitting original record pursuant to the Rules of the Supreme Court, including all papers necessary to be copied and other services rendered, except in cases in which costs are assessed pursuant to §§ 17.1-275.1, 17.1-275.2, 17.1-275.3, or § 17.1-275.4, a fee of twenty

dollars.

33. For issuance of hunting and trapping permits in accordance with § 10.1-1154, twenty-five cents.

34. For filings, etc., under the Uniform Federal Lien Registration Act (§ 55-142.1 et seq.), the fees shall be as prescribed in that Act.

35. For filing the appointment of a resident agent for a nonresident property owner in accordance with § 55-218.1, a fee of one dollar.

36. For filing power of attorney for service of process, or resignation or revocation thereof, in accordance with § 59.1-71, a fee of twenty-five cents.

37. For recordation of certificate and registration of names of nonresident owners in accordance with § 59.1-74, a fee of ten dollars.

38. For maintaining the information required under the Overhead High Voltage Line Safety Act (§ 59.1-406 et seq.), the fee as prescribed in § 59.1-411.

39. For lodging, indexing and preserving a will in accordance with § 64.1-56, a fee of two dollars.

40. For filing a financing statement in accordance with § 8.9-403, the fee shall be as prescribed under that section.

41. For filing a termination statement in accordance with § 8.9-404, the fee shall be as prescribed under that section.

42. For filing assignment of security interest in accordance with § 8.9-405, the fee shall be as prescribed under that section.

43. For filing a petition as provided in §§ 37.1-134.7 and 37.1-134.17, the fee shall be ten dollars.

44. For issuing any execution, and recording the return thereof, a fee of \$1.50.

45. For the preparation and issuance of a summons for interrogation by an execution creditor, a fee of five dollars. If there is no outstanding execution, and one is requested herewith, the clerk shall be allowed an additional fee of \$1.50, in accordance with subdivision A 44.

B. In accordance with § 17.1-281, the clerk shall collect fees under subdivisions A 7, 10, 11, 13, 16, 18 if applicable, 20, 22, 24, 26, 29, and 31 to be designated for courthouse construction, renovation or maintenance.

C. In accordance with § 17.1-278, the clerk shall collect fees under subdivisions A 7, 13, 16, 18 if applicable, 20, 22, 24, 26, 29 and 31 to be designated for services provided for the poor, without charge, by a nonprofit legal aid program.

D. In accordance with § 9-178.1, the clerk shall collect fees under subdivisions A 10 and 11 to be designated for the Intensified Drug Enforcement Jurisdiction Fund.

E. In accordance with § 42.1-70, the clerk shall collect fees under subdivisions A 7, 13, 16, 18 if applicable, 20, 22, 24, 26, 29 and 31 to be designated for public law libraries.

F. The provisions of this section shall control the fees charged by clerks of circuit courts for the services above described.

§ 17.1-405. Appellate jurisdiction - Administrative agency, Virginia Workers' Compensation Commission, and domestic relations appeals.

Any aggrieved party may appeal to the Court of Appeals from:

1. Any final decision of a circuit court on appeal from a decision of an administrative agency;
2. Any final decision of the Virginia Workers' Compensation Commission;
3. Any final judgment, order, or decree of a circuit court involving:
  - a. Affirmance or annulment of a marriage;
  - b. Divorce;
  - c. Custody;
  - d. Spousal or child support;
  - e. The control or disposition of a child;
  - f. Any other domestic relations matter arising under Title 16.1 or Title 20; or
  - g. Adoption under Chapter ~~11~~ 10.2 (§ ~~63.1-220~~ § 63.1-219.7 et seq.) of Title 63.1;
4. Any interlocutory decree or order entered in any of the cases listed in this section (i) granting, dissolving, or denying an injunction or (ii) adjudicating the principles of a cause.

§ 17.1-410. Disposition of appeals; finality of decisions.

A. Each appeal of right taken to the Court of Appeals and each appeal for which a petition for appeal has been granted shall be considered by a panel of the court.

When the Court of Appeals has (i) rejected a petition for appeal, (ii) dismissed an appeal in any case in accordance with the Rules of Court, or (iii) decided an appeal, its decision shall be final, without appeal to the Supreme Court, in:

1. Traffic infraction and misdemeanor cases where no incarceration is imposed;
2. Cases originating before any administrative agency or the Virginia Workers' Compensation Commission;
3. Cases involving the affirmance or annulment of a marriage, divorce, custody, spousal or child support or the control or disposition of a juvenile and other domestic relations cases arising under Title 16.1 or Title 20, or involving adoption under Chapter ~~11~~ 10.2 (§ ~~63.1-220~~ § 63.1-219.7 et seq.) of Title 63.1;

4. Appeals in criminal cases pursuant to §§ 19.2-398 and 19.2-401. Such finality of the Court of Appeals' decision shall not preclude a defendant, if he is convicted, from requesting the Court of Appeals or Supreme Court on direct appeal to reconsider an issue which was the subject of the pretrial appeal; and

5. Appeals involving involuntary treatment of prisoners pursuant to § 53.1-40.1.

B. Notwithstanding the provisions of subsection A, in any case other than an appeal pursuant to § 19.2-398, in which the Supreme Court determines on a petition for review that the decision of the Court of Appeals involves a substantial constitutional question as a determinative issue or matters of significant precedential value, review may be had in the Supreme Court in accordance with the provisions of § 17.1-411.

§ 20-124.1. Definitions.

As used in this chapter:

"Joint custody" means (i) joint legal custody where both parents retain joint responsibility for the care and control of the child and joint authority to make decisions concerning the child even though the child's primary residence may be with only one parent, (ii) joint physical custody where both parents share physical and custodial care of the child, or (iii) any combination of joint legal and joint physical custody which the court deems to be in the best interest of the child.

"Person with a legitimate interest" shall be broadly construed and includes, but is not limited to grandparents, stepparents, former stepparents, blood relatives and family members provided any such party has intervened in the suit or is otherwise properly before the court. The term shall be broadly construed to accommodate the best interest of the child. A party with a legitimate interest shall not include any person (i) whose parental rights have been terminated by court order, either voluntarily or involuntarily, or any other person whose interest in the child derives from or through such person whose parental rights have been so terminated, including but not limited to grandparents, stepparents, former stepparents, blood relatives and family members, if the child subsequently has been legally adopted except where a final order of adoption is entered pursuant to ~~§ 63.1-231~~ § 63.1-219.48 or (ii) who has been convicted of a violation of subsection A of §§ 18.2-61, 18.2-63 or subsection B of § 18.2-366 when the child who is the subject of the petition was conceived as a result of such violation.

"Sole custody" means that one person retains responsibility for the care and control of a child and has primary authority to make decisions concerning the child.

§ 20-158. Parentage of child resulting from assisted conception.

A. Determination of parentage, generally. - Except as provided in subsections B, C, D, and E of this section, the parentage of any child resulting from the performance of assisted conception shall be determined as follows:

1. The gestational mother of a child is the child's mother.

2. The husband of the gestational mother of a child is the child's father, notwithstanding any declaration of invalidity or annulment of the marriage obtained after the performance of assisted conception, unless he commences an action in which the mother and child are parties within two years after he discovers or, in the exercise of due diligence, reasonably should have discovered the child's birth and in which it is determined that he did not consent to the performance of assisted conception.

3. A donor is not the parent of a child conceived through assisted conception, unless the donor is the husband of the gestational mother.

B. Death of spouse. - Any child resulting from the insemination of a wife's ovum using her husband's sperm, with his consent, is the child of the husband and wife notwithstanding that, during the ten-month period immediately preceding the birth, either party died.

However, any person who dies before in utero implantation of an embryo resulting from the union of his sperm or her ovum with another gamete, whether or not the other gamete is that of the person's spouse, is not the parent of any resulting child unless (i) implantation occurs before notice of the death can reasonably be communicated to the physician performing the procedure or (ii) the person consents to be a parent in writing executed before the implantation.

C. Divorce. - Any child resulting from insemination of a wife's ovum using her husband's sperm, with his consent, is the child of the husband and wife notwithstanding that either party filed for a divorce or annulment during the ten-month period immediately preceding the birth. Any person who is a party to an action for divorce or annulment commenced by filing before in utero implantation of an embryo resulting from the union of his sperm or her ovum with another gamete, whether or not the other gamete is that of the person's spouse, is not the parent of any resulting child unless (i) implantation occurs before notice of the filing can reasonably be communicated to the physician performing the procedure or (ii) the person consents in writing to be a parent, whether the writing was executed before or after the implantation.

D. Birth pursuant to court approved surrogacy contract. - After approval of a surrogacy contract by the court and entry of an order as provided in subsection D of § 20-160, the intended parents are the parents of any resulting child. However, if the court vacates the order approving the agreement pursuant to subsection B of § 20-161, the surrogate is the mother of the resulting child and her husband is the father. The intended parents may only obtain parental rights through adoption as provided in Chapter 44

10.2 (~~§ 63.1-220~~ § 63.1-219.7 et seq.) of Title 63.1.

E. Birth pursuant to surrogacy contract not approved by court. - In the case of a surrogacy contract that has not been approved by a court as provided in § 20-160, the parentage of any resulting child shall be determined as follows:

1. The gestational mother is the child's mother unless the intended mother is a genetic parent, in which case the intended mother is the mother.

2. If either of the intended parents is a genetic parent of the resulting child, the intended father is the child's father. However, if (i) the surrogate is married, (ii) her husband is a party to the surrogacy contract, and (iii) the surrogate exercises her right to retain custody and parental rights to the resulting child pursuant to § 20-162, then the surrogate and her husband are the parents.

3. If neither of the intended parents is a genetic parent of the resulting child, the surrogate is the mother and her husband is the child's father if he is a party to the contract. The intended parents may only obtain parental rights through adoption as provided in Chapter ~~11~~ 10.2 (~~§ 63.1-220~~ § 63.1-219.7 et seq.) of Title 63.1.

4. After the signing and filing of the surrogate consent and report form in conformance with the requirements of subsection A of § 20-162, the intended parents are the parents of the child and the surrogate and her husband, if any, shall not be the parents of the child.

§ 20-160. Petition and hearing for court approval of surrogacy contract; requirements; orders.

A. Prior to the performance of assisted conception, the intended parents, the surrogate, and her husband shall join in a petition to the circuit court of the county or city in which at least one of the parties resides. The surrogacy contract shall be signed by all the parties and acknowledged before an officer or other person authorized by law to take acknowledgments.

A copy of the contract shall be attached to the petition. The court shall appoint a guardian ad litem to represent the interests of any resulting child and shall appoint counsel to represent the surrogate. The court shall order a home study by a local department of social services or welfare or a licensed child-placing agency, to be completed prior to the hearing on the petition.

All hearings and proceedings conducted under this section shall be held in camera, and all court records shall be confidential and subject to inspection only under the standards applicable to adoptions as provided in ~~§ 63.1-235~~ § 63.1-219.52. The court conducting the proceedings shall have exclusive and continuing jurisdiction of all matters arising under the surrogacy contract until all provisions of the contract are fulfilled.

B. The court shall hold a hearing on the petition. The court shall enter an order approving the surrogacy contract and authorizing the performance of assisted conception for a period of twelve months after the date of the order, and may discharge the guardian ad litem and attorney for the surrogate upon finding that:

1. The court has jurisdiction in accordance with § 20-157;

2. A local department of social services or welfare or a licensed child-placing agency has conducted a home study of the intended parents, the surrogate, and her husband, and has filed a report of this home study with the court;

3. The intended parents, the surrogate, and her husband meet the standards of fitness applicable to adoptive parents;

4. All the parties have voluntarily entered into the surrogacy contract and understand its terms and the nature, meaning, and effect of the proceeding and understand that any agreement between them for payment of compensation is void and unenforceable;

5. The agreement contains adequate provisions to guarantee the payment of reasonable medical and ancillary costs either in the form of insurance, cash, escrow, bonds, or other arrangements satisfactory to the parties, including allocation of responsibility for such costs in the event of termination of the pregnancy, termination of the contract pursuant to § 20-161, or breach of the contract by any party;

6. The surrogate is married and has had at least one pregnancy, and has experienced at least one live birth, and bearing another child does not pose an unreasonable risk to her physical or mental health or to that of any resulting child. This finding shall be supported by medical evidence;

7. Prior to signing the surrogacy contract, the intended parents, the surrogate, and her husband have submitted to physical examinations and psychological evaluations by practitioners licensed to perform such services pursuant to Title 54.1, and the court and all parties have been given access to the records of the physical examinations and psychological evaluations;

8. The intended mother is infertile, is unable to bear a child, or is unable to do so without unreasonable risk to the unborn child or to the physical or mental health of the intended mother or the child. This finding shall be supported by medical evidence;

9. At least one of the intended parents is expected to be the genetic parent of any child resulting from the agreement;

10. The husband of the surrogate is a party to the surrogacy agreement;

11. All parties have received counseling concerning the effects of the surrogacy by a qualified health care professional or social worker, and a report containing conclusions about the capacity of the parties to enter into and fulfill the agreement has been filed with the court; and

12. The agreement would not be substantially detrimental to the interests of any of the affected persons.

C. Unless otherwise provided in the surrogacy contract, all court costs, counsel fees, and other costs and expenses associated with the hearing, including the costs of the home study, shall be assessed against the intended parents.

D. Within seven days of the birth of any resulting child, the intended parents shall file a written notice with the court that the child was born to the surrogate within 300 days after the last performance of assisted conception. Upon the filing of this notice and a finding that at least one of the intended parents is the genetic parent of the resulting child as substantiated by medical evidence, the court shall enter an order directing the State Registrar of Vital Records to issue a new birth certificate naming the intended parents as the parents of the child pursuant to § 32.1-261.

If evidence cannot be produced that at least one of the intended parents is the genetic parent of the resulting child, the court shall not enter an order directing the issuance of a new birth certificate naming the intended parents as the parents of the child, and the surrogate and her husband shall be the parents of the child.

§ 22.1-3. Persons to whom public schools shall be free.

The public schools in each school division shall be free to each person of school age who resides within the school division. Every person of school age shall be deemed to reside in a school division:

1. When the person is living with a natural parent, or a parent by legal adoption;
2. When the parents of such person are dead and the person is living with a person in loco parentis who actually resides within the school division;
3. When the parents of such person are unable to care for the person and the person is living, not solely for school purposes, with another person who resides in the school division and is either (i) the court-appointed guardian, or has legal custody, of the person or (ii) acting in loco parentis pursuant to placement of the person for adoption by a person or entity authorized to do so under ~~§ 63.1-220.1~~ § 63.1-219.8;
4. When the person is living with a parent, guardian, or person in loco parentis in a temporary shelter in the school division, not solely for school purposes; or
5. When the person is living in the school division not solely for school purposes, as an emancipated minor.

For purposes of this section, "temporary shelter" means (i) any home, single or multi-unit dwelling or housing unit in which persons who are without housing or a fixed address receive temporary housing or shelter or (ii) any facility specifically designed or approved for the purpose of providing temporary housing or shelter to persons who are without permanent housing or a fixed address.

If a person resides within housing or temporary shelter that is situated in more than one school division, the person shall be deemed to reside in and shall be entitled to attend a public school within either school division. However, if a person resides in housing or temporary shelter that is located in one school division, but the property on which such housing or temporary shelter is located lies within more than one school division, such person shall be deemed to reside only in the single school division in which the housing or temporary shelter is located. Notwithstanding any such residency determination, any person residing in housing or a temporary shelter that is located in one school division, but the property on which such housing or temporary shelter is located lies within more than one school division, shall be deemed to reside in either school division, if such person or any sibling of such person residing in the same housing or temporary shelter attends, prior to July 1, 1999, a school within either school division in which the property on which the housing or temporary shelter is located.

§ 63.1-195. Definitions.

As used in this chapter:

"Adoptive home" means any family home selected and approved by a parent, local board of public welfare or social services or a licensed child-placing agency for the placement of a child with the intent of adoption.

"Adoptive placement" means arranging for the care of a child who is in the custody of a child-placing agency in an approved home for the purpose of adoption.

"Child" means any natural person under eighteen years of age.

"Child-caring institution" means any institution maintained for the purpose of receiving children for full-time care, maintenance, protection and guidance separated from their parents or guardians, except:

1. A bona fide educational institution whose pupils, in the ordinary course of events, return annually to the homes of their parents or guardians for not less than two months of summer vacation;
2. An establishment required to be licensed as a summer camp by Title 35.1; and
3. A bona fide hospital legally maintained as such.

"Child day center" means a child day program offered to (i) two or more children under the age of thirteen in a facility that is not the residence of the provider or of any of the children in care or (ii) thirteen or more children at any location.

"Child day center system" means any person who is voluntarily licensed as such who operates, manages, or accredits as members of its system, fifty or more child day center sites in the

Commonwealth.

"Child day program" means a regularly operating service arrangement for children where, during the absence of a parent or guardian, a person or organization has agreed to assume responsibility for the supervision, protection, and well-being of a child under the age of thirteen for less than a twenty-four-hour period.

"Child-placing agency" means any person who places children in foster homes, adoptive homes or independent living arrangements pursuant to § 63.1-205 or a local board of public welfare or social services that places children in foster homes or adoptive homes pursuant to §§ 63.1-56, 63.1-204 and ~~63.1-220.2~~ 63.1-219.28.

"Child-welfare agency" means a child day center, child day center system, child-placing agency, child-caring institution, family day home, family day system, or independent foster home.

"Family day home" means a child day program offered in the residence of the provider or the home of any of the children in care for one through twelve children under the age of thirteen, exclusive of the provider's own children and any children who reside in the home, when at least one child receives care for compensation. The provider of a licensed or registered family day home shall disclose to the parents or guardians of children in their care the percentage of time per week that persons other than the provider will care for the children. Family day homes serving six through twelve children, exclusive of the provider's own children and any children who reside in the home, shall be licensed. However, no family day home shall care for more than four children under the age of two, including the provider's own children and any children who reside in the home, unless the family day home is licensed or voluntarily registered. However, a family day home where the children in care are all grandchildren of the provider shall not be required to be licensed.

"Family day system" means any person who approves family day homes as members of its system; who refers children to available family day homes in that system; and who, through contractual arrangement, may provide central administrative functions including, but not limited to, training of operators of member homes; technical assistance and consultation to operators of member homes; inspection, supervision, monitoring, and evaluation of member homes; and referral of children to available health and social services.

"Foster care services" 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 § 63.1-248.2 or in need of services as defined in § 16.1-228 and his family when the child (i) has been identified as needing services to prevent or eliminate the need for foster care placement, (ii) has been placed through an agreement between the local board of social services or the public agency designated by the community policy and management team and the parents or guardians, (iii) has been committed or entrusted to a local board of social services or child welfare agency, or (iv) has been placed under the supervisory responsibility of a local board pursuant to § 16.1-293.

"Foster care placement" means placement of a child through (i) an agreement between the parents or guardians and the local board or the public agency designated by the community policy and management team where legal custody remains with the parents or guardians; or (ii) an entrustment or commitment of the child to the local board or child welfare agency.

"Foster home" means the place of residence of any natural person in which any child, other than a child by birth or adoption of such person, resides as a member of the household.

"Group home" means a child-caring institution which is operated by any person at any place other than in an individual's family home or residence and which does not care for more than twelve children.

"Independent foster home" means a private family home in which any child, other than a child by birth or adoption of such person, resides as a member of the household and has been placed therein independently of a child-placing agency except (i) a home in which are received only children related by birth or adoption of the person who maintains such home and children of personal friends of such person and (ii) a home in which is received a child or children committed under the provisions of subdivision 4 of § 16.1-278.2, subdivision 6 of § 16.1-278.4, or subdivision 13 of § 16.1-278.8.

"Independent living placement" means placement of a child at least sixteen years of age who is in the custody of a local board or licensed child-placing agency or has been placed by a local board in a living arrangement in which he does not have daily substitute parental supervision.

"Intercountry placement" means the arrangement for the care of a child in an adoptive home or foster care placement into or out of the Commonwealth by a licensed child-placing agency, court, or other entity authorized to make such placements in accordance with the laws of the foreign country under which it operates.

"Interstate placement" includes the arrangement for the care of a child in an adoptive home, foster care placement or in the home of the child's parent or with a relative or nonagency guardian, into or out of the Commonwealth, by a child-placing agency or court when the full legal right of the child's parent or nonagency guardian to plan for the child has been voluntarily terminated or limited or severed by the action of any court.

"Permanent foster care placement" means the place of residence in which a child resides and in which he has been placed pursuant to the provisions of §§ 63.1-56 and 63.1-206.1 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 § 16.1-251 or § 63.1-248.9. 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.

"Person" means any natural person, or any association, partnership or corporation or other legal entity.

"Registered family day home" means any family day home which has met the standards for voluntary registration for such homes pursuant to regulations promulgated by the State Board of Social Services and which has obtained a certificate of registration from the Commissioner.

"Special order" means an administrative order issued to any party licensed pursuant to this chapter that has a stated duration of not more than twelve months and that may include a civil penalty of not more than \$500 per violation, prohibition on new admissions or reduction of licensed capacity in a child welfare agency.

§ 63.1-203. Records and reports.

Every licensed child welfare agency shall keep such records and make such reports to the Commissioner as he may require. The forms to be used in the making of such reports shall be prescribed and furnished by the Commissioner.

Upon the entry of a final order of adoption involving a child placed by a licensed child-placing agency, that agency shall transmit to the Commissioner all reports and collateral information in connection with the case which shall be preserved by the Commissioner in accordance with ~~§ 63.1-236~~ § 63.1-219.53. Such agency may keep duplicate copies of such reports and collateral information or may obtain copies of such documents from the Commissioner at a reasonable fee as prescribed by the Board.

§ 63.1-204. Acceptance and control over children.

A. A licensed child-welfare agency shall have the right to accept, for any purpose not contrary to the limitations contained in its license, such children as may be entrusted or committed to it by the parents, guardians, relatives or other persons having legal custody thereof, or committed by any court of competent jurisdiction. The agency shall, within the terms of its license and the agreement or order by which such child is entrusted or committed to its care, have custody and control of every child so entrusted or committed and accepted, until he is lawfully discharged, has been adopted, or has attained his majority.

An agency which is licensed as a child-placing agency by the Department of Social Services and certified as a proprietary school for students with disabilities by the Department of Education shall not be required to take custody of any child placed in its special education program but shall enter into a placement agreement with the parents or guardian of the child concerning the respective responsibilities of the agency and the parents or guardian for the care and control of the child. Such an agency shall conform with all other legal requirements of licensed child-placing agencies including the provisions of §§ 16.1-281 and 16.1-282.

A licensed private child-placing agency may accept placement of a child through an agreement with a local department of social services where the local department of social services retains legal custody of the child or where the parents or legal guardian of the child retain legal custody but have entered into a placement agreement with the local department or the public agency designated by the community policy and management team.

Whenever a licensed child-placing agency accepts legal custody of a child, the agency shall comply with §§ 16.1-281 and 16.1-282.

A child-caring institution licensed as a temporary emergency shelter may accept a child for placement provided that verbal agreement for placement is obtained from the parents, guardians, relatives or other persons having legal custody thereof, within eight hours of the child's arrival at the facility and provided that a written placement agreement is completed and signed by the legal guardian and the facility representative within twenty-four hours of the child's arrival or by the end of the next business day after the child's arrival.

B. Whenever a licensed child-welfare agency accepts custody of a child pursuant to an entrustment agreement entered into under the authority of this section, a petition for approval of the entrustment agreement by the child-welfare agency, except a child-caring institution when the child is placed there by a parent or parents: (i) shall be filed in the juvenile and domestic relations district court of the city or county within a reasonable period of time, not to exceed eighty-nine days after the execution of an entrustment agreement for less than ninety days, if the child is not returned to his home within that period; (ii) shall be filed within a reasonable period of time, not to exceed thirty days after the execution of an entrustment agreement for ninety days or longer or for an unspecified period of time, if such entrustment agreement does not provide for the termination of all parental rights and responsibilities with respect to the child; and (iii) may be filed in the case of a permanent entrustment agreement which provides for the termination of all parental rights and responsibilities with respect to the child.

C. A child may be placed for adoption by a licensed child-placing agency or a local board of social services, in accordance with the provisions of ~~§ 63.1-220.2~~ § 63.1-219.28.

For the purposes of this section, a parent who is less than eighteen years of age shall be deemed fully competent and shall have legal capacity to execute a valid entrustment agreement, including an agreement which provides for the termination of all parental rights and responsibilities, and shall be as fully bound thereby as if such parent had attained the age of eighteen years. An entrustment agreement for the termination of all parental rights and responsibilities with respect to the child shall be valid notwithstanding that it is not signed by the father of a child born out of wedlock if the identity of the father is not reasonably ascertainable, or if such father is given notice of the entrustment by registered or certified mail to his last known address and such father fails to object to the entrustment within twenty-one days of the mailing of such notice. 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 which would refute such an affidavit. The absence of such an affidavit shall not be deemed evidence that the identity of the father is reasonably ascertainable. For purposes of determining whether the identity of the father is reasonably ascertainable, the standard of what is reasonable under the circumstances shall control, taking into account the relative interests of the child, the mother and the father.

An entrustment agreement for the termination of all parental rights and responsibilities with respect to the child shall be valid notwithstanding that it is not signed by the birth father of a child when such father has been convicted of a violation of subsection A of § 18.2-61, § 18.2-63 or subsection B of § 18.2-366, and the child was conceived as a result of such violation.

§ 63.1-209. Confidential records.

A. The records of all child-welfare agencies and persons received or placed out by them and the facts learned by them concerning such persons and their parents or relatives, shall be confidential information, provided that the Commissioner, the State Board and their agents shall have access to such information, that it shall be disclosed upon the proper order of any court, and that it may be disclosed to any person having a legitimate interest in the placement of any such person.

The local department of social services may disclose the contents of records and information learned during the course of a child protective services investigation or during the provision of child protective services to a family, without a court order and without the consent of the family, to a person having a legitimate interest when in the judgment of the local department of social services such disclosure is in the best interest of the child who is the subject of the records. Persons having a legitimate interest in child protective services records of local departments of social services include, but are not limited to, (i) any person who is responsible for investigating a report of known or suspected abuse or neglect or for providing services to a child or family which is the subject of a report, including multi-disciplinary teams and family assessment and planning teams referenced in subsection F of § 63.1-248.6, law-enforcement agencies and Commonwealth's attorneys; (ii) child welfare or human services agencies of the Commonwealth or its political subdivisions when those agencies request information to determine the compliance of any person with a child protective services plan or an order of any court; (iii) personnel of the school or child day program as defined in § 63.1-195 attended by the child so that the local department can receive information from such personnel on an ongoing basis concerning the child's health and behavior, and the activities of the child's custodian; and (iv) a parent, grandparent, or any other person when such parent, grandparent or other person would be considered by the local department as a potential caretaker of the child in the event the department has to remove the child from his custodian.

Whenever a local department of social services exercises its discretion to release otherwise confidential information to any person who meets one or more of these descriptions, the local department shall be presumed to have exercised its discretion in a reasonable and lawful manner.

It shall be unlawful for any officer, agent or employee of any child-welfare agency, for the Commissioner, the State Board or their agents or employees, and for any person who has held any such position, and for any other person to whom any such information is disclosed as hereinabove provided, to disclose, directly or indirectly, any such confidential information, except as herein provided. Every violation of this section shall constitute a Class 1 misdemeanor and be punishable as such.

B. Any person who has attained his majority, who has not been legally adopted in accordance with the provisions of Chapter 44 10.2 (~~§ 63.1-220~~ § 63.1-219.7 et seq.) of this title, who was not a child for whom all parental rights and responsibilities have been terminated, and who believes that he has been placed out by a child-placing agency, shall have the right to demand and receive from the Commissioner, the State Board, or any such agency, such information as any of them may have concerning his own parents or relatives.

C. Any person who has not been legally adopted in accordance with the provisions of Chapter 44 10.2 (~~§ 63.1-220~~ § 63.1-219.7 et seq.) of this title and who was a child for whom all parental rights and responsibilities have been terminated, shall not have access to any information from a child-placing agency with respect to the identity of the biological family, except (i) upon application of the child who is eighteen or more years of age, (ii) upon order of a circuit court entered upon good cause shown, and (iii) after notice to and opportunity for hearing by the applicant for such order and the child-placing agency or local board of public welfare or social services which had custody of the child.

An eligible person who is a resident of Virginia may apply for the court order provided for herein to (i) the circuit court of the county or city where the person resides or (ii) the circuit court of the county or city where the principal office of the child-placing agency or local board of public welfare or social services which controls the information sought by the person is located. An eligible person who is not a resident of Virginia shall apply for such a court order to the circuit court of the county or city where the principal office of the child-placing agency or local board of public welfare or social services which controls the information sought by the person is located.

If the identity and whereabouts of the biological family are known to the agency or local board, the court may require the agency or local board to advise the biological parents of the pendency of the application for such order. In determining good cause for the disclosure of such information, the court shall consider the relative effects of such action upon the applicant for such order and the biological parents.

D. This section shall not apply to the disposition of adoption records, reports and information which is governed by the provisions of ~~§ 63.1-236~~ § 63.1-219.53.

## CHAPTER 10.2.

### ADOPTION.

#### Article 1.

#### General Provisions.

##### § 63.1-219.7. Definitions.

*As used in this chapter:*

*"Adoptive home" means any family home selected and approved by a parent, local board of social services or a licensed child-placing agency for the placement of a child with the intent of adoption.*

*"Adoptive placement" means arranging for the care of a child who is in the custody of a child-placing agency in an approved home for the purpose of adoption.*

*"Birth family" or "birth sibling" means the child's biological family or biological sibling.*

*"Birth parent" means the child's biological parent and, for purposes of adoptive placement, means parent(s) by previous adoption.*

*"Child-placing agency" means any person who places children in foster homes or adoptive homes or a local board of social services that places children in foster homes or adoptive homes pursuant to §§ 63.1-56, 63.1-204 and 63.1-219.28.*

*"Parental placement" means locating or effecting the placement of a child or the placing of a child in a family home by the child's parent or legal guardian for the purpose of foster care or adoption.*

*"Person" means any natural person or association, partnership or corporation.*

##### § 63.1-219.8. Who may place children for adoption.

*A child may be placed for adoption by:*

- 1. A licensed child-placing agency;*
- 2. A local board of social services;*
- 3. The child's parent or legal guardian if the placement is a parental placement; and*
- 4. Any agency outside the Commonwealth that is licensed or otherwise duly authorized to place children for adoption by virtue of the laws under which it operates.*

##### § 63.1-219.9. Filing of petition for adoption; venue; jurisdiction; and proceedings.

*Proceedings for the adoption of a minor child and for a change of name of such child shall be instituted only by petition to a circuit court in the county or city in which the petitioner resides or in the county or city in which is located the child-placing agency that placed the child. Such petition may be filed by any natural person who resides in the Commonwealth or who has custody of a child placed by a child-placing agency of the Commonwealth, for leave to adopt a minor child not legally his by birth and, if it is so desired by the petitioner, also to change the name of such child. In the case of married persons, the petition shall be the joint petition of the husband and wife but, in the event the child to be adopted is legally the child by birth or adoption of one of the petitioners, such petitioner shall unite in the petition for the purpose of indicating his or her consent to the prayer thereof only. The petition shall contain a full disclosure of the circumstances under which the child came to live, and is living, in the home of the petitioner. Each petition for adoption shall be signed by the petitioner as well as by counsel of record, if any. In any case in which the petition seeks the entry of an adoption order without referral for investigation, the petition shall be under oath.*

##### § 63.1-219.10. Parental, or agency, consent required; exceptions.

*A. No petition for adoption shall be granted, except as hereinafter provided in this section, unless written consent to the proposed adoption is filed with the petition. Such consent shall be signed and acknowledged before an officer authorized by law to take acknowledgments. The consent of a birth parent for the adoption of his child placed directly by the birth parent shall be executed as provided in § 63.1-219.40, and the circuit court may accept a certified copy of an order entered pursuant to § 63.1-219.40 in satisfaction of all requirements of this section, provided the order clearly evidences compliance with the applicable notice and consent requirements of § 63.1-219.40.*

*B. A birth parent who has not reached the age of eighteen shall have legal capacity to give consent to adoption and shall be as fully bound thereby as if the birth parent had attained the age of eighteen*

years.

*C. Consent shall be executed:*

1. By the parents or surviving parent of a child born in wedlock. A child born to a married birth mother shall be presumed to be the child of her husband and his consent shall be required. This presumption may be rebutted by sufficient evidence, satisfactory to the circuit court, which would establish by a preponderance of the evidence the paternity of another man, or the impossibility or improbability of cohabitation of the birth mother and her husband for a period of at least 300 days preceding the birth of the child, in such case his consent shall not be required. If the parents are divorced and the residual parental rights and responsibilities as defined in § 16.1-228 of one parent have been terminated by terms of the divorce, or other order of a court having jurisdiction, the petition may be granted without the consent of such parent; or

2. By the parents or surviving parent of a child born to parents who were not married to each other at the time of the child's conception or birth. The consent of the birth father of a child born to parents who were not married to each other at the time of the child's conception or birth shall not be required (i) if the identity of the birth father is not reasonably ascertainable or (ii) if the identity of such birth father is ascertainable and his whereabouts are known, such birth father is given notice of the adoption proceeding, including the date and location of the hearing, by registered or certified mail to his last known address, and such birth father fails to object to the adoption proceeding within twenty-one days of the mailing of such notice. Such objection shall be in writing, signed by the objecting party or counsel of record for the objecting party and shall be filed with the clerk of the court in which the petition was filed during the business day of the court, within the time period specified in this section. Failure of the objecting party to appear at the consent hearing, either in person or by counsel, shall constitute a waiver of such objection; or

3. By the child-placing agency or the local board of social services having custody of the child, with right to place him for adoption, through court commitment or parental agreement as provided in §§ 63.1-56, 63.1-204 or § 63.1-219.28; or an agency outside the Commonwealth that is licensed or otherwise duly authorized to place children for adoption by virtue of the laws under which it operates; and

4. By the child if he is fourteen years of age or older, unless the court finds that the best interests of the child will be served by not requiring such consent.

*D. No consent shall be required of the birth father of a child when the birth father is convicted of a violation of subsection A of § 18.2-61, § 18.2-63 or subsection B of § 18.2-366, and the child was conceived as a result of such violation.*

*E. When a child has been placed by the birth parent(s) with the prospective adoptive parent(s) who is the child's grandparent, adult brother or sister, adult uncle or aunt, or adult great uncle or great aunt, the court may accept the written and signed consent of the birth parent(s) that has been acknowledged by an officer authorized by law to take such acknowledgments.*

*§ 63.1-219.11. When consent is withheld or unobtainable.*

*A. If, after consideration of the evidence, the court finds that the valid consent of any person or agency whose consent is required is withheld contrary to the best interests of the child as set forth in § 63.1-219.13, or is unobtainable, the court may grant the petition without such consent:*

1. Twenty-one days after personal service of notice of petition on the party or parties whose consent is required by this section; or

2. If personal service is unobtainable, ten days after the completion of the execution of an order of publication against the party or parties whose consent is required by this section concerning the petition; or

3. If the judge certifies on the record that the identity of any person whose consent is hereinabove required is not reasonably ascertainable.

*An affidavit of the birth mother that the identity of the birth 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. The absence of such an affidavit shall not be deemed evidence that the identity of the birth father is reasonably ascertainable. For purposes of determining whether the identity of the birth father is reasonably ascertainable, the standard of what is reasonable under the circumstances shall control, taking into account the relative interests of the child, the birth mother and the birth father.*

*B. If the child is not in the custody of a child-placing agency and both parents are deceased, the court, after hearing evidence to that effect, may grant the petition without the filing of any consent.*

*§ 63.1-219.12. When consent is revocable; fraud or duress; mutual consent.*

*Parental consent to an adoption shall be revocable prior to the final order of adoption (i) upon proof of fraud or duress or (ii) after placement of the child in an adoptive home, upon written, mutual consent of the birth parents and prospective adoptive parents.*

*§ 63.1-219.13. Best interests of the child; standards for determining.*

*In determining whether the valid consent of any person whose consent is required is withheld contrary to the best interests of the child, or is unobtainable, the court shall consider whether the*

*failure to grant the petition pending before it would be detrimental to the child. In determining whether the failure to grant the petition would be detrimental to the child, the court shall consider all relevant factors, including the birth parent(s)' efforts to obtain or maintain legal and physical custody of the child; whether the birth parent(s)' efforts to assert parental rights were thwarted by other people; the birth parent(s)' ability to care for the child; the age of the child; the quality of any previous relationship between the birth parent(s) and the child and between the birth parent(s) and any other minor children; the duration and suitability of the child's present custodial environment; and the effect of a change of physical custody on the child.*

*§ 63.1-219.14. Parental presumption after revocation period expires.*

*If, after the expiration of the appropriate revocation period provided for in § 63.1-219.30 or § 63.1-219.41, a birth parent or an alleged birth parent attempts to obtain or regain custody of or attempts to exercise parental rights to a child who has been placed for adoption, there shall be no parental presumption in favor of any party. Upon the motion of any such birth parent or alleged birth parent, or upon the motion of any person or agency with whom the child has been placed, the court shall determine (i) whether the birth parent or alleged birth parent is a person whose consent to the adoption is required and, if so, then (ii) pursuant to § 63.1-219.13, whether, in the best interest of the child, the consent of the person whose consent is required is being withheld contrary to the best interest of the child or is unobtainable.*

*§ 63.1-219.15. Removal of child from adoptive home.*

*When a child is placed in an adoptive home pursuant to an adoptive home placement agreement by a local board of social services or by a licensed child-placing agency pursuant to § 63.1-219.28, or by the birth parent or legal guardian of the child pursuant to § 63.1-219.37, and a court of competent jurisdiction has not entered an interlocutory order of adoption, such child shall not be removed from the physical custody of the adoptive parents, except (i) with the consent of the adoptive parents; (ii) upon order of the juvenile and domestic relations district court or the circuit court of competent jurisdiction; (iii) pursuant to § 63.1-211, which removal shall be subject to review by the juvenile and domestic relations district court upon petition of the adoptive parents; or (iv) upon order of the juvenile and domestic relations district court that accepted consent when consent has been revoked as authorized by § 63.1-219.12 or § 63.1-219.30.*

*When a child has been placed in an adoptive home directly by the birth parents or legal guardian of the child, the adoptive parents have been granted custody of the child pursuant to § 63.1-219.40, and it becomes necessary to remove the child from the home of the adoptive parents, the court entering such an order shall order that any consent given for the purposes of such placement shall be void and shall determine the custody of the child.*

*§ 63.1-219.16. Entry of interlocutory order.*

*If, after considering the home study or any required report, the circuit court is satisfied that all of the applicable requirements have been complied with, that the petitioner is financially able to maintain adequately, except as provided in Chapter 11.1 (§ 63.1-238.1 et seq.) of this title, and is morally suitable and a proper person to care for and train the child, that the child is suitable for adoption by the petitioner, and that the best interests of the child will be promoted by the adoption, it shall enter an interlocutory order of adoption declaring that henceforth, subject to the probationary period hereinafter provided for and to the provisions of the final order of adoption, the child will be, to all intents and purposes, the child of the petitioner. If the petition includes a prayer for a change of the child's name and the circuit court is satisfied that such change is in the best interests of the child, upon entry of final order, the name of the child shall be changed. An attested copy of every interlocutory order of adoption shall be forwarded forthwith by the clerk of the circuit court in which it was entered to the Commissioner and to the licensed or duly authorized child-placing agency or the local director of social services which prepared the required homestudy or report.*

*If the circuit court denies the petition for adoption and if it appears to the circuit court that the child is without proper care, custody or guardianship, the circuit court may, in its discretion, appoint a guardian for the child or commit the child to a custodial agency as provided for in §§ 16.1-278.2, 16.1-278.3 and 31-5, respectively.*

*§ 63.1-219.17. Probationary period and interlocutory order not required under certain circumstances.*

*The circuit court may omit the probationary period and the interlocutory order and enter a final order of adoption under the following circumstances:*

*1. If the child is legally the child by birth or adoption of one of the petitioners and if the circuit court is of the opinion that the entry of an interlocutory order would otherwise be proper.*

*2. After receipt of the report required by § 63.1-219.35, if the child has been placed in the home of the petitioner by a child-placing agency and (i) the placing or supervising agency certifies to the circuit court that the child has lived in the home of the petitioner continuously for a period of at least six months immediately preceding the filing of the petition and has been visited by a representative of such agency at least three times within a six-month period, provided there are not less than ninety days between the first visit and the last visit, and (ii) the circuit court is of the opinion that the entry of an interlocutory order would otherwise be proper. The circuit court may, for good cause shown, in cases of*

placement by a child-placing agency, omit the requirement that the visits be made in the six months immediately preceding the filing of the petition, provided that such visits were made in some six-month period preceding the filing.

3. After receipt of the report, if the child has resided in the home of the petitioner continuously for at least three years immediately prior to the filing of the petition for adoption, and the circuit court is of the opinion that the entry of an interlocutory order would otherwise be proper.

4. When a child has been placed by the birth parent with the prospective adoptive parent who is the child's grandparent, adult brother or sister, adult uncle or aunt, or adult great uncle or great aunt and the court has accepted the written consent of the birth parent in accordance with § 63.1-219.10, and the circuit court is of the opinion that the entry of an interlocutory order would otherwise be proper. If the circuit court determines the need for an investigation prior to the final order of adoption, it shall refer the matter to the local director of social services or a licensed child placing agency for an investigation and report, which shall be completed within such time as the circuit court designates.

5. After receipt of the report, if the child has been legally adopted according to the laws of a foreign country with which the United States has diplomatic relations and if the circuit court is of the opinion that the entry of an interlocutory order would otherwise be proper, and the child (i) has resided in the home of the petitioners for at least one year immediately prior to the filing of the petition, or (ii) has resided in the home of the petitioners for at least six months immediately prior to the filing of the petition, has been visited by a representative of a child-placing agency or of the local department of social services three times within such six-month period with no fewer than ninety days between the first and last visits, and the three visits have occurred within eight months immediately prior to the filing of the petition.

6. After receipt of the report, if the child was placed into Virginia from a foreign country in accordance with § 63.1-207, and if the child has resided in the home of the petitioner for at least six months immediately prior to the filing of the petition and has been visited by a representative of a licensed child-placing agency or of the local department of social services three times within the six-month period with no fewer than ninety days between the first and last visits, and the three visits have occurred within eight months immediately prior to the filing of the petition.

§ 63.1-219.18. Revocation of interlocutory order.

The circuit court may, by order entered of record, revoke its interlocutory order of adoption at any time prior to the entry of the final order, for good cause shown, on its own motion, or on the motion of the birth parents of the child, or of the petitioner, or of the child himself by his next friend, or of the child-placing agency, which placed the child with the petitioners or of the Commissioner; but, no such order of revocation shall be entered, except on motion of the petitioner, unless the petitioner is given ten days' notice of such motion in writing and an opportunity to be heard or has removed from the Commonwealth. The clerk of the circuit court shall forward an attested copy of every such order to the Commissioner and to the child-placing agency that placed the child.

When an interlocutory order has been entered and subsequently is revoked, the circuit court may proceed in the same manner as set forth in § 63.1-219.16 to enter an order concerning the subsequent custody or guardianship of the child.

§ 63.1-219.19. Visitations during probationary period and report.

A. Except as hereinafter provided, after the entry of an interlocutory order of adoption, (i) the licensed or duly authorized child-placing agency; or, (ii) if the child was not placed by an agency and the placement is not a parental placement, the local director of social services; or, (iii) if the placement is a parental placement, the child-placing agency that submitted the home study; or, (iv) if the child was placed by an agency in another state or by an agency, court, or other entity in another country, the local director of social services or licensed child-placing agency, whichever agency completed the home study or provided supervision, shall cause the child to be visited at least three times within a period of six months by an agent of such local board or department of social services or by an agent of such licensed or duly authorized child-placing agency. Whenever practicable, such visits shall be made within the six months' period immediately following the date of entry of the interlocutory order; however, no less than ninety days shall elapse between the first visit and the last visit. The agency that placed the child, the child-placing agency that submitted the home study, the local director of social services or the licensed child-placing agency, as applicable, shall make a written report to the circuit court, in such form as the Commissioner may prescribe, of the findings made pursuant to such visitations. A copy of the report to the circuit court shall be furnished to the counsel of record for the parties, which copy shall be returned by such counsel as is required by § 63.1-219.53 for the return of the original report. A copy of the report to the circuit court shall be served on the Commissioner by delivering or mailing a copy to him on or before the day of filing the report with the circuit court. On the report to the circuit court there shall be appended either acceptance of service or certification of the local director of social services or the representative of the child-placing agency, that copies were served as this section requires, showing the date of delivery or mailing. The Commissioner may notify the circuit court within twenty-one days of the date of delivery or mailing of the report as shown by the agency, during which time the circuit court shall withhold consideration of the merits of the report pending review of the

report by the Commissioner, of any disapproval thereof stating reasons for any further action on the report that he deems necessary.

B. The three supervisory visits required in subsection A shall be conducted in the presence of the child. At least one such visit shall be conducted in the home of the petitioners in the presence of the child and both petitioners, unless the petition was filed by a single parent or one of the petitioners is no longer residing in the home.

C. When it is determined for purposes of subsection B that the petitioner no longer resides in the adoptive home, the child-placing agency or local director of social services shall contact the petitioner to determine whether or not the petitioner wishes to remain a party to the proceedings and shall include in its report to the circuit court the results of its findings.

§ 63.1-219.20. Final order of adoption.

After the expiration of six months from the date upon which the interlocutory order is entered, and after considering the report made pursuant to § 63.1-219.19, if the circuit court is satisfied that the best interests of the child will be served thereby, the circuit court shall enter the final order of adoption. However, a final order of adoption shall not be entered until information has been furnished by the petitioner in compliance with § 32.1-262 unless the circuit court, for good cause shown, finds the information to be unavailable or unnecessary. No circuit court shall deny a petitioner a final order of adoption for the sole reason that the child was placed in the adoptive home by a person not authorized to make such placements pursuant to § 63.1-219.8. An attested copy of every final order of adoption shall be forwarded, by the clerk of the circuit court in which it was entered, to the Commissioner and to the child-placing agency that placed the child or to the local director of social services, in cases where the child was not placed by an agency.

§ 63.1-219.21. Annual review of pending petitions for adoption; duty of Commissioner and circuit court clerk.

After the expiration of twelve months from the date of the entry of the last order upon a petition for adoption, except when the last order entered is a final order of adoption, it shall be the responsibility of the Commissioner to notify the clerk of the circuit court of all adoption cases that have been pending for a period of more than twelve months, and the clerk of the circuit court shall place on the docket all such cases for review by the circuit court as soon as practicable.

§ 63.1-219.22. Legal effects of adoption.

The birth parents, and the parents by previous adoption, if any, except where a final order of adoption is entered pursuant to § 63.1-219.48, and any other person whose interest in the child derives from or through such parent or previous adoptive parent, including but not limited to grandparents, stepparents, former stepparents, blood relatives and family members, other than any such parent who is the husband or wife of one of the petitioners, shall, by such final order of adoption, be divested of all legal rights and obligations in respect to the child including the right to petition any court for visitation with the child, but in all cases the child shall be free from all legal obligations of obedience and maintenance in respect to such persons. Any child adopted under the provisions of this chapter shall, from and after the entry of the interlocutory order or from and after the entry of the final order where no such interlocutory order is entered, be, to all intents and purposes, the child of the person or persons so adopting him, and, unless and until such interlocutory order or final order is subsequently revoked, shall be entitled to all the rights and privileges, and subject to all the obligations, of a child of such person or persons born in lawful wedlock. An adopted person is the child of an adopting parent, and as such, the adopting parent shall be entitled to testify in all cases civil and criminal, as if the adopted child was born of the adopting parent in lawful wedlock.

§ 63.1-219.23. Final order not subject to attack after six months.

After the expiration of six months from the date of entry of any final order of adoption from which no appeal has been taken to the Court of Appeals, the validity thereof shall not be subject to attack in any proceedings, collateral or direct, for any reason, including but not limited to fraud, duress, failure to give any required notice, failure of any procedural requirement, or lack of jurisdiction over any person, and such order shall be final for all purposes.

§ 63.1-219.24. Provision of false information; penalty.

Any person who knowingly and intentionally provides false information in writing and under oath, which is material to an adoptive placement shall be guilty of a Class 6 felony. The Commissioner is authorized to investigate such cases and may refer the case to the attorney for the Commonwealth for prosecution.

§ 63.1-219.25. Certain exchange of property, advertisement, solicitation prohibited; penalty.

No person or child-placing agency shall charge, pay, give, or agree to give or accept any money, property, service or other thing of value in connection with a placement or adoption or any act undertaken pursuant to this chapter except (i) reasonable and customary services provided by a licensed or duly authorized child-placing agency and fees paid for such services; (ii) payment or reimbursement for medical expenses and insurance premiums that are directly related to the birth mother's pregnancy and hospitalization for the birth of the child who is the subject of the adoption proceedings, for mental health counseling received by the birth mother or birth father related to the adoption, and for expenses

incurred for medical care for the child; (iii) payment or reimbursement for reasonable and necessary expenses for food, clothing, and shelter when, upon the written advice of her physician, the birth mother is unable to work or otherwise support herself due to medical reasons or complications associated with the pregnancy or birth of the child; (iv) payment or reimbursement for reasonable expenses incurred incidental to any required court appearance including, but not limited to, transportation, food and lodging; (v) usual and customary fees for legal services in adoption proceedings; and (vi) payment or reimbursement of reasonable expenses incurred for transportation in connection with any of the services specified in this section or intercountry placements as defined in § 63.1-195 and as necessary for compliance with state and federal law in such placements. No person shall advertise or solicit to perform any activity prohibited by this section. Any person violating the provisions of this section shall be guilty of a Class 6 felony. The Commissioner is authorized to investigate cases in which fees paid for legal services appear to be in excess of usual and customary fees in order to determine if there has been compliance with the provisions of this section.

§ 63.1-219.26. Suspected violation of property exchange information.

If the juvenile and domestic relations or circuit court or any participating licensed or duly authorized child-placing agency suspects that there has been a violation of § 63.1-219.25 in connection with a placement or adoption, it shall report such findings to the Commissioner for investigation and appropriate action. If the Commissioner suspects that a person has violated § 63.1-219.25, he shall report his findings to the appropriate attorney for the Commonwealth. If the Commissioner believes that such violation has occurred in the course of the practice of a profession or occupation licensed or regulated pursuant to Title 54.1, he shall also report such findings to the appropriate regulatory authority for investigation and appropriate disciplinary action.

§ 63.1-219.27. Birth certificate.

For the purpose of securing a new birth certificate for an adopted child, the procedures set forth in § 32.1-262 shall be followed.

## Article 2.

### Agency Adoptions.

§ 63.1-219.28. Placement of children for adoption by agency or local board.

A licensed child-placing agency or local board of social services may place for adoption, and is empowered to consent to the adoption of, any child who is properly committed or entrusted to its care, in accordance with the provisions of §§ 63.1-56, 63.1-204 or this section, when the order of commitment or the entrustment agreement between the birth parent(s) and the agency or board provides for the termination of all parental rights and responsibilities with respect to the child for the purpose of placing and consenting to the adoption of such child.

The entrustment agreement shall divest the birth parent(s) of all legal rights and obligations with respect to the child, and the child shall be free from all legal obligations of obedience and maintenance with respect to them, provided that such rights and obligations may be restored to the birth parent(s) and the child by circuit court order prior to the entry of a final order of adoption upon proof of fraud or duress.

§ 63.1-219.29. Execution of entrustment agreement by birth parent(s); exceptions; notice and objection to entrustment; copy required to be furnished.

For the purposes of this section, a birth parent who is less than eighteen years of age shall be deemed fully competent and shall have legal capacity to execute a valid entrustment agreement, including an agreement that provides for the termination of all parental rights and responsibilities, and shall be as fully bound thereby as if such birth parent had attained the age of eighteen years.

An entrustment agreement for the termination of all parental rights and responsibilities with respect to the child shall be valid notwithstanding that it is not signed by the birth father of a child born out of wedlock if the identity of the birth father is not reasonably ascertainable, or if such birth father is given notice of the entrustment by registered or certified mail to his last known address and such birth father fails to object to the entrustment within twenty-one days of the mailing of such notice. Such objection shall be in writing, signed by the objecting party or counsel of record for the objecting party and shall be filed with the agency that mailed the notice of entrustment within the time period specified in § 63.1-219.30. An affidavit of the birth mother that the identity of the birth father is not reasonably ascertainable shall be sufficient evidence of this fact, provided there is no other evidence that would refute such an affidavit. The absence of such an affidavit shall not be deemed evidence that the identity of the birth father is reasonably ascertainable. For purposes of determining whether the identity of the birth father is reasonably ascertainable, the standard of what is reasonable under the circumstances shall control, taking into account the relative interests of the child, the birth mother and the birth father.

An entrustment agreement for the termination of all parental rights and responsibilities with respect to the child shall be valid notwithstanding that it is not signed by the birth father of a child when the birth father has been convicted of a violation of subsection A of § 18.2-61, § 18.2-63 or subsection B of § 18.2-366, and the child was conceived as a result of such violation.

A copy of the entrustment agreement shall be furnished to all parties signing such agreement.

§ 63.1-219.30. Revocation of entrustment agreement.

A valid entrustment agreement terminating all parental rights and responsibilities to the child shall be revocable by either of the birth parents until (i) the child has reached the age of twenty-five days and (ii) fifteen days have elapsed from the date of execution of the agreement. In addition, a valid entrustment agreement shall be revocable by either of the birth parents if the child has not been placed in the home of adoptive parents at the time of such revocation. Revocation of an entrustment agreement shall be in writing and signed by the revoking party. The written revocation shall be delivered to the child-placing agency or local board of social services to which the child was originally entrusted. Delivery of the written revocation shall be made during the business day of the child-placing agency or local board of social services to which the child was originally entrusted, in accordance with the applicable time period set out in this section. If the revocation period expires on a Saturday, Sunday, legal holiday or any day on which the agency or local board is officially closed, the revocation period shall be extended to the next day that is not a Saturday, Sunday, legal holiday or other day on which the agency or local board is officially closed. Upon revocation of the entrustment agreement, the child shall be returned to the parent revoking the agreement.

§ 63.1-219.31. Counseling of birth parents required.

Prior to the placement of a child for adoption, the licensed child-placing agency or local board having custody of the child shall counsel the birth mother or, if reasonably available, both birth parents, concerning the disposition of their child.

§ 63.1-219.32. Determination of appropriate home.

In determining the appropriate home in which to place a child for adoption, a married couple or an unmarried individual shall be eligible to receive placement of a child for purposes of adoption. In addition, the agency or board may consider the recommendations of a physician or attorney licensed in the Commonwealth, or a clergyman who is familiar with the situation of the prospective adoptive parents or the child. The physician, attorney or clergyman shall not charge any fee for recommending such a placement to a board or agency and shall not advertise that he is available to make such recommendations.

§ 63.1-219.33. Parental placement sections apply if birth parents designate adoptive parents.

When a licensed child-placing agency or a local board of social services accepts custody of a child for the purpose of placing the child with adoptive parents designated by the birth parents or a person other than a licensed child-placing agency or local board of social services, the parental provisions of this chapter shall apply to such placement.

§ 63.1-219.34. Filing of petition for agency adoption.

A petition for the adoption of a child placed in the home of the petitioners by a child-placing agency shall be filed in the name by which the child will be known after adoption, provided the name is followed by the registration number of the child's original birth certificate and the state or country in which the registration occurred unless it is verified by the registrar of vital statistics of the state or country of birth that such information is not available. The report of investigation required by § 63.1-219.35 and, when applicable, the report required by § 63.1-219.19 shall be identified with the child's name as it appears on the birth certificate, the birth registration number and the name by which the child is to be known after the final order of adoption is entered.

§ 63.1-219.35. Investigations; report to court.

A. Upon the filing of the petition, the court shall forward a copy of the petition and all exhibits thereto to the Commissioner and to the agency that placed the child. In cases where the child was placed by an agency in another state, or by an agency, court, or other entity in another country, the petition and all exhibits shall be forwarded to the local director of social services or licensed child-placing agency, whichever agency completed the home study or provided supervision. If no Virginia agency provided such services, the petition and all exhibits shall be forwarded to the local director of social services. If the child was not placed by an agency, the petition and all exhibits shall be forwarded to the director of social services of the locality where the petitioners reside or resided at the time of filing the petition, or had legal residence at the time of the filing of the petition. However, in cases where a licensed child-placing agency has completed a home study, the petition and all exhibits shall be forwarded to the licensed child-placing agency. The applicable agency shall make a thorough investigation of the matter and report thereon in writing, in such form as the Commissioner may prescribe, to the court within ninety days after the copy of the petition and all exhibits thereto are forwarded. A copy of the report to the court shall be served on the Commissioner by delivering or mailing a copy to him on or before the day of filing the report with the court. On the report to the court there shall be appended either acceptance of service or certificate of the local director of social services or other welfare agency of the county or city, or the representative of the child-placing agency, that copies were served as this section requires, showing the date of delivery or mailing. The Commissioner may notify the court within twenty-one days of the date of delivery or mailing of the report as shown by the agency, during which time the court shall withhold consideration of the merits of the petition pending review of the agency report by the Commissioner, of any disapproval thereof stating reasons for any further action on the report that he deems necessary.

B. If the report required in subsection A is not made to the court within the periods specified, the

court may proceed to hear and determine the merits of the petition and enter such order or orders as the court may deem appropriate.

C. The investigation requested by the court shall include, in addition to other inquiries which the court may require the child-placing agency or local director of social services to make, inquiries as to (i) whether the petitioner is financially able, except as provided in Chapter 11.1 (§ 63.1-238.1 et seq.) of this title, morally suitable, in satisfactory physical and mental health and a proper person to care for and to train the child; (ii) what the physical and mental condition of the child is; (iii) why the parents, if living, desire to be relieved of the responsibility for the custody, care and maintenance of the child, and what their attitude is toward the proposed adoption; (iv) whether the parents have abandoned the child or are morally unfit to have custody over him; (v) the circumstances under which the child came to live, and is living, in the same home of the petitioner; (vi) whether the child is a suitable child for adoption by the petitioner; and (vii) what fees have been paid by the petitioners or in their behalf to persons or agencies that have assisted them in obtaining the child. Any report made to the court shall include a recommendation as to the action to be taken by the court on the petition. A copy of any report made to the court shall be furnished to counsel of record representing the adopting parent or parents. When the investigation reveals that there may have been a violation of § 63.1-219.8 or § 63.1-219.25, the local director or superintendent or child-placing agency shall so inform the court and shall make such violation known to the Commissioner.

D. The report shall include the relevant physical and mental history of the birth parents if known to the person making the report. However, nothing in this subsection shall require that an investigation be made.

#### § 63.1-219.36. Foster parent adoption.

When a foster parent who has a child placed in the foster parents' home by a licensed or duly authorized child-placing agency desires to adopt the child and (i) the child has resided in the home of such foster parent continuously for at least eighteen months and (ii) the birth parents' rights to the child have been terminated, the court shall accept the petition filed by the foster parent and shall order a thorough investigation of the matter to be made pursuant to § 63.1-219.35. The court may refer the matter for investigation to a licensed or duly authorized child-placing agency other than the agency holding custody of the child. Upon completion of the investigation and report and filing of the consent of the agency holding custody of the child, or upon the finding contemplated by subsection C of § 63.1-219.10, the court may enter a final order of adoption waiving visitation requirements, if the court determines that the adoption is in the best interests of the child.

#### Article 3.

#### Parental Placement Adoptions.

#### § 63.1-219.37. Placement of children by parent or guardian.

The birth parent or legal guardian of a child may place his child for adoption directly with the adoptive parents of his choice. Consent to the proposed adoption shall be executed upon compliance with the provisions of this chapter before a juvenile and domestic relations district court or, if the birth parent or legal guardian does not reside in Virginia, before a court having jurisdiction over child custody matters in the jurisdiction where the birth parent or legal guardian resides when requested by a juvenile and domestic relations district court of this Commonwealth, pursuant to § 20-142. Consent proceedings shall be advanced on the juvenile and domestic relations district court docket so as to be heard by the court within ten days of filing of the petition, or as soon thereafter as practicable so as to provide the earliest possible disposition.

#### § 63.1-219.38. Home study; simultaneous meeting required; exception.

Prior to the consent hearing in the juvenile and domestic relations district court, a home study of the adoptive parent(s) shall be completed by a licensed or duly authorized child placing agency in accordance with regulations promulgated by the State Board of Social Services. The home study shall make inquiry as to (i) whether the prospective adoptive parents are financially able, morally suitable, and in satisfactory physical and mental health to enable them to care for the child; (ii) the physical and mental condition of the child, if known; (iii) the circumstances under which the child came to live, or will be living, in the home of the prospective adoptive family, as applicable; (iv) what fees have been paid by the prospective adoptive family or in their behalf in the placement and adoption of the child; (v) whether the requirements of subdivisions A 1, A 2, A 3 and A 5 of § 63.1-219.39 have been met; and (vi) any other matters specified by the court. In the course of the home study, the agency social worker shall meet at least once with the birth parent(s) and prospective adoptive parents simultaneously. When the child has been placed with prospective adoptive parents who are related to the child as specified in subdivision 6 of § 63.1-219.40, this meeting is not required.

#### § 63.1-219.39. Requirements of a parental placement adoption.

A. The juvenile and domestic relations district court shall not accept consent until it determines that:

1. The birth parent(s) are aware of alternatives to adoption, adoption procedures, and opportunities for placement with other adoptive families, and that the birth parents' consent is informed and uncoerced.

2. A licensed or duly authorized child-placing agency has counseled the prospective adoptive parents

with regard to alternatives to adoption, adoption procedures, including the need to address the parental rights of birth parents, the procedures for terminating such rights, and opportunities for adoption of other children; that the prospective adoptive parents' decision is informed and uncoerced; and that they intend to file an adoption petition and proceed toward a final order of adoption.

3. The birth parent(s) and adoptive parents have exchanged identifying information including but not limited to full names, addresses, physical, mental, social and psychological information and any other information necessary to promote the welfare of the child.

4. Any financial agreement or exchange of property among the parties and any fees charged or paid for services related to the placement or adoption of the child have been disclosed to the court and that all parties understand that no binding contract regarding placement or adoption of the child exists.

5. There has been no violation of the provisions of § 63.1-219.25 in connection with the placement; however, if it appears there has been such violation, the court shall not reject consent of the birth parent to the adoption for that reason alone but shall report the alleged violation as required by § 63.1-219.26.

6. A licensed or duly authorized child-placing agency has conducted a home study of the prospective adoptive home in accordance with regulations established by the State Board of Social Services and has provided to the court a report of such home study, which shall contain the agency's recommendation regarding the suitability of the placement. A married couple or an unmarried individual shall be eligible to receive placement of a child for adoption.

7. The birth parent(s) have been informed of their opportunity to be represented by legal counsel.

B. The court shall not accept the consent if the requirements of subsection A have not been met. In such cases, it shall refer the birth parent to a licensed or duly authorized child-placing agency for investigation and recommendation in accordance with § 63.1-219.45. If the court determines that any of the parties is financially unable to obtain the required services, it shall refer the matter to the local director of social services.

§ 63.1-219.40. Consent to be executed in juvenile court; exceptions.

When the juvenile and domestic relations district court is satisfied that all requirements of § 63.1-219.39 have been met with respect to at least one birth parent and the adoptive child is at least ten days old, that birth parent or both birth parents, as the case may be, shall execute consent to the proposed adoption in compliance with the provisions of § 63.1-219.10 while before the juvenile and domestic relations district court in person and in the presence of the prospective adoptive parents. The juvenile and domestic relations district court shall accept the consent of the birth parent(s) and transfer custody of the child to the prospective adoptive parents, pending notification to any nonconsenting birth parent, as described hereinafter.

1. a. The execution of consent before the juvenile and domestic relations district court shall not be required of a birth father who is not married to the mother of the child at the time of the child's conception or birth if (i) the birth father consents under oath and in writing to the adoption; (ii) the birth mother swears under oath and in writing that the identity of the birth father is not reasonably ascertainable; (iii) the identity of the birth father is ascertainable and his whereabouts are known, he is given notice of the proceedings by registered or certified mail to his last known address and he fails to object to the proceeding within twenty-one days of the mailing of such notice. Such objection shall be in writing, signed by the objecting party or counsel of record for the objecting party and shall be filed with the clerk of the court in which the petition was filed during the business day of the court, within the time period specified in this section. Failure of the objecting party to appear at the consent hearing, either in person or by counsel, shall constitute a waiver of such objection; or (iv) the putative birth father named by the birth mother denies under oath and in writing paternity of the child. An affidavit of the birth mother that the identity of the birth father is not reasonably ascertainable shall be sufficient evidence of this fact, provided there is no other evidence before the court that would refute such an affidavit. The absence of such an affidavit shall not be deemed evidence that the identity of the birth father is reasonably ascertainable. For purposes of determining whether the identity of the birth father is reasonably ascertainable, the standard of what is reasonable under the circumstances shall control, taking into account the relative interests of the child, the birth mother and the birth father.

b. The juvenile and domestic relations district court may accept the written consent of the birth father who is not married to the birth mother of the child at the time of the child's conception or birth, provided that the identifying information required in § 63.1-219.39 is filed in writing with the juvenile and domestic relations district court of jurisdiction. Such consent shall be executed after the birth of the child, shall advise the birth father of his opportunity for legal representation, and shall be presented to the juvenile and domestic relations district court for acceptance. The consent may waive further notice of the adoption proceedings and shall contain the name, address and telephone number of the birth father's legal counsel or an acknowledgment that he was informed of his opportunity to be represented by legal counsel and declined such representation.

c. In the event that the birth mother's consent is not executed in the juvenile and domestic relations district court, the consent of the birth father who is not married to the birth mother of the child shall be executed in the juvenile and domestic relations district court.

d. A child born to a married birth mother shall be presumed to be the child of her husband and his consent shall be required. This presumption may be rebutted by sufficient evidence, satisfactory to the juvenile and domestic relations district court, which would establish by a preponderance of the evidence the paternity of another man or the impossibility or improbability of cohabitation of the birth mother and her husband for a period of at least 300 days preceding the birth of the child, in which case the husband's consent shall not be required.

2. A birth parent whose consent is required as set forth in § 63.1-219.10, whose identity is known and who neither consents before the juvenile and domestic relations district court as described above, nor executes a written consent to the adoption or a denial of paternity out of court as provided above, shall be given notice, including the date and location of the hearing, of the proceedings pending before the juvenile and domestic relations district court and be given the opportunity to appear before the juvenile and domestic relations district court. Such hearing may occur subsequent to the proceeding wherein the consenting birth parent appeared but may not be held until twenty-one days after personal service of notice on the nonconsenting birth parent, or if personal service is unobtainable, ten days after the completion of the execution of an order of publication against such birth parent. The juvenile and domestic relations district court may appoint counsel for the birth parent(s). If the juvenile and domestic relations district court finds that consent is withheld contrary to the best interests of the child, as set forth in § 63.1-219.13, or is unobtainable, it may grant the petition without such consent and enter an order waiving the requirement of consent of the nonconsenting birth parent and transferring custody of the child to the prospective adoptive parents, which order shall become effective fifteen days thereafter. If the juvenile and domestic relations district court denies the petition, the juvenile and domestic relations district court shall order that any consent given for the purpose of such placement shall be void and, if necessary, the court shall determine custody of the child as between the birth parents.

3. Except as provided in subdivision 4 of this section, if consent cannot be obtained from at least one birth parent, the juvenile and domestic relations district court shall deny the petition and determine custody of the child pursuant to § 16.1-278.2.

4. If the child was placed by the birth parent(s) with the prospective adoptive parents and if both birth parents have failed, without good cause, to appear at a hearing to execute consent under this section for which they were given proper notice pursuant to § 16.1-264, the juvenile and domestic relations district court may grant the petition without the consent of either birth parent and enter an order waiving consent and transferring custody of the child to the prospective adoptive parents, which order shall become effective fifteen days thereafter. Prior to the entry of such an order, the juvenile and domestic relations district court may appoint legal counsel for the birth parents and shall find by clear and convincing evidence (i) that the birth parents were given proper notice of the hearing(s) to execute consent and of the hearing to proceed without their consent; (ii) that the birth parents failed to show good cause for their failure to appear at such hearing(s); and (iii) that pursuant to § 63.1-219.13, the consent of the birth parents is withheld contrary to the best interests of the child or is unobtainable.

5. If both birth parents are deceased, the juvenile and domestic relations district court, after hearing evidence to that effect, may grant the petition without the filing of any consent.

6. When a child has been placed by the birth parent(s) with prospective adoptive parents who are the child's grandparents, adult brother or sister, adult uncle or aunt or adult great uncle or great aunt, consent does not have to be executed in the juvenile and domestic relations district court in the presence of the prospective adoptive parents. The juvenile and domestic relations district court may accept written consent that has been signed and acknowledged before an officer authorized by law to take acknowledgments. No hearing shall be required for the court's acceptance of such consent.

When such child has resided in the home of the prospective adoptive parent(s) continuously for three or more years, this section shall not apply, and consent shall be executed in accordance with subsection E of § 63.1-219.10.

7. No consent shall be required from the birth father of a child placed pursuant to this section when such father is convicted of a violation of subsection A of § 18.2-61, § 18.2-63 or subsection B of § 18.2-366, and the child was conceived as a result of such violation, nor shall the birth father be entitled to notice of any of the proceedings under this section.

8. The juvenile and domestic relations district court shall review each order entered under this section at least annually until such time as the final order of adoption is entered.

§ 63.1-219.41. When consent is revocable.

Consent shall be revocable as follows:

1. By either consenting birth parent for any reason for up to fifteen days from its execution.

a. Such revocation shall be in writing, signed by the revoking party or counsel of record for the revoking party and shall be filed with the clerk of the juvenile and domestic relations district court in which the petition was filed during the business day of the juvenile and domestic relations district court, within the time period specified in this section. If the revocation period expires on a Saturday, Sunday, legal holiday or any day on which the clerk's office is closed as authorized by statute, the revocation period shall be extended to the next day that is not a Saturday, Sunday, legal holiday or other day on which the clerk's office is closed as authorized by statute.

b. Upon the filing of a valid revocation within the time period set out in this section, the juvenile and domestic relations district court shall order that any consent given for the purpose of such placement is void and, if necessary, the juvenile and domestic relations district court shall determine custody of the child as between the birth parents.

2. By any party prior to the final order of adoption (i) upon proof of fraud or duress or (ii) after placement of the child in an adoptive home, upon written, mutual consent of the birth parents and prospective adoptive parents.

§ 63.1-219.42. *Adoptive home not in child's best interests.*

If the juvenile and domestic relations district court determines from the information provided to it that placement in the prospective adoptive home will be contrary to the best interests of the child, it shall so inform the birth parents. If the birth parents choose not to retain custody of the child nor to designate other prospective adoptive parents, or if the birth parents' whereabouts are not reasonably ascertainable, the juvenile and domestic relations district court shall determine custody of the child.

§ 63.1-219.43. *Duty of Department of Social Services to disseminate information.*

The Department of Social Services shall develop and disseminate information to the public regarding the provisions of parental placement adoptions, including the desirability of initiating the procedures required by § 63.1-219.39 as early in the placement and adoption process as possible to ensure that birth parents are aware of the provisions of this law and begin required procedures in a timely manner.

§ 63.1-219.44. *Petition for parental placement adoption; jurisdiction, contents.*

Proceedings for the parental placement adoption of a minor child and for a change of name of such child shall be instituted only by petition to the circuit court in the county or city in which the petitioner resides. Such petition may be filed by any natural person who resides in the Commonwealth for leave to adopt a minor child not legally his by birth and, if it is so desired by the petitioner, also to change the name of such child. In the case of married persons, the petition shall be the joint petition of the husband and wife but, in the event the child to be adopted is legally the child by birth or adoption of one of the petitioners, such petitioner shall unite in the petition for the purpose of indicating his or her consent to the prayer thereof only. The petition shall contain a full disclosure of the circumstances under which the child came to live, and is living, in the home of the petitioner. Each petition for adoption shall be signed by the petitioner as well as by counsel of record, if any. In any case in which the petition seeks the entry of an adoption order without referral for investigation, the petition shall be under oath.

The petition shall state that the findings required by § 63.1-219.39 have been made and shall be accompanied by appropriate documentation supporting such statement, to include copies of documents executing consent and transferring custody of the child to the prospective adoptive parents, and a copy of the report required by § 63.1-219.38. The court shall not waive any of the requirements of this paragraph nor any of the requirements of § 63.1-219.39.

A single petition for adoption under the provisions of this section shall be sufficient for the concurrent adoption by the same petitioners of two or more children who have the same birth parent or parents; and nothing in this section shall be construed as having heretofore required a separate petition for each of such children.

§ 63.1-219.45. *Preliminary investigations; report to court.*

A. Upon the filing of the petition, the court wherein the petition is filed, or the clerk thereof upon order of the court, shall forward a copy of the petition and all exhibits thereto to the Commissioner and to the director of social services of the locality where the petitioners reside or resided at the time of filing the petition, or had legal residence at the time of the filing of the petition. However, in cases where a licensed child-placing agency has completed a home study, the petition and all exhibits shall be forwarded to the licensed child-placing agency.

B. In parental placement adoptions where consent has been properly executed, no investigation and report pursuant to this section is required. However, the court may order a thorough investigation of the matter and report thereon in writing, in such form as the Commissioner may prescribe, to be performed by the applicable agency and submitted to the court within ninety days after the copy of the petition and all exhibits thereto are forwarded. A copy of any report to the court shall be served on the Commissioner by delivering or mailing a copy to him on or before the day of filing the report with the court. On the report to the court there shall be appended either acceptance of service or certification of the local director of social services or the representative of the child-placing agency, that copies were served as this section requires, showing the date of delivery or mailing of the report as shown by the agency, during which time the court shall withhold consideration of the merits of the petition pending review of the agency report by the Commissioner, of any disapproval thereof stating reasons for any further action of the report which he deems necessary. If the report requested by the court is not made to the court within the periods specified, the court may proceed to hear and determine the merits of the petition and enter such order or orders as the court may deem appropriate.

C. The investigation requested by the court shall include, in addition to other inquiries which the court may require the child-placing agency or local director of social services to make, inquiries as to (i) whether the petitioner is financially able, except as provided in Chapter 11.1 (§ 63.1-238.1 et seq.) of

*this title, morally suitable, in satisfactory physical and mental health and a proper person to care for and to train the child; (ii) what the physical and mental condition of the child is; (iii) why the parents, if living, desire to be relieved of the responsibility for the custody, care and maintenance of the child, and what their attitude is toward the proposed adoption; (iv) whether the parents have abandoned the child or are morally unfit to have custody over him; (v) the circumstances under which the child came to live, and is living, in the same home of the petitioner; (vi) whether the child is a suitable child for adoption by the petitioner; and (vii) what fees have been paid by the petitioners or in their behalf to persons or agencies which have assisted them in obtaining the child. Any report made to the court shall include a recommendation as to the action to be taken by the court on the petition. A copy of any report made to the court shall be furnished to counsel of record representing the adopting parent or parents. When the investigation reveals that there may have been a violation of § 63.1-219.8 or § 63.1-219.25, the local director or superintendent or child-placing agency shall so inform the court and shall make such violation known to the Commissioner.*

*D. The report shall include the relevant physical and mental history of the birth parents if known to the person making the report. However, nothing in this subsection shall require that an investigation be made.*

*§ 63.1-219.46. Return of copies furnished to counsel.*

*Any copy of the report required by § 63.1-219.45 to be furnished to counsel of record representing the adopting parent or parents shall, upon the entry of a final order of adoption, or other final disposition of the matter, be returned by such counsel, without having been duplicated, to the clerk of the court in which final disposition of the matter is had, to be disposed of as is required by § 63.1-219.53 for the return of the original report.*

*§ 63.1-219.47. Court issuing order deemed sending agency under Interstate Compact on Placement of Children.*

*When a petitioner moves outside the Commonwealth after the entry of an interlocutory order of adoption but prior to the entry of a final order of adoption and the child was not placed by a child-placing agency, the court issuing the interlocutory order shall be deemed the sending agency for the purposes of the Interstate Compact on the Placement of Children authorized pursuant to the provisions of § 63.1-219.2.*

#### *Article 4.*

##### *Stepparent Adoption.*

*§ 63.1-219.48. Adoption of child by new spouse of birth or adoptive parent.*

*A. When the spouse of a birth parent of a child born in wedlock or the spouse of a parent by adoption of the child has died, and the surviving birth parent or parent by adoption marries again and the new spouse desires to adopt the child, on a petition filed by the surviving birth parent or parent by adoption and new spouse for the adoption and change of name of the child, the court may proceed to order the proposed adoption or change of name without referring the matter to the local director of social services.*

*B. When a birth parent of a legitimate infant or a parent by adoption is divorced and marries again and the birth parent or parent by adoption desires the new spouse to adopt the child, on a petition filed by the birth parent or parent by adoption and the new spouse for the adoption and change of name of the child, the court may proceed to order the proposed adoption or change of name without referring the matter to the local director of social services if the other birth parent or parent by adoption consents in writing to the adoption or change of name or if the other birth parent or parent by adoption is deceased.*

*C. When the custodial birth parent of a child born to parents who were not married to each other at the time of the child's conception or birth marries and the new spouse of such custodial birth parent desires to adopt such child, on a petition filed by the custodial birth parent and spouse for the adoption and change of name of the child, the court may proceed to order the proposed adoption and change of name without referring the matter to the local director of social services if (i) the noncustodial birth parent consents, under oath, in writing to the adoption, or (ii) the mother swears, under oath, in writing, that the identity of the father is not reasonably ascertainable, or (iii) the putative father named by the mother denies paternity of the child, or (iv) the child is fourteen years of age or older and has lived in the home of the person desiring to adopt the child for at least five years, or (v) the noncustodial birth parent is deceased.*

*D. When a single person who has adopted a child thereafter marries and desires his spouse to adopt the child, on a petition filed by the adoptive parent and the spouse for the adoption and change of name of the child, the court may proceed to order the proposed adoption or change of name without referring the matter to the local director of social services.*

*§ 63.1-219.49. Investigation and report at discretion of court.*

*A. For adoptions under this article, an investigation and report shall be undertaken only if the court in its discretion determines that there should be an investigation before a final order of adoption is entered. If the court makes such a determination, it shall refer the matter to the local director of social services for an investigation and report to be completed within such time as the court designates. If an*

investigation is ordered, the court shall forward a copy of the petition and all exhibits thereto to the local director of social services. A copy of the report to the court shall be served on the Commissioner by delivering or mailing a copy to him on or before the day of filing the report with the court. On the report to the court there shall be appended either acceptance of service or certification of the local director of social services that copies were served as this section requires, showing the date of delivery or mailing. The Commissioner may notify the court within twenty-one days of the date of delivery or mailing of the report as shown by the agency, during which time the court shall withhold consideration of the merits of the petition pending review of the agency report by the Commissioner, of any disapproval thereof stating reasons for any further action on the report that he deems necessary.

B. If the report is not made to the court within the periods specified, the court may proceed to hear and determine the merits of the petition and enter such order or orders as the court may deem appropriate.

C. The investigation requested by the court may include, in addition to other inquiries which the court may require the child-placing agency or local director of social services to make, inquiries as to (i) whether the petitioner is financially able, except as provided in Chapter 11.1 (§ 63.1-238.1 et seq.) of this title, morally suitable, in satisfactory physical and mental health and a proper person to care for and to train the child; (ii) what the physical and mental condition of the child is; (iii) why the parents, if living, desire to be relieved of the responsibility for the custody, care and maintenance of the child, and what their attitude is toward the proposed adoption; (iv) whether the parents have abandoned the child or are morally unfit to have custody over him; (v) the circumstances under which the child came to live, and is living, in the same home of the petitioner; (vi) whether the child is a suitable child for adoption by the petitioner; and (vii) what fees have been paid by the petitioners or in their behalf to persons or agencies that have assisted them in obtaining the child. Any report made to the court shall include a recommendation as to the action to be taken by the court on the petition. A copy of any report made to the court shall be furnished to counsel of record representing the adopting parent or parents. When the investigation reveals that there may have been a violation of § 63.1-219.8 or § 63.1-219.25, the local director or superintendent or child-placing agency shall so inform the court and shall make such violation known to the Commissioner.

D. The report shall include the relevant physical and mental history of the birth parents if known to the person making the report. However, nothing in this subsection shall require that an investigation be made.

#### Article 5.

##### Adult Adoption.

##### § 63.1-219.50. Adoption of certain persons eighteen years of age or over.

A petition may be filed in circuit court by any natural person who is a resident of this Commonwealth: (i) for the adoption of a stepchild eighteen years of age or over to whom he has stood in loco parentis for a period of at least three months; or (ii) for the adoption of a niece or nephew over eighteen years of age who has no living parents and who has lived in the home of the petitioner for at least three months; or (iii) for the adoption of any person eighteen years of age or over who is the birth child of the petitioner or who had resided in the home of the petitioner for a period of at least three months prior to becoming eighteen years of age; or (iv) for the adoption of any person eighteen years of age or older, for good cause shown, provided that the person to be adopted is at least fifteen years younger than the petitioner and the petitioner and the person to be adopted have known each other for at least five years prior to the filing of the petition for adoption, and provided further that both the petitioner and the person to be adopted have been residents of the Commonwealth during the five-year period when they knew each other. Proceedings in any such case shall conform as near as may be to proceedings for the adoption of a minor child under this chapter except that:

(a) No consent of either parent shall be required; and

(b) The consent of the person to be adopted shall be required in all cases.

Any interlocutory or final order issued in any case under this section shall have the same effect as other orders issued under this chapter; and in any such case the word "child" in any other section of this chapter shall be construed to refer to the person whose adoption is petitioned for under this section. The entry of a final order of adoption pursuant to this section which incorporates a change of name shall be deemed to meet the requirements of § 8.01-217.

The provisions of this section shall apply to any person who would have been eligible for adoption hereunder prior to July 1, 1972.

##### § 63.1-219.51. Investigation and report at discretion of court; exception.

A. For adoptions under this article, an investigation and report shall not be made unless the circuit court in its discretion so requires. However, if a petition is filed for the adoption of any person eighteen years of age or older under (iv) of § 63.1-219.50, the circuit court shall require an investigation and report to be made. If an investigation is required, the court shall forward a copy of the petition and all exhibits to the local director of social services. A copy of the report to the court shall be served on the Commissioner by delivering or mailing a copy to him on or before the day of filing the report with the court. On the report to the court there shall be appended either acceptance of service or certification of

*the local director of social services that copies were served as this section requires, showing the date of delivery or mailing. The Commissioner may notify the court, within twenty-one days of the date of delivery or mailing of the report as shown by the agency, during which time the court shall withhold consideration of the merits of the petition pending review of the agency report by the Commissioner, of any disapproval thereof stating reasons for any further action on the report that he deems necessary.*

*B. If the report is not made to the court within the periods specified, the court may proceed to hear and determine the merits of the petition and enter such order or orders as the court may deem appropriate.*

*C. The investigation requested by the court may include, in addition to other inquiries that the court may require the child-placing agency or local director of social services to make, inquiries as to (i) whether the petitioner is financially able, except as provided in Chapter 11.1 (§ 63.1-238.1 et seq.) of this title, morally suitable, in satisfactory physical and mental health and a proper person to care for and to train the child; (ii) what the physical and mental condition of the child is; (iii) why the parents, if living, desire to be relieved of the responsibility for the custody, care and maintenance of the child, and what their attitude is toward the proposed adoption; (iv) whether the parents have abandoned the child or are morally unfit to have custody over him; (v) the circumstances under which the child came to live, and is living, in the same home of the petitioner; (vi) whether the child is a suitable child for adoption by the petitioner; and (vii) what fees have been paid by the petitioners or in their behalf to persons or agencies which have assisted them in obtaining the child. Any report made to the court shall include a recommendation as to the action to be taken by the court on the petition. A copy of any report made to the court shall be furnished to counsel of record representing the adopting parent or parents. When the investigation reveals that there may have been a violation of § 63.1-219.8 or § 63.1-219.25, the local director or superintendent or child-placing agency shall so inform the court and shall make such violation known to the Commissioner.*

*D. The report shall include the relevant physical and mental history of the birth parents if known to the person making the report. However, nothing in this subsection shall require that an investigation be made.*

#### *Article 6.*

##### *Records.*

*§ 63.1-219.52. Separate order book, file and index of adoption cases; to whom available; permanent retention.*

*Each circuit court clerk shall establish and maintain a separate and exclusive order book, file and index of adoption cases, none of which shall be exposed to public view but which shall be made available by such clerk to attorneys of record, social service officials, court officials, and to such other persons as the circuit court shall direct in specific cases by order of the circuit court entered in accordance with § 63.1-219.53.*

*Such records shall be retained permanently in original form or on microfilm. Such microfilm and microphotographic process and equipment shall meet state archival standards and such microfilm shall be available for examination to those persons listed above. The clerk shall further provide security negative microfilm copies of such records for storage in the Archives and Records Division of The Library of Virginia.*

*§ 63.1-219.53. Disposition of reports; disclosure of information as to identity of birth family.*

*Upon the entry of a final order of adoption or other final disposition of the matter, the clerk of the circuit court in which it was entered shall forthwith transmit to the Commissioner all reports made in connection with the case, and the Commissioner shall preserve such reports and all other collateral reports, information and recommendations in a separate file. Except as provided in subsections C, D and E of § 63.1-219.54, nonidentifying information from such adoption file shall not be open to inspection, or be copied, by anyone other than the adopted person, if eighteen years of age or over, or licensed or authorized child-placing agencies providing services to the child or the adoptive parents, except upon the order of a circuit court entered upon good cause shown. However, if the adoptive parents, or either of them, is living, the adopted person shall not be permitted to inspect the home study of the adoptive parents unless the Commissioner first obtains written permission to do so from such adoptive parent or parents.*

*No identifying information from such adoption file shall be disclosed, open to inspection or made available to be copied except as provided in subsections A, B and E of § 63.1-219.54 or upon application of the adopted person, if eighteen years of age or over, to the Commissioner, who shall designate the person or agency that made the investigation to attempt to locate and advise the birth family of the application. The designated person or agency shall report the results of the attempt to locate and advise the birth family to the Commissioner, including the relative effects that disclosure of the identifying information may have on the adopted person, the adoptive parents, and the birth family. The adopted person and the birth family may submit to the Commissioner, and the Commissioner shall consider, written comments stating the anticipated effect that the disclosure of identifying information may have upon any party. Upon a showing of good cause, the Commissioner shall disclose the identifying information. If the Commissioner fails to designate a person or agency to attempt to locate*

the birth family within thirty days of receipt of the application, or if the Commissioner denies disclosure of the identifying information after receiving the designated person's or agency's report, the adopted person may apply to the circuit court for an order to disclose such information. Such order shall be entered only upon good cause shown after notice to and opportunity for hearing by the applicant for such order and the person or agency that made the investigation. "Good cause" when used in this section shall mean a showing of a compelling and necessitous need for the identifying information.

An eligible adoptee who is a resident of Virginia may apply for the court order provided for herein to (i) the circuit court of the county or city where the adoptee resides or (ii) the circuit court of the county or city where the central office of the State Department of Social Services is located. An eligible adoptee who is not a resident of Virginia shall apply for such a court order to the circuit court of the county or city where the central office of the State Department of Social Services is located.

If the identity and whereabouts of the adoptive parents and the birth parents are known to the person or agency, the circuit court may require the person or agency to advise the adoptive parents and the birth parents of the pendency of the application for such order. In determining good cause for the disclosure of such information, the circuit court shall consider the relative effects of such action upon the adopted person, the adoptive parents and the birth parents. The adopted person and the birth family may submit to the circuit court, and the circuit court shall consider, written comments stating the anticipated effect that the disclosure of identifying information may have upon any party.

When consent of the birth parents is not obtainable, due to the death of the birth parents or mental incapacity of the birth parents, the circuit court may release identifying information to the adult adopted person. In making this decision, the circuit court shall consider the needs and concerns of the adopted person and the birth family if such information is available, the actions the agency took to locate the birth family, the information in the agency's report and the recommendation of the agency.

The Commissioner, person or agency may charge a reasonable fee to cover the costs of processing requests for nonidentifying information.

Upon entry of a final order of adoption or other final disposition of a matter involving the placement of a child by a licensed child-placing agency or a local board of social services or an investigation by the local director of a placement for adoption of a child, the agency or local board shall transmit to the Commissioner all reports and collateral information in connection with the case, which shall be preserved by the Commissioner in accordance with this section.

§ 63.1-219.54. Disclosure to birth family; adoptive parents; medical, etc., information; exchange of information; open records in parental placement adoptions.

A. Where the adoption is finalized on or after July 1, 1994, and the adopted person is twenty-one years of age or over, the adopted person's birth parents and adult birth siblings may apply to the Commissioner for the disclosure of identifying information from the adoption file. The Commissioner shall designate the person or agency that made the investigation to attempt to locate and advise the adopted person of the application. The designated person or agency shall report the results of the attempt to locate and advise the adopted person to the Commissioner, including the relative effects that disclosure of the identifying information may have on the adopted person, the adoptive parents, and the birth family. The adopted person and the birth family may submit to the Commissioner, and the Commissioner shall consider, written comments stating the anticipated effect that the disclosure of identifying information may have upon any party. Upon a showing of good cause, the Commissioner shall disclose the identifying information. If the Commissioner fails to designate a person or agency to attempt to locate the adopted person within thirty days of receipt of the application, or if the Commissioner denies disclosure of the identifying information after receiving the designated person's or agency's report, the birth parents or adult birth siblings, whoever applied, may apply to the circuit court for an order to disclose such information. Such order shall be entered only upon good cause shown after notice to and opportunity for hearing by the applicant for such order and the person or agency that made the investigation. "Good cause" when used in this section shall mean a showing of a compelling and necessitous need for the identifying information.

A birth parent or adult birth sibling who is a resident of Virginia may apply for the court order provided for herein to (i) the circuit court of the county or city where the birth parent or adult birth sibling resides or (ii) the circuit court of the county or city where the central office of the State Department of Social Services is located. A birth parent or adult birth sibling who is not a resident of Virginia shall apply for such a court order to the circuit court of the county or city where the central office of the State Department of Social Services is located.

If the identity and whereabouts of the adopted person and adoptive parents are known to the person or agency, the circuit court may require the person or agency to advise the adopted person and adoptive parents of the pendency of the application for such order. In determining good cause for the disclosure of such information, the circuit court shall consider the relative effects of such action upon the adopted person, the adoptive parents and the birth family. The adopted person and the birth family may submit to the circuit court, and the circuit court shall consider, written comments stating the anticipated effect that the disclosure of identifying information may have upon any party.

When consent of the adopted person is not obtainable, due to the death or mental incapacity of the

adopted person, the circuit court may release identifying information to the birth parents or adult birth siblings. In making this decision, the circuit court shall consider the needs and concerns of the birth parents or adult birth siblings and the adoptive family if such information is available, the actions the agency took to locate the adopted person, the information in the agency's report and the recommendation of the agency.

B. Where the adoption is finalized on or after July 1, 1994, and the adopted person is under eighteen years of age, the adoptive parents or other legal custodian of the child may apply to the Commissioner for the disclosure of identifying information about the birth family. The Commissioner shall designate the person or agency that made the investigation to attempt to locate and advise the birth family of the application. The designated person or agency shall report the results of the attempt to locate and advise the birth family to the Commissioner, including the relative effects that disclosure of the identifying information may have on the adopted person, the adoptive parents or other legal custodian, and the birth family. The adoptive parents, legal custodian and birth family may submit to the Commissioner, and the Commissioner shall consider, written comments stating the anticipated effect that the disclosure of identifying information may have upon any party. Upon a showing of good cause, the Commissioner shall disclose the identifying information. If the Commissioner fails to designate a person or agency to attempt to locate the birth family within thirty days of receipt of the application, or if the Commissioner denies disclosure of the identifying information after receiving the designated person's or agency's report, the adoptive parents or legal custodian, whoever applied, may apply to the circuit court for an order to disclose such information. Such order shall be entered only upon good cause shown after notice to and opportunity for hearing by the applicant for such order and the person or agency that made the investigation. "Good cause" when used in this section shall mean a showing of a compelling and necessitous need for the identifying information.

An adoptive parent or legal custodian who is a resident of Virginia may apply for the court order provided for herein to (i) the circuit court of the county or city where the adoptive parent or legal custodian resides or (ii) the circuit court of the county or city where the central office of the State Department of Social Services is located. An adoptive parent or legal custodian who is not a resident of Virginia shall apply for such a court order to the circuit court of the county or city where the central office of the State Department of Social Services is located.

If the identity and whereabouts of the birth parents are known to the person or agency, the circuit court may require the person or agency to advise the birth parents of the pendency of the application for such order. In determining good cause for the disclosure of such information, the circuit court shall consider the relative effects of such action upon the adopted person, the adoptive parents or legal custodian and the birth parents. The birth family may submit to the circuit court, and the circuit court shall consider, written comments stating the anticipated effect that the disclosure of identifying information may have upon any party.

When consent of the birth family is not obtainable, due to the death of the birth parents or mental incapacity of the birth parents, the court may release identifying information to the adoptive parents or legal custodian. In making this decision, the circuit court shall consider the needs and concerns of the adoptive parents or legal custodian and the birth family if such information is available, the actions the agency took to locate the birth family, the information in the agency's report and the recommendation of the agency.

C. In any case where a physician or licensed mental health provider submits a written statement, in response to a request from the adult adoptee, adoptive parent, birth parent or adult birth siblings, indicating that it is critical that medical, psychological or genetic information be conveyed, and states clearly the reasons why this is necessary, the agency that made the investigation shall make an attempt to inform the adult adoptee, adoptive parents, birth parents or adult birth siblings, whichever is applicable, of the information. The Commissioner shall provide information from the adoption record to the searching agency if necessary to facilitate the search. Confidentiality of all parties shall be maintained by the agency.

D. In cases where at least one of the adoptive parents and one of the birth parents agree in writing to allow the agency involved in the adoption to exchange nonidentifying information and pictures, the agency may exchange this information with such adoptive parents and birth parents when the whereabouts of the adoptive parents and birth parents is known or readily accessible. Such agreement may be entered into or withdrawn by either party at any time or may be withdrawn by the adult adoptee.

E. In parental placement adoptions, where the consent to the adoption was executed on or after July 1, 1994, the entire adoption record shall be open to the adoptive parents, the adoptee who is eighteen years of age or older, and a birth parent who executed a written consent to the adoption.

§ 63.1-219.55. Fees for home studies, investigations, visitations and reports.

Notwithstanding the provisions of § 17.1-275, the circuit court with jurisdiction over any adoption matter, or the person, agency, or child-placing agency that attempts to locate the birth family pursuant to § 63.1-219.53 or subsection B of § 63.1-219.54, or that attempts to locate the adult adoptee pursuant to subsection A of § 63.1-219.54, shall assess a fee against the petitioner, or applicant and, in the case

*of local departments of social services, shall assess such fee in accordance with regulations and fee schedules established by the State Board, for home studies, investigations, visits and reports provided by the appropriate department of social services, person, or agency pursuant to §§ 20-160, 63.1-219.19, 63.1-219.38, 63.1-219.45, or § 63.1-219.53. The State Board shall establish regulations and fee schedules, which shall include (i) standards for determining the petitioner's or applicant's ability to pay and (ii) a scale of fees based on the petitioner's or applicant's income and family size and the actual cost of the services provided. The fee charged shall not exceed the actual cost of the service. The fee shall be paid to the appropriate department of social services, person, or agency and a receipt therefor shall be provided to the court, or to the Commissioner if pursuant to § 63.1-219.53 or § 63.1-219.54, prior to the acceptance of parental consent, entry of any final order, or release of identifying information by the Commissioner, and no court shall accept parental consent or enter any final order and the Commissioner shall not release any identifying information until proof of payment of such fees has been received.*

§ 63.1-238.1. Definitions.

As used in this chapter:

(a) "Child-placing agency" shall have the same meaning as defined in ~~§ 63.1-220~~ § 63.1-219.7.

(b) "Child with special needs" shall mean any child (i) in the custody of a local board of public welfare or social services which has the authority to place the child for adoption and consent thereto in accordance with the provisions of § 63.1-56 or (ii) in the custody of a licensed child-placing agency, for whom it has been determined that it is unlikely that the child will be adopted within a reasonable period of time due to one or more factors including, but not limited to:

1. Physical, mental or emotional condition existing prior to adoption;
2. Hereditary tendency, congenital problem or birth injury leading to substantial risk of future disability; or
3. Individual circumstances of the child related to age, racial or ethnic background or close relationship with one or more siblings.

This term shall also include a child for whom the factors set out in subdivision (b) 1 or (b) 2 are present at the time of adoption but are not diagnosed until after the final order of adoption is entered and no more than one year has elapsed.

**2. That Chapter 11 (§§ 63.1-220 through 63.1-238.02) of Title 63.1 of the Code of Virginia is repealed.**