

062849412

HOUSE BILL NO. 728

Offered January 11, 2006

Prefiled January 10, 2006

A *BILL to amend and reenact §§ 16.1-277.01, 17.1-275, 20-49.1, 63.2-1201, 63.2-1202, 63.2-1222, 63.2-1233, and 63.2-1241 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 12 of Title 63.2 an article numbered 7, consisting of sections numbered 63.2-1249 through 63.2-1253, relating to adoption laws; penalty.*

Patrons—McQuigg; Senator: O'Brien

Referred to Committee on Health, Welfare and Institutions

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-277.01, 17.1-275, 20-49.1, 63.2-1201, 63.2-1202, 63.2-1222, 63.2-1233, and 63.2-1241 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 12 of Title 63.2 an article numbered 7, consisting of sections numbered 63.2-1249 through 63.2-1253 as follows:

§ 16.1-277.01. Approval of entrustment agreement.

A. In any case in which a child has been entrusted pursuant to § 63.2-903 or § 63.2-1817 to the local board of social services or to a child welfare agency, a petition for approval of the entrustment agreement by the board or agency:

1. Shall be filed within a reasonable period of time, no later than eighty-nine days after the execution of an entrustment agreement for less than ninety days, if the child is not returned to the caretaker from whom he was entrusted within that period;

2. 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

3. 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.

The board or agency shall file a foster care plan pursuant to § 16.1-281 to be heard with any petition for approval of an entrustment agreement.

B. Upon the filing of a petition for approval of an entrustment agreement pursuant to subsection A of § 16.1-241, the court shall appoint a guardian ad litem to represent the child in accordance with the provisions of § 16.1-266, and shall schedule the matter for a hearing to be held as follows: within forty-five days of the filing of a petition pursuant to subdivision A 1, A 2 or A 3 of this section, except where an order of publication has been ordered by the court, in which case the hearing shall be held within seventy-five days of the filing of the petition. The court shall provide notice of the hearing and a copy of the petition to the following, each of whom shall be a party entitled to participate in the proceeding:

1. The local board of social services or child welfare agency;

2. The child, if he is twelve years of age or older;

3. The guardian ad litem for the child; and

4. The child's parents, guardian, legal custodian or other person standing in loco parentis to the child.

No such notification shall be required, however, if the judge certifies on the record that the identity of the parent or guardian is not reasonably ascertainable. An affidavit of the mother that the identity of the father is not reasonably ascertainable shall be sufficient evidence of this fact, provided there is no other evidence before the court which would refute such an affidavit. *Failure to register with the putative father registry pursuant to Article 7 (§ 63.2-1249 et seq.) of Chapter 12 of Title 63.2 shall be sufficient evidence that the identity of the father is not reasonably ascertainable.* The hearing shall be held and an order may be entered, although a parent, guardian, legal custodian or person standing in loco parentis fails to appear and is not represented by counsel, provided personal or substituted service was made on the person, or the court determines that such person cannot be found, after reasonable effort, or in the case of a person who is without the Commonwealth, the person cannot be found or his post office address cannot be ascertained after reasonable effort. However, when a petition seeks approval of a permanent entrustment agreement which provides for the termination of all parental rights and responsibilities with respect to the child, a summons shall be served upon the parent or parents and the other parties specified in § 16.1-263. The summons or notice of hearing shall clearly state the consequences of a termination of residual parental rights. Service shall be made pursuant to § 16.1-264.

INTRODUCED

HB728

59 The remaining parent's parental rights may be terminated even though that parent has not entered into an
60 entrustment agreement if the court finds, based upon clear and convincing evidence, that it is in the best
61 interest of the child and that (i) the identity of the parent is not reasonably ascertainable; (ii) the identity
62 and whereabouts of the parent are known or reasonably ascertainable, and the parent is personally served
63 with notice of the termination proceeding pursuant to § 8.01-296 or § 8.01-320; (iii) the whereabouts of
64 the parent are not reasonably ascertainable and the parent is given notice of the termination proceedings
65 by certified or registered mail to the last known address and such parent fails to object to the
66 proceedings within twenty-one days of the mailing of such notice; or (iv) the whereabouts of the parent
67 are not reasonably ascertainable and the parent is given notice of the termination proceedings through an
68 order of publication pursuant to §§ 8.01-316 and 8.01-317, and such parent fails to object to the
69 proceedings.

70 C. At the hearing held pursuant to this section, the court shall hear evidence on the petition filed and
71 shall review the foster care plan for the child filed by the local board or child welfare agency in
72 accordance with § 16.1-281.

73 D. At the conclusion of the hearing, the court shall make a finding, based upon a preponderance of
74 the evidence, whether approval of the entrustment agreement is in the best interest of the child.
75 However, if the petition seeks approval of a permanent entrustment agreement which provides for the
76 termination of all parental rights and responsibilities with respect to the child, the court shall make a
77 finding, based upon clear and convincing evidence, whether termination of parental rights is in the best
78 interest of the child. If the court makes either of these findings, the court may make any of the orders of
79 disposition permitted in a case involving an abused or neglected child pursuant to § 16.1-278.2. Any
80 such order transferring legal custody of the child shall be made in accordance with the provisions of
81 subdivision A 5 of § 16.1-278.2 and shall be subject to the provisions of subsection D1 of this section.
82 This order shall include, but need not be limited to, the following findings: (i) that there is no less
83 drastic alternative to granting the requested relief; and (ii) that reasonable efforts have been made to
84 prevent removal and that continued placement in the home would be contrary to the welfare of the
85 child, if the order transfers legal custody of the child to a local board of social services.

86 The effect of the court's order approving a permanent entrustment agreement is to terminate an
87 entrusting parent's residual parental rights. Any order terminating parental rights shall be accompanied
88 by an order (i) continuing or granting custody to a local board of social services or to a licensed
89 child-placing agency or (ii) granting custody or guardianship to a relative or other interested individual.
90 Such an order continuing or granting custody to a local board of social services or to a licensed
91 child-placing agency shall indicate whether that board or agency shall have the authority to place the
92 child for adoption and consent thereto. A final order terminating parental rights pursuant to this section
93 renders the approved entrustment agreement irrevocable. Such order may be appealed in accordance with
94 the provisions of § 16.1-296.

95 D1. Any order transferring custody of the child to a relative or other interested individual pursuant to
96 subsection D of this section shall be entered only upon a finding, based upon a preponderance of the
97 evidence, that the relative or other interested individual is one who (i) after an investigation as directed
98 by the court, is found by the court to be willing and qualified to receive and care for the child; (ii) is
99 willing to have a positive, continuous relationship with the child; (iii) is committed to providing a
100 permanent, suitable home for the child; and (iv) is willing and has the ability to protect the child from
101 abuse and neglect; and the order shall so state. The court's order transferring custody to a relative or
102 other interested individual should further provide for, as appropriate, any terms and conditions which
103 would promote the child's interest and welfare; ongoing provision of social services to the child and the
104 child's custodian; and court review of the child's placement.

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

116 § 17.1-275. (Effective January 1, 2006) Fees collected by clerks of circuit courts; generally.

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

119 1. [Repealed.]

120 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, \$16 for an instrument or document consisting of 10 or fewer pages or sheets; \$30 for an instrument or document consisting of 11 to 30 pages or sheets; and \$50 for an instrument or document consisting of 31 or more pages or sheets. Whenever any writing to be recorded includes plat or map sheets no larger than eight and one-half inches by 14 inches, such plat or map sheets shall be counted as ordinary pages for the purpose of computing the recording fee due pursuant to this section. A fee of \$15 per page or sheet shall be charged with respect to plat or map sheets larger than eight and one-half inches by 14 inches. 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. One dollar and fifty cents 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, \$20 for estates not exceeding \$50,000, \$25 for estates not exceeding \$100,000 and \$30 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, \$10.

5. For issuing a marriage license, attaching certificate, administering or receiving all necessary oaths or affidavits, indexing and recording, \$10.

6. For making out any bond, other than those under § 17.1-267 or subdivision A 4, administering all necessary oaths and writing proper affidavits, \$3.

7. For all services rendered by the clerk in any garnishment or attachment proceeding, the clerk's fee shall be \$15 in cases not exceeding \$500 and \$25 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 \$0.50 for each page. From such fees, the clerk shall reimburse the locality the costs of making out the copies and pay the remaining fees directly to the Commonwealth. The funds to recoup the cost of making out the copies shall be deposited with the county or city treasurer or Director of Finance, and the governing body shall budget and appropriate such funds to be used to support the cost of copies pursuant to this subdivision. For purposes of this section, the costs of making out the copies shall include lease and maintenance agreements for the equipment used to make out the copies, but shall not include salaries or related benefits. The costs of copies shall otherwise be determined in accordance with § 2.2-3701. 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 \$2 and for attaching the certificate of the judge, if the clerk is requested to do so, the clerk shall charge an additional \$0.50.

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 or is subject to a disposition under § 18.2-251, 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 and Treatment Fund.

11. 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 or is subject to a disposition under § 18.2-251, the clerk shall assess a fee for each misdemeanor conviction and each misdemeanor disposition under § 18.2-251, which shall be taxed as costs to the defendant and shall be paid into the Drug Offender Assessment and Treatment Fund as provided in § 17.1-275.8.

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 civil actions that include one or more claims for the award of monetary damages the clerk's fee chargeable to the plaintiff shall be \$50 in cases seeking recovery not exceeding \$50,000, \$100 in cases seeking recovery not exceeding \$100,000, and \$150 in cases seeking recovery exceeding \$100,000. A fee of \$25 shall be paid by the plaintiff at the time of instituting a condemnation case, 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 or a claim impleading a third-party defendant. 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.

13a. For the filing of any petition seeking court approval of a settlement where no action has yet been filed, the clerk's fee, chargeable to the petitioner, shall be \$50, to be paid by the petitioner at the

182 time of filing the petition.

183 14. In addition to the fees chargeable for civil actions, for the costs of proceedings for judgments by
184 confession under §§ 8.01-432 through 8.01-440, the clerk shall tax as costs (i) the cost of registered or
185 certified mail; (ii) the statutory writ tax, in the amount required by law to be paid on a suit for the
186 amount of the confessed judgment; (iii) for the sheriff for serving each copy of the order entering
187 judgment, \$12; and (iv) for docketing the judgment and issuing executions thereon, the same fees as
188 prescribed in subdivision A 17.

189 15. For qualifying notaries public, including the making out of the bond and any copies thereof,
190 administering the necessary oaths, and entering the order, \$10.

191 16. For each habeas corpus proceeding, the clerk shall receive \$10 for all services required
192 thereunder. This subdivision shall not be applicable to such suits filed in the Supreme Court of Virginia.

193 17. For docketing and indexing a judgment from any other court of this Commonwealth, for
194 docketing and indexing a judgment in the new name of a judgment debtor pursuant to the provisions of
195 § 8.01-451, but not when incident to a divorce, for noting and filing the assignment of a judgment
196 pursuant to § 8.01-452, a fee of \$5; and for issuing an abstract of any recorded judgment, when proper
197 to do so, a fee of \$5; and for filing, docketing, indexing and mailing notice of a foreign judgment, a fee
198 of \$20.

199 18. For all services rendered by the clerk in any court proceeding for which no specific fee is
200 provided by law, the clerk shall charge \$10, to be paid by the party filing said papers at the time of
201 filing; however, this subdivision shall not be applicable in a divorce cause prior to and including the
202 entry of a decree of divorce from the bond of matrimony.

203 19., 20. [Repealed.]

204 21. For making the endorsements on a forthcoming bond and recording the matters relating to such
205 bond pursuant to the provisions of § 8.01-529, \$1.

206 22. For all services rendered by the clerk in any proceeding pursuant to § 57-8 or 57-15, \$10.

207 23. For preparation and issuance of a subpoena duces tecum, \$5.

208 24. For all services rendered by the clerk in matters under § 8.01-217 relating to change of name,
209 \$20; however, this subdivision shall not be applicable in cases where the change of name is incident to
210 a divorce.

211 25. For providing court records or documents on microfilm, per frame, \$0.10.

212 26. In all divorce and separate maintenance proceedings, and all civil actions that do not include one
213 or more claims for the award of monetary damages, the clerk's fee chargeable to the plaintiff shall be
214 \$50 to be paid by the plaintiff at the time of instituting the suit, which shall include the furnishing of a
215 duly certified copy of the final decree. The fees prescribed by this subdivision shall be charged upon the
216 filing of a counterclaim or a claim impleading a third-party defendant. However, no fee shall be charged
217 for the filing of a cross-claim or setoff in any pending suit. In divorce cases, when there is a merger of
218 a divorce of separation a mensa et thoro into a decree of divorce a vinculo, the above mentioned fee
219 shall include the furnishing of a duly certified copy of both such decrees. *For each petition for adoption*
220 *filed pursuant to § 63.2-1201, the additional \$50 filing fee required under § 63.2-1201 shall be*
221 *deposited in the Putative Father Registry Fund pursuant to § 63.2-1249.*

222 27. For the acceptance of credit cards in lieu of money to collect and secure all fees, including filing
223 fees, fines, restitution, forfeiture, penalties and costs, the clerk shall collect a service charge of four
224 percent of the amount paid.

225 28. For the return of any check unpaid by the financial institution on which it was drawn or notice is
226 received from the credit card issuer that payment will not be made for any reason, the clerk shall
227 collect, if allowed by the court, a fee of \$20 or 10 percent of the amount to be paid, whichever is
228 greater, in accordance with § 19.2-353.3.

229 29. For all services rendered, except in cases in which costs are assessed pursuant to § 17.1-275.1,
230 17.1-275.2, 17.1-275.3, or 17.1-275.4, in an adoption proceeding, a fee of \$20, in addition to the fee
231 imposed under § 63.2-1246, to be paid by the petitioner or petitioners.

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

234 31. For the filing of any petition as provided in §§ 33.1-124, 33.1-125 and 33.1-129, a fee of \$5 to
235 be paid by the petitioner; and for the recordation of a certificate or copy thereof, as provided for in
236 § 33.1-122, as well as for any order of the court relating thereto, the clerk shall charge the same fee as
237 for recording a deed as provided for in this section, to be paid by the party upon whose request such
238 certificate is recorded or order is entered.

239 32. For making up, certifying and transmitting original record pursuant to the Rules of the Supreme
240 Court, including all papers necessary to be copied and other services rendered, except in cases in which
241 costs are assessed pursuant to § 17.1-275.1, 17.1-275.2, 17.1-275.3, 17.1-275.4, 17.1-275.7, 17.1-275.8,
242 or 17.1-275.9, a fee of \$20.

243 33. For issuance of hunting and trapping permits in accordance with § 10.1-1154, \$0.25.

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 \$1.

36. [Repealed.]

37. For recordation of certificate and registration of names of nonresident owners in accordance with § 59.1-74, a fee of \$10.

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 \$2.

40. For filing a financing statement in accordance with § 8.9A-505, the fee shall be as prescribed under § 8.9A-525.

41. For filing a termination statement in accordance with § 8.9A-513, the fee shall be as prescribed under § 8.9A-525.

42. For filing assignment of security interest in accordance with § 8.9A-514, the fee shall be as prescribed under § 8.9A-525.

43. For filing a petition as provided in §§ 37.2-1001 and 37.2-1013, the fee shall be \$10.

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 \$5. 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, A 13, A 16, A 18 if applicable, A 20, A 22, A 24, A 26, A 29 and A 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, A 13, A 16, A 18 if applicable, A 20, A 22, A 24, A 26, A 29 and A 31 to be designated for services provided for the poor, without charge, by a nonprofit legal aid program.

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

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

§ 20-49.1. How parent and child relationship established.

A. The parent and child relationship between a child and a woman may be established prima facie by proof of her having given birth to the child, or as otherwise provided in this chapter.

B. The parent and child relationship between a child and a man may be established by:

1. Scientifically reliable genetic tests, including blood tests, which affirm at least a ninety-eight percent probability of paternity. Such genetic test results shall have the same legal effect as a judgment entered pursuant to § 20-49.8.

2. A voluntary written statement of the father and mother made under oath acknowledging paternity and confirming that prior to signing the acknowledgment, the parties were provided with a written and oral description of the rights and responsibilities of acknowledging paternity and the consequences arising from a signed acknowledgment, including the right to rescind. The acknowledgement may be rescinded by either party within sixty days from the date on which it was signed unless an administrative or judicial order relating to the child in an action to which the party seeking rescission was a party is entered prior to the rescission. A written statement shall have the same legal effect as a judgment entered pursuant to § 20-49.8 and shall be binding and conclusive unless, in a subsequent judicial proceeding, the person challenging the statement establishes that the statement resulted from fraud, duress or a material mistake of fact. In any subsequent proceeding in which a statement acknowledging paternity is subject to challenge, the legal responsibilities of any person signing it shall not be suspended during the pendency of the proceeding, except for good cause shown. Written acknowledgments of paternity made under oath by the father and mother prior to July 1, 1990, shall have the same legal effect as a judgment entered pursuant to § 20-49.8.

3. ~~In the absence of such acknowledgment or if the probability of paternity is less than ninety-eight percent, such relationship may be established as otherwise provided in this chapter.~~ An adjudication by a court of competent jurisdiction of the man's paternity.

4. A presumption if:

a. He and the mother of the child are married to each other and the child is born during the marriage;

b. He and the mother of the child were married to each other and the child is born within 300 days after the marriage is terminated by death, annulment, declaration of invalidity, divorce, or after a decree of separation;

c. Before the birth of the child, he and the mother of the child married each other in apparent compliance with the law, even if the attempted marriage is or could be declared invalid, and the child is born during the invalid marriage or within 300 days after its termination by death, annulment, declaration of invalidity, divorce, or after a decree of separation; or

d. After the birth of the child, he and the birth mother married each other in apparent compliance with the law, whether or not the marriage is or could be declared invalid, and he voluntarily asserted his paternity of the child, and:

(1) The assertion is in a record filed with the State Registrar;

(2) He agreed to be and is named as the child's father on the child's birth certificate; or

(3) He promised in a record filed with the State Registrar to support the child as his own.

C. Such presumption may be rebutted by sufficient evidence that would establish by a preponderance of the evidence the paternity of another man or the impossibility of cohabitation with the birth mother for a period of at least 300 days prior to the birth of the child.

ED. The parent and child relationship between a child and an adoptive parent may be established by proof of lawful adoption.

§ 63.2-1201. 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 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.

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.

The petition for adoption shall include an additional \$50 filing fee that shall be used to fund a putative father registry established in Article 7 (§ 63.2-1249 et seq.) of this chapter.

§ 63.2-1202. 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 § 63.2-1233, and the circuit court may accept a certified copy of an order entered pursuant to § 63.2-1233 in satisfaction of all requirements of this section, provided the order clearly evidences compliance with the applicable notice and consent requirements of § 63.2-1233.

B. A birth parent who has not reached the age of 18 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 18 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 By the birth mother; and

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 21 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 circuit 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~~ Any man who:

- a. Is an acknowledged father under subdivision B 2 of § 20-49.1;
- b. Is an adjudicated father under subdivision B 3 of § 20-49.1;
- c. Is a presumed father under subdivision B 4 of § 20-49.1; or
- d. Has filed with the putative father registry pursuant to Article 7 (§ 63.2-1249 et seq.) of this chapter.

3. By the child-placing agency or the local board having custody of the child, with right to place him for adoption, through court commitment or parental agreement as provided in § 63.2-900, 63.2-903 or 63.2-1221; 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 14 years of age or older, unless the circuit 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, subsection B of § 18.2-366, or an equivalent offense of another state, the United States, or any foreign jurisdiction, 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 circuit 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.

§ 63.2-1222. Execution of entrustment agreement by birth parent(s); exceptions; notice and objection to entrustment; copy required to be furnished; requirement for agencies outside the Commonwealth.

For the purposes of this section, a birth parent who is less than 18 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 18 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, *the putative birth father did not register with the putative father registry pursuant to Article 7 (§ 63.2-1249 et seq.) of this chapter, the putative birth father named by the birth mother denies under oath and in writing paternity of the child*, or if such birth father is given notice of the entrustment by registered or certified mail to his last known address and fails to object to the entrustment within 21 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 § 63.2-1223. 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, subsection B of § 18.2-366, or an equivalent offense of another state, the United States, or any foreign jurisdiction, 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.

When any agency outside the Commonwealth, or its agent, that is licensed or otherwise duly authorized to place children for adoption by virtue of the laws under which it operates executes an entrustment agreement in the Commonwealth with a birth parent for the termination of all parental rights and responsibilities with respect to the child, the requirements of §§ 63.2-1221 through 63.2-1224 shall apply. Any entrustment agreement that fails to comply with such requirements shall be void.

§ 63.2-1233. Consent to be executed in juvenile and domestic relations district court; exceptions.

When the juvenile and domestic relations district court is satisfied that all requirements of § 63.2-1232 have been met with respect to at least one birth parent and the adoptive child is at least 10 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 § 63.2-1202 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 21 days of the mailing of such notice; *(iv) the putative father did not register with the putative father registry pursuant to Article 7 (§ 63.2-1249 et seq.) of this chapter; (v) he executes a notarized denial of paternity with consent to adoption; or (vi) the putative birth father named by the birth mother denies under oath and in writing paternity of the child.* ~~Such~~ An objection under clause (iii) 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 juvenile and domestic relations district 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 juvenile and domestic relations district 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 § 63.2-1232 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 § 63.2-1202, 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 21 days after personal service of notice on the nonconsenting birth parent, or if personal service is unobtainable, 10 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 § 63.2-1205, 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 15 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, 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 15 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 § 63.2-1205, 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 § 63.2-1202.

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, subsection B of § 18.2-366, or an equivalent offense of another state, the United States, or any foreign jurisdiction, 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.

§ 63.2-1241. 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 circuit court may proceed to order the proposed adoption or change of name without referring the matter to the local director.

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 circuit court may proceed to order the proposed adoption or change of name without referring the matter to the local director 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 circuit court may proceed to order the proposed adoption and change of name without referring the matter to the local director 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, or (vi) the noncustodial birth parent executes a notarized denial of paternity with consent to adoption, or (vii) the noncustodial birth parent:

- a. Is not an acknowledged father pursuant to subdivision B 2 of § 20-49.1; and
- b. Is not an adjudicated father pursuant to subdivision B 3 of § 20-49.1; and
- c. Is not a presumed father pursuant to subdivision B 4 of § 20-49.1; and
- d. Is not a putative father who has registered with the putative father registry pursuant to Article 7 (§ 63.2-1249 et seq.) of this chapter.

D. When a single person who has adopted a child thereafter marries and desires his spouse to adopt

551 the child, on a petition filed by the adoptive parent and the spouse for the adoption and change of name
552 of the child, the circuit court may proceed to order the proposed adoption or change of name without
553 referring the matter to the local director.

554 *Article 7.*

555 *Putative Father Registry.*

556 § 63.2-1249. *Establishment of registry.*

557 A putative father registry is established in the Department of Social Services and the Putative Father
558 Registry Fund (the Fund) is established and consists of moneys collected under § 63.2-1201. Moneys in
559 the Fund shall be used solely for the administration of the putative father registry. Notwithstanding any
560 provision to the contrary, any moneys in the Fund at the end of the fiscal year shall not revert to the
561 general fund, but shall remain in the Fund and be used to carry out the provisions of this article.

562 § 63.2-1250. *Registration; notice; form.*

563 A. Except as otherwise provided in subsection C, a man who desires to be notified of a proceeding
564 for adoption of, or termination of parental rights regarding, a child that he may have fathered shall
565 register with the putative father registry before the birth of the child or within 15 days after the birth. A
566 registrant shall promptly notify the registry of any change in the information registered including but
567 not limited to change of address. The Department shall incorporate all new information received into its
568 records but is not required to obtain current information for incorporation in the registry.

569 B. A man will not prejudice any rights by failing to register if:

570 1. A father-child relationship between the man and the child has been established pursuant to
571 § 20-49.1; or

572 2. The man commences a proceeding to adjudicate his paternity before a petition for adoption or a
573 petition for the termination of his parental rights is filed with the court.

574 C. Failure to register pursuant to subsection A shall waive all rights of a man who is not an
575 acknowledged, presumed, or adjudicated father pursuant to § 20-49.1 to withhold consent to an adoption
576 proceeding unless the man was lead to believe through the birth mother's fraud that the pregnancy was
577 terminated or the mother miscarried when in fact the baby was born or that the child died when in fact
578 the child is alive. Upon the discovery of the fraud the man shall register with the putative father registry
579 within 15 days.

580 D. The Department shall give, in the manner prescribed for service of process in a civil action,
581 notice of a proceeding for the adoption of, or termination of parental rights regarding, a child to a
582 registrant who has timely registered pursuant to subsection A.

583 E. Any man who has engaged in sexual intercourse with a woman is deemed to be on legal notice
584 that a child may be conceived and the man is entitled to all legal rights and obligations resulting
585 therefrom. Lack of knowledge of the pregnancy does not excuse failure to timely register.

586 F. The Department shall prepare a form for registering with the agency that shall require (i) the
587 registrant's name, date of birth, and social security number; (ii) the registrant's driver's license number
588 and state of issuance; (iii) the registrant's home address, telephone number and employer; (iv) name
589 address, and telephone number of the putative birth mother, if known; (v) state of conception; (vi) place
590 and date of birth of the child, if known; and (vii) name and gender of the child, if known. The form
591 shall also state that (i) timely registration entitles the registrant to notice of a proceeding for adoption
592 of the child or termination of the registrant's parental rights; (ii) registration does not commence a
593 proceeding to establish paternity; (iii) the information disclosed on the form may be used against the
594 registrant to establish paternity; (iv) services to assist in establishing paternity are available to the
595 registrant through the Department; (v) the registrant should also register in another state if conception
596 or birth of the child occurred in another state; (vi) information on registries of other states is available
597 from the Department; (vii) the form is signed under penalty of perjury; and (viii) procedures exist to
598 rescind the registration of a claim of paternity.

599 § 63.2-1251. *Furnishing information; confidentiality; penalty.*

600 A. The Department is not required to locate the mother of a child who is the subject of a
601 registration, but the Department shall send a copy of the notice of registration to the mother if she
602 provided an address.

603 B. Information contained in the registry is confidential and may only be released on request to:

604 1. A court or a person designated by the court;

605 2. The mother of the child who is the subject of the registration;

606 3. An agency authorized by law to receive such information;

607 4. A licensed child-placing agency;

608 5. A support enforcement agency;

609 6. A party or the party's attorney of record in an adoption proceeding, or in a proceeding of
610 termination of parental rights, regarding a child who is the subject of the registration; and

611 7. The putative father registry in another state.

612 C. An individual who intentionally releases information from the registry to an individual or agency

not authorized to receive the information in this section is guilty of a Class 4 misdemeanor.

§ 63.2-1252. Search of registry.

A. If no father-child relationship has been established pursuant to § 20-49.1, a petitioner for adoption shall obtain from the Department a certificate that a search of the putative father registry was performed. If the conception or birth of the child occurred in another state, a petitioner for adoption shall obtain a certificate from that state indicating that a search of the putative father registry was performed, if that state has a putative father registry.

B. The Department shall furnish to the requester a certificate of search of the registry on the request of an individual, court or agency listed in § 63.2-1251. Any such certificate shall be signed on behalf of the Department and state that a search has been made of the registry and a registration containing the information required to identify the registrant has been found and is attached to the certificate of search or has not been found.

C. A petitioner shall file the certificate of search with the court before a proceeding for adoption of, or termination of parental rights regarding, a child may be concluded.

D. A certificate of search of the putative father registry is admissible in a proceeding for adoption of, or termination of parental rights regarding, a child and, if relevant, in other legal proceedings.

§ 63.2-1253. Duty to publicize registry.

A. The Department shall produce and distribute a pamphlet or other publication informing the public about the putative father registry including the procedures for voluntary acknowledgement of paternity; the consequences of acknowledgement and failure to acknowledge paternity pursuant to § 20-49.1; a description of the putative father registry including to whom and under what circumstances it applies, the time limits and responsibilities for filing, paternal rights and associated responsibilities; and other appropriate provisions of this article. Such pamphlet or publication shall include a detachable form that meets the requirements of subsection F of § 63.2-1250, is suitable for United States mail, and is addressed to the putative father registry. Such pamphlet or publication shall be made available for distribution at all offices of the Department of Health and all local departments of social services. The Department shall also provide such pamphlets or publications to hospitals, libraries, medical clinics, schools, universities, and other providers of child-related services upon request.

B. The Department shall provide information to the public at large by way of general public service announcements, or other ways to deliver information to the public about the putative father registry and its services.