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SENATE BILL NO. 1041

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Health, Welfare and Institutions
on February 15, 2007)

(Patron Prior to Substitute — Senator O'Brien)

A *BILL to amend and reenact §§ 63.2-903, 63.2-1201, 63.2-1202, 63.2-1212, 63.2-1213, 63.2-1222, 63.2-1223, 63.2-1226, 63.2-1233, and 63.2-1241 of the Code of Virginia, relating to technical changes in the adoption laws.*

Be it enacted by the General Assembly of Virginia:

1. That §§ 63.2-903, 63.2-1201, 63.2-1202, 63.2-1212, 63.2-1213, 63.2-1222, 63.2-1223, 63.2-1226, 63.2-1233, and 63.2-1241 of the Code of Virginia are amended and reenacted as follows:

§ 63.2-903. Entrustment agreements; adoption.

A. Whenever a local board accepts custody of a child pursuant to an entrustment agreement entered into under the authority of § 63.2-900, or a licensed child-placing agency accepts custody of a child pursuant to an entrustment agreement entered into under the authority of § 63.2-1817, in the city or county juvenile and domestic relations district court a petition for approval of the entrustment agreement (i) shall be filed within a reasonable period of time, not to exceed 89 days after the execution of an entrustment agreement for less than 90 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 30 days after the execution of an entrustment agreement for 90 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.

B. For purposes of §§ 63.2-900, 63.2-1817 and this section, a 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 parent had attained the age of 18 years. An entrustment agreement for the termination of all parental rights and responsibilities shall be executed in writing and notarized. 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 fails to object to the entrustment within 24 15 days of 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 that 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.

C. An entrustment agreement for the termination of 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, 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.

D. A child may be placed for adoption by a licensed child-placing agency or a local board, in accordance with the provisions of § 63.2-1221.

§ 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, in the county or city in which the child-placing agency that placed the child is located, or in the county or city in which a birth parent executed a consent pursuant to § 63.2-1233. 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, or by an adopting parent of a child who was subject to a consent proceeding held pursuant to § 63.2-1233, or by intended parents who are parties to a surrogacy contract. The petition shall ask leave to adopt a minor child not legally the petitioner's 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. *If any procedural provision of*

HOUSE SUBSTITUTE

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60 *this chapter applies to only one adoptive parent, then the court may waive the application of the*
61 *procedural provision as to the spouse of the adoptive parent.* The petition shall contain a full disclosure
62 of the circumstances under which the child came to live, and is living, in the home of the petitioner.
63 Each petition for adoption shall be signed by the petitioner as well as by counsel of record, if any. In
64 any case in which the petition seeks the entry of an adoption order without referral for investigation, the
65 petition shall be under oath.

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

70 (Effective July 1, 2007) The petition for adoption, except those filed pursuant to subdivisions 5 and 6
71 of § 63.2-1210, shall include an additional \$50 filing fee that shall be used to fund the Putative Father
72 Registry established in Article 7 (§ 63.2-1249 et seq.) of this chapter.

73 § 63.2-1202. Parental, or agency, consent required; exceptions.

74 A. No petition for adoption shall be granted, except as hereinafter provided in this section, unless
75 written consent to the proposed adoption is filed with the petition. Such consent shall be in writing,
76 signed under oath and acknowledged before an officer authorized by law to take acknowledgments. The
77 consent of a birth parent for the adoption of his child placed directly by the birth parent shall be
78 executed as provided in § 63.2-1233, and the circuit court may accept a certified copy of an order
79 entered pursuant to § 63.2-1233 in satisfaction of all requirements of this section, provided the order
80 clearly evidences compliance with the applicable notice and consent requirements of § 63.2-1233.

81 B. A birth parent who has not reached the age of 18 shall have legal capacity to give consent to
82 adoption and perform all acts related to adoption, and shall be as fully bound thereby as if the birth
83 parent had attained the age of 18 years.

84 C. A man shall be presumed to be the father of a child if:

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

87 2. (Effective until July 1, 2007) He and the mother of the child were married to each other and the
88 child is born within 300 days after the marriage is terminated by death, annulment, declaration of
89 invalidity, divorce, or after a decree of separation; or

90 2. (Effective July 1, 2007) He and the mother of the child were married to each other and the child
91 is born within 300 days of their date of separation, as evidenced by a written agreement or decree of
92 separation, or within 300 days after the marriage is terminated by death, annulment, declaration of
93 invalidity, or divorce; or

94 3. (Effective until July 1, 2007) Before the birth of the child, he and the mother of the child married
95 each other in apparent compliance with the law, even if the attempted marriage is or could be declared
96 invalid, and the child is born during the invalid marriage or within 300 days after its termination by
97 death, annulment, declaration of invalidity, divorce, or after a decree of separation.

98 3. (Effective July 1, 2007) Before the birth of the child, he and the mother of the child married each
99 other in apparent compliance with the law, even if the attempted marriage is or could be declared
100 invalid, and the child is born during the invalid marriage or within 300 days of their date of separation,
101 as evidenced by a written agreement or decree of separation, or within 300 days after its termination by
102 death, annulment, declaration of invalidity, or divorce.

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

106 D. Consent shall be executed:

107 1. By the birth mother and by any man who:

108 a. Is an acknowledged father under § 20-49.1;

109 b. Is an adjudicated father under § 20-49.8;

110 c. Is a presumed father under subsection C;

111 d. (Effective until July 1, 2007) Has registered with the Putative Father Registry pursuant to Article
112 7 (§ 63.2-1249 et seq.) of this chapter; or

113 e. (Effective July 1, 2007) Is a putative father but who has not registered with the Putative Father
114 Registry, if his identity is reasonably ascertainable.

115 2. By the child-placing agency or the local board having custody of the child, with right to place him
116 for adoption, through court commitment or parental agreement as provided in ~~§ 63.2-900, 63.2-903 or~~
117 ~~63.2-1221~~; or an agency outside the Commonwealth that is licensed or otherwise duly authorized to
118 place children for adoption by virtue of the laws under which it operates; and

119 3. By the child if he is 14 years of age or older, unless the circuit court finds that the best interests
120 of the child will be served by not requiring such consent.

121 C. Consent shall be executed:

1. By the birth mother and by any male who:
 - a. Is an acknowledged father under § 20-49.1;
 - b. Is an adjudicated father under § 20-49.8;
 - c. (Effective until July 1, 2007) Has registered with the Putative Father Registry pursuant to Article 7 (§ 63.2-1249 et seq.) of this chapter; or
 - d. Is a presumed father under subsection D;
- Verification of compliance with the notice provisions of the Putative Father Registry shall be provided to the court.
2. 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
3. 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. A man shall be presumed to be the father of a child if:
 1. He and the mother of the child are married to each other and the child is born during the marriage;
 2. (Effective until July 1, 2007) 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; or
 2. (Effective July 1, 2007) He and the mother of the child were married to each other and the child is born within 300 days of their date of separation, as evidenced by a written agreement or court order establishing the date of separation, or within 300 days after the marriage is terminated by death, annulment, declaration of invalidity, or divorce; or
 3. (Effective until July 1, 2007) 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.
 3. (Effective July 1, 2007) 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 of their date of separation, as evidenced by a written agreement or court order establishing the date of separation, or within 300 days after its termination by death, annulment, declaration of invalidity, or divorce.
- 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 or improbability of cohabitation with the birth mother for a period of at least 300 days prior to the birth of the child.
- E. No consent shall be required of a birth father if he denies under oath and in writing the paternity of the child. Such denial of paternity may be withdrawn no more than 10 days after it is executed. Once the child is 10 days old, any executed denial of paternity is final and constitutes a waiver of all rights with respect to the adoption of the child and cannot be withdrawn.
- F. 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.
- G. No notice or consent shall be required of any person whose parental rights have been terminated by a court of competent jurisdiction, *including foreign courts that have competent jurisdiction.*
- H. No consent shall be required of a birth parent who, without just cause, has neither visited nor contacted the child for a period of six months prior to the filing of the petition for adoption. The prospective adoptive parent(s) shall establish by clear and convincing evidence that the birth parent(s), without just cause, has neither visited nor contacted the child for a period of six months prior to the filing of the petition for adoption. This provision shall not infringe upon the birth parent's right to be noticed and heard on the allegation of abandonment.
- I. A birth father ~~not married to the mother~~ of the child may consent to the termination of all of his parental rights prior to the birth of the child.
- J. The failure of the nonconsenting party to appear at ~~the~~any scheduled hearing, either in person or by counsel, after proper notice has been given to said party, shall constitute a waiver of any objection and right to consent to the adoption.
- § 63.2-1212. 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; (ii) if the child was not placed by an agency and the placement is not a parental placement, the local director; (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 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 local department or by an agent of such licensed or duly authorized child-placing agency. Whenever practicable, such visits shall be made within the six-month 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 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 § 63.2-1246 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 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 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.

§ 63.2-1213. Final order of adoption.

After consideration of the report made pursuant to § 63.2-1212 or as permitted pursuant to § 63.2-1210, 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; ~~provided that the child has been in the physical custody of the petitioner for at least six months immediately prior to entry of the order.~~ 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 physical custody of the petitioner by a person not authorized to make such placements pursuant to § 63.2-1200. 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, in cases where the child was not placed by an agency.

§ 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.

A. 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 perform all acts related to adoption and shall be as fully bound thereby as if such birth parent had attained the age of 18 years.

B. (Effective until July 1, 2007) 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 denies under oath and in writing the paternity of the child.

B. (Effective July 1, 2007) 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 ~~and or~~ such birth father did not register with the Putative Father Registry pursuant to Article 7 (§ 63.2-1249 et seq.) of this chapter or the birth father named by the birth mother denies under oath and in writing the paternity of the child. A birth father shall be given notice of the ~~proceedings~~ *entrustment* if he is an acknowledged father pursuant to § 20-49.1, an adjudicated father pursuant to § 20-49.8, or a presumed father pursuant to § 63.2-1202, a putative father that has registered with Putative Father Registry pursuant to Article 7 (§ 63.2-1249 et seq.) of this chapter, or a putative father that has not

registered with Putative Father Registry but whose identity is reasonably ascertainable pursuant to Article 7 (§ 63.2-1249 et seq.) of this chapter.

C. When a birth father is required to be given notice, he may be given notice of the entrustment by registered or certified mail to his last known address. If he fails to object to the entrustment within 15 days of the mailing of such notice, his entrustment shall not be required. 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.

D. The execution of an entrustment agreement shall be required of a presumed father except under the following circumstances: (i) if he denies paternity under oath and in writing in accordance with subsection D of § 63.2-1202; (ii) if the presumption is 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; (iii) if another man admits, in writing and under oath, that he is the biological father; or (iv) if an adoptive placement has been determined to be in the best interests of the child pursuant to § 63.2-1205.

E. When none of the provisions of ~~subsection~~ subsections C and D apply, notice of the entrustment shall be given to the presumed father pursuant to the requirements of § 16.1-277.01.

F. 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.

G. A birth father ~~not married to the mother of the child~~ may execute an entrustment agreement for the termination of all of his parental rights prior to the birth of the child. Such entrustment shall be subject to the revocation provisions of § 63.2-1223.

H. No entrustment shall be required of a birth father if he denies under oath and in writing the paternity of the child. Such denial of paternity may be withdrawn no more than 10 days after it is executed. Once the child is 10 days old, any executed denial of paternity is final and constitutes a waiver of all rights with respect to the adoption of the child and cannot be withdrawn.

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

J. 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. The birth parent may expressly waive, under oath and in writing, the execution of the entrustment under the requirements of §§ 63.2-1221 through 63.2-1224 in favor of the execution of an entrustment or relinquishment under the laws of another state if the birth parent is represented by independent legal counsel. Such written waiver shall expressly state that the birth parent has received independent legal counsel advising of the laws of Virginia and of the other state and that Virginia law is expressly being waived. The waiver also shall include the name, address, and telephone number of such legal counsel. Any entrustment agreement that fails to comply with such requirements shall be void.

§ 63.2-1223. 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 10 days and (ii) seven 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 physical custody of *the prospective* 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 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 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.

§ 63.2-1226. When birth parents recommend adoptive parents.

When a licensed child-placing agency or a local board is requested to ~~and accepts~~ *accept* custody of a child for the purpose of placing the child with adoptive parent(s) recommended by the birth parent(s) or a person other than a licensed child-placing agency or local board, either the parental placement adoption provisions or the agency adoption provisions of this chapter shall apply to such placement at

the election of the birth parent(s). Such agency or local board shall provide information to the birth parent(s) regarding the parental placement adoption and agency adoption provisions and shall provide the birth parent the opportunity to be represented by independent legal counsel as well as counseling with a social worker. No person shall charge, pay, give, or agree to give or accept any money, property, services, or other thing of value in connection with such adoption except as provided in § 63.2-1218.

§ 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 in the third calendar day of life, 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 the birth father consents under oath and in writing to the adoption.

b. (Effective until July 1, 2007) The consent of a birth father who is not married to the mother of the child at the time of the child's conception or birth shall not be required if the putative father named by the birth mother denies under oath and in writing the paternity of the child. The mother may, but is not required to identify the father who is not acknowledged pursuant to § 20-49.1, adjudicated pursuant to § 20-49.8, or presumed pursuant to § 63.2-1202.

b. (Effective July 1, 2007) The consent of a birth father who is not married to the mother of the child at the time of the child's conception or birth shall not be required if the putative father did not register with the Putative Father Registry pursuant to Article 7 (§ 63.2-1249 et seq.) of this chapter and the identity of the birth father is not reasonably ascertainable or if *his identity is reasonably ascertainable and he has been provided notice pursuant to § 63.2-1250* or if the putative father named by the birth mother denies under oath and in writing the paternity of the child.

c. When a birth father is required to be given notice, he may be given notice of the adoption by registered or certified mail to his last known address and if he fails to object to the adoption within 15 days of the mailing of such notice, his consent shall not be required. An 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 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. When no timely objection is filed, no hearing on this issue is required. Failure of the objecting party to appear at any scheduled hearing, either in person or by counsel, shall constitute a waiver of such objection.

d. 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 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. *For good cause shown, the court may dispense with the requirements regarding exchanging identifying information pursuant to § 63.2-1232.*

e. 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.

f. A child born to a married birth mother shall be presumed to be the child of her husband and his consent shall be required, unless the court finds that the father's consent is withheld contrary to the best interests of the child as provided in § 63.2-1205 or if his consent is unobtainable. The consent of such presumed father shall be under oath and in writing and may be executed in or out of court. The presumption that the husband is the father of the child 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. If the court is satisfied that the presumption has been rebutted, notice of the adoption shall not be required to be given to the presumed father.

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 15 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. 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 and 5, 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. Under this subdivision, the court or the parties may waive the requirement of the simultaneous meeting under § 63.2-1231 and the requirements of subdivisions A 1, A 3, and A 7 of § 63.2-1232 where the opportunity for compliance is not reasonably available under the applicable circumstances.

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. 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.

7. No consent shall be required of a birth father if he denies under oath and in writing the paternity of the child. Such denial of paternity may be withdrawn no more than 10 days after it is executed. Once the child is 10 days old, any executed denial of paternity is final and constitutes a waiver of all rights with the respect to the adoption of the child and cannot be withdrawn.

8. A birth father ~~not married to the mother of the child~~ may consent to the ~~termination of all of his parental rights~~ adoption prior to the birth of the child.

9. 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.

10. *When there has been an interstate transfer of the child in a parental placement adoption in compliance with Chapter 10 of Title 63.2 (§§ 63.2-1000 et seq.), all matters relating to the adoption of the child including, but not limited to, custody and parentage shall be determined in the court of appropriate jurisdiction in the state that was approved for finalization of the adoption by the interstate compact authorities.*

§ 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

429 by the birth parent or parent by adoption and the new spouse for the adoption and change of name of
430 the child, or if the child is the result of surrogacy, the circuit court may proceed to order the proposed
431 adoption or change of name without referring the matter to the local director if the other birth parent or
432 parent by adoption consents in writing to the adoption or change of name or if the other birth parent or
433 parent by adoption is deceased.

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

445 a. Is not an acknowledged father pursuant to § 20-49.1; and

446 b. Is not an adjudicated father pursuant to § 20-49.8; and

447 c. Is not a presumed father; and

448 d. (Effective July 1, 2007) Is not a putative father who has registered with the Putative Father
449 Registry pursuant to Article 9 7 (§ 63.2-1249 et seq.) of this chapter ~~and the putative father's identity is~~
450 ~~not reasonably ascertainable and, if his identity is reasonably ascertainable, he has been provided notice~~
451 ~~pursuant to § 63.2-1250.~~

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