

098213752

HOUSE BILL NO. 2160

Offered January 14, 2009

Prefiled January 14, 2009

A BILL to amend and reenact §§ 16.1-277.01, 16.1-277.02, and 16.1-278.3 of the Code of Virginia, and to amend the Code of Virginia by adding sections numbered 16.1-283.1, 63.2-1228.1, and 63.2-1228.2, relating to post-adoption contact and communication.

Patron—Toscano

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§§ 16.1-277.01, 16.1-277.02, and 16.1-278.3 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding sections numbered 16.1-283.1, 63.2-1228.1, and 63.2-1228.2, 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. A birth father shall be given notice of the proceedings if he is an acknowledged father pursuant to § 20-49.1, adjudicated pursuant to § 20-49.8, or presumed pursuant to § 63.2-1202, or has registered with the Putative Father Registry pursuant Article 7 (§ 63.2-1249 et seq.). 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 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

INTRODUCED

HB2160

59 rights. Service shall be made pursuant to § 16.1-264. The remaining parent's parental rights may be
60 terminated even though that parent has not entered into an entrustment agreement if the court finds,
61 based upon clear and convincing evidence, that it is in the best interest of the child and that (i) the
62 identity of the parent is not reasonably ascertainable; (ii) the identity and whereabouts of the parent are
63 known or reasonably ascertainable, and the parent is personally served with notice of the termination
64 proceeding pursuant to § 8.01-296 or § 8.01-320; (iii) the whereabouts of the parent are not reasonably
65 ascertainable and the parent is given notice of the termination proceedings by certified or registered mail
66 to the last known address and such parent fails to object to the proceedings within 15 days of the
67 mailing of such notice; or (iv) the whereabouts of the parent are not reasonably ascertainable and the
68 parent is given notice of the termination proceedings through an order of publication pursuant to
69 §§ 8.01-316 and 8.01-317, and such parent fails to object to the 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. *At any time*
86 *subsequent to the transfer of legal custody of the child pursuant to this section, a birth parent of the*
87 *child, the local board, child-placing agency, or pre-adoptive parent or parents, or any combination*
88 *thereof, may enter into a written post-adoption contact and communication agreement in accordance*
89 *with the provisions of §§ 16.1-283.1 and 63.2-1228.1. The court shall not require a written*
90 *post-adoption contact and communication agreement as a precondition to entry of an order in any case*
91 *involving the child.*

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

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

111 E. The local board or licensed child-placing agency to which authority is given to place the child for
112 adoption and consent thereto after an order terminating parental rights is entered pursuant to this section
113 shall file a written Adoption Progress Report with the juvenile court on the progress being made to
114 place the child in an adoptive home. The report shall be filed with the court every six months from the
115 date of the final order terminating parental rights until a final order of adoption is entered on behalf of
116 the child in the circuit court. At the conclusion of the hearing at which termination of parental rights is
117 ordered and authority is given to the local board or licensed child-placing agency to place the child for
118 adoption, the juvenile court shall schedule a date by which the board or agency shall file the first
119 Adoption Progress Report required by this section. A copy of the Adoption Progress Report shall be
120 sent by the court to the guardian ad litem for the child. The court may schedule a hearing on the report

with or without the request of a party.

§ 16.1-277.02. Petition for relief of care and custody.

A. Requests for petitions for relief of the care and custody of a child shall be referred initially to the local department of social services for investigation and the provision of services, if appropriate, in accordance with the provisions of § 63.2-319 or Chapter 15 (§ 63.2-1500 et seq.) of Title 63.2. Upon the filing of a petition for relief of a child's care and custody pursuant to subdivision A 4 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 on the petition. Such hearing on the petition may include partial or final disposition of the matter. 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 child, if he is twelve years of age or older;

2. The guardian ad litem for the child;

3. The child's parents, 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 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. The hearing on the petition shall be held pursuant to this section although a parent fails to appear and is not represented by counsel, provided personal or substituted service was made on the parent, 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, in the case of a hearing to grant a petition for permanent relief of custody and terminate a parent's residual parental rights, notice to the parent whose rights may be affected shall be provided in accordance with the provisions of §§ 16.1-263 and 16.1-264; and

4. The local board of social services. Upon receiving notice of the hearing pursuant to this section, the local board of social services shall investigate the matter and provide services, as appropriate, in accordance with the provisions of § 63.2-319 or Chapter 15 (§ 63.2-1500 et seq.) of Title 63.2.

B. At the hearing, the local board of social services, the child, the child's parents, guardian, legal custodian or other person standing in loco parentis and any other family or household member of the child to whom notice was given shall have the right to confront and cross-examine all adverse witnesses and evidence and to present evidence on their own behalf.

C. At the conclusion of the hearing on the petition, the court shall make a finding, based upon a preponderance of the evidence, whether there is good cause shown for the petitioner's desire to be relieved of the child's care and custody, unless the petition seeks permanent relief of custody and termination of parental rights. If the petition seeks permanent relief of custody and termination of parental rights, the court shall make a finding, based upon clear and convincing evidence, whether termination of parental rights is in the best interest of the child. If the court makes either of these findings, the court may enter:

1. A preliminary protective order pursuant to § 16.1-253;

2. An order that requires the local board of social services to provide services to the family as required by law;

3. An order that is consistent with any of the dispositional alternatives pursuant to § 16.1-278.3; or

4. Any combination of these orders.

Any such order transferring legal custody of the child shall be made in accordance with the provisions of subdivision A 5 of § 16.1-278.2 and shall be subject to the provisions of subsection C1 of this section. This order shall include, but need not be limited to, the following findings: (i) that there is no less drastic alternative to granting the requested relief; and (ii) that reasonable efforts have been made to prevent removal and that continued placement in the home would be contrary to the welfare of the child, if the order transfers legal custody of the child to a local board of social services. Any order terminating residual parental rights shall be accompanied by an order continuing or granting custody to a local board of social services, to a licensed child-placing agency or the granting of custody or guardianship to a relative or other interested individual. Such an order continuing or granting custody to a local board of social services or to a licensed child-placing agency shall indicate whether that board or agency shall have the authority to place the child for adoption and consent thereto. *At any time subsequent to the transfer of legal custody of the child pursuant to this section, a birth parent, the local board, child-placing agency, or pre-adoptive parent or parents, or any combination thereof, may enter into a written post-adoption contact and communication agreement in accordance with the provisions of §§ 16.1-283.1 and 63.2-1228.1. The court shall not require a written post-adoption contact and communication agreement as a precondition to entry of an order in any case involving the child.*

The court shall schedule a subsequent hearing within seventy-five days of the hearing held pursuant

182 to this section: (i) to enter a final order of disposition pursuant to § 16.1-278.3 or (ii) if the child is
183 placed in foster care, for review of the foster care plan filed pursuant to § 16.1-281. If a party is
184 required to be present at the subsequent hearing, and (i) is present at the hearing on the petition, the
185 party shall be given notice of the date set for the subsequent hearing; (ii) if not present, shall be
186 summoned as provided in § 16.1-263.

187 C1. Any order transferring temporary custody of the child to a relative or other interested individual
188 pursuant to subsection C of this section shall be entered only upon a finding, based upon a
189 preponderance of the evidence, that the relative or other interested individual is one who (i) is found by
190 the court to be willing and qualified to receive and care for the child; (ii) is willing to have a positive,
191 continuous relationship with the child; and (iii) is willing and has the ability to protect the child from
192 abuse and neglect. The court's order transferring temporary custody to a relative or other interested
193 individual should further provide for compliance with any preliminary protective order entered on behalf
194 of the child in accordance with the provisions of § 16.1-253; and, as appropriate, ongoing provision of
195 social services to the child and the child's custodian; and court review of the child's placement with the
196 relative or other individual. Any final order transferring custody of the child to a relative or other
197 interested individual pursuant to this section shall, in addition, be entered only after an investigation as
198 directed by the court and upon a finding, stated in the court's order, that the relative or other interested
199 individual is one who satisfies clauses (i), (ii) and (iii) of this subsection and is committed to providing
200 a permanent, suitable home for the child.

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

212 § 16.1-278.3. Relief of care and custody.

213 A. Within seventy-five days of a hearing on a petition for relief of the care and custody of any child
214 pursuant to § 16.1-277.02 at which the court found (i) good cause for the petitioner's desire to be
215 relieved of a child's care and custody or (ii) that permanent relief of custody and termination of residual
216 parental rights is in the best interest of the child, a dispositional hearing shall be held, if a final order
217 disposing of the matter was not entered at the conclusion of the hearing on the petition held pursuant to
218 § 16.1-277.02.

219 B. Notice of the dispositional hearing shall be provided to the local department of social services, the
220 guardian ad litem for the child, the child if he is at least twelve years of age, and the child's parents,
221 custodian or other person standing in loco parentis. However, if a parent's residual parental rights were
222 terminated at the hearing on the petition held pursuant to § 16.1-277.02, no such notice of the hearing
223 pursuant to this section shall be provided to the parent. The hearing shall be held and a dispositional
224 order may be entered, although a parent, guardian, legal custodian or person standing in loco parentis
225 fails to appear and is not represented by counsel, provided personal or substituted service was made on
226 the person, or the court determines that the person cannot be found, after reasonable effort, or in the
227 case of a person who is without the Commonwealth, the person cannot be found or his post office
228 address cannot be ascertained after reasonable effort. However, in the case of a hearing to grant a
229 petition for permanent relief of custody and terminate a parent's residual parental rights, notice to the
230 parent whose rights may be affected shall be provided in accordance with the provisions of §§ 16.1-263
231 and 16.1-264.

232 C. The court may make any of the orders of disposition permitted in a case involving an abused or
233 neglected child pursuant to § 16.1-278.2. Any such order transferring legal custody of the child shall be
234 made in accordance with the provisions of subdivision A 5 of § 16.1-278.2 and shall be subject to the
235 provisions of subsection D1 of this section. This order shall include, but need not be limited to, the
236 following findings: (i) that there is no less drastic alternative to granting the requested relief; and (ii)
237 that reasonable efforts have been made to prevent removal and that continued placement in the home
238 would be contrary to the welfare of the child, if the order transfers legal custody of the child to a local
239 board of social services. Any preliminary protective orders entered on behalf of the child shall be
240 reviewed at the dispositional hearing and may be incorporated, as appropriate, in the dispositional order.
241 If the child has been placed in foster care, at the dispositional hearing the court shall review the foster
242 care plan for the child filed by the local board of social services or child welfare agency in accordance
243 with § 16.1-281.

D. If the parent or other custodian seeks to be relieved permanently of the care and custody of any child and the court finds by clear and convincing evidence that termination of the parent's parental rights is in the best interest of the child, the court may terminate the parental rights of that parent. If the remaining parent has not petitioned for permanent relief of the care and custody of the child, the remaining parent's parental rights may be terminated in accordance with the provisions of § 16.1-283. Any order terminating parental rights shall be accompanied by an order (i) continuing or granting custody to a local board of social services or to a licensed child-placing agency, or (ii) granting custody or guardianship to a relative or other interested individual. Such an order continuing or granting custody to a local board of social services or to a licensed child-placing agency shall indicate whether that board or agency shall have the authority to place the child for adoption and consent thereto. Proceedings under this section shall be advanced on the docket so as to provide for their earliest practicable disposition. *At any time subsequent to the transfer of legal custody of the child pursuant to this section, a birth parent, the local board, child-placing agency, or pre-adoptive parent or parents, or any combination thereof, may enter into a written post-adoption contact and communication agreement in accordance with the provisions of §§ 16.1-283.1 and 63.2-1228.1. The court shall not require a written post-adoption contact and communication agreement as a precondition to entry of an order in any case involving the child.*

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

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

F. A dispositional order entered pursuant to this section is a final order from which an appeal may be taken in accordance with § 16.1-296.

§ 16.1-283.1. Authority to enter into voluntary post-adoption contact and communication agreement.

A. *In any case in which a child has been placed in foster care as a result of court commitment, an entrustment agreement entered into by the parent or parents, or other voluntary relinquishment by the parent or parents, the child's birth parent may enter into a written post-adoption contact and communication agreement with the agency having authority to place the child for adoption or with the pre-adoptive parents, if any. A post-adoption contact and communication agreement may include, but is not limited to, provisions related to contact and communication between the child, the birth parent or parents, and the adoptive parents, and provisions for the sharing of information about the child, including sharing of photographs of the child and information about the child's education, health, and welfare.*

B. *Any agreement entered into by the birth parent or parents and the agency having authority to place the child for adoption shall evidence the agency's agreement to request that any subsequently identified pre-adoptive parents consider the birth parent's or parents' request for the post-adoption sharing of information specified in the agreement. Any such agreement shall be filed by the petitioner for adoption with other documents filed in the circuit court having jurisdiction over the child's adoption if the pre-adoptive parents, once identified, agree to the post-adoption sharing of information with the birth parent as specified in the birth parent's agreement with the agency.*

C. *Any agreement entered into by the birth parent or parents and the pre-adoptive parents shall contain the birth parent's acknowledgement that the adoption of the child is irrevocable, even if the adoptive parents do not abide by the post-adoption contact and communication agreement, and the adoptive parents' acknowledgement that the agreement grants the birth parent's or parents' right to seek to enforce the post-adoption contact and communication provisions set forth in the agreement. Such*

305 agreement shall be filed by the petitioner for adoption, if the petitioner for adoption is a party to the
306 written agreement, with other documents filed in the circuit court having jurisdiction over the child's
307 adoption.

308 D. In no event shall failure to enter into a post-adoption contact and communication agreement with
309 identified adoptive parents after authority to consent to the child's adoption is granted to a local board
310 of social services or a child welfare agency, or refusal to comply with a post-adoption contact and
311 communication agreement affect the validity of (i) the consent to the adoption, (ii) the voluntary
312 relinquishment of parental rights, (iii) the voluntary or involuntary termination of parental rights, or (iv)
313 the finality of the adoption.

314 E. No birth parent of a child, child placing agency, or preadoptive parent or parents of a child shall
315 be required to enter into a post-adoption contact and communication agreement.

316 § 63.2-1228.1. Post-adoption contact and communication agreements.

317 A. The circuit court may approve a post-adoption contact and communication agreement authorized
318 pursuant to § 16.1-283.1 and filed with the court for a petition for adoption if:

319 1. The court determines that the child's best interest would be served by approving the post-adoption
320 contact and communication agreement;

321 2. The adoptive parents and birth parents have consented to a post-adoption contact and
322 communication agreement filed with the court;

323 3. The agency sponsoring the adoption and the child's guardian ad litem has recommended that the
324 post-adoption contact and communication agreement be approved as being in the best interest of the
325 child, or, if there is no agency sponsoring the adoption, the agency that prepared the adoption report
326 has been informed of the post-adoption contact and communication agreement and has recommended in
327 the agency's report to the circuit court that the post-adoption contact and communication agreement be
328 approved; and

329 4. Where the child is 14 years of age or older, consent to the post-adoption contact and
330 communication agreement is obtained from the child.

331 B. A post-adoption contact and communication agreement shall include the following;

332 1. The birth parent's or parents' acknowledgement that the adoption of the child is irrevocable, even
333 if the adoptive parents do not abide by the post-adoption contact and communication agreement; and

334 2. The adoptive parents' acknowledgement that the agreement grants the birth parent's or parents'
335 rights to seek to enforce the post-adoption contact and communication provisions set forth in the
336 agreement.

337 C. A post-adoption contact and communication agreement may include, but is not limited to,
338 provisions related to contact and communication between the child, the birth parent or parents, and the
339 adoptive parents, and provisions for the sharing of information about the child, including sharing of
340 photographs of the child and information about the child's education, health, and welfare.

341 D. To be enforceable, any agreement under this section shall be approved by the circuit court and
342 incorporated into the final order of adoption.

343 E. The circuit court shall not require execution of a post-adoption contact and communication
344 agreement as a condition for approving any adoption.

345 § 63.2-1228.2. Jurisdiction to approve post-adoption contact and communication agreement.

346 A. Unless otherwise stated in the final order of adoption, the circuit court of the jurisdiction in
347 which the final order of adoption was entered shall retain jurisdiction to modify or enforce the terms of
348 a post-adoption contact and communication agreement entered into pursuant to § 63.2-1228.1.

349 B. A birth parent or adoptive parent who has executed a post-adoption contact and communication
350 agreement as described in this section may file a petition with the circuit court of the jurisdiction in
351 which the final order of adoption was entered:

352 1. To modify the post-adoption contact and communication agreement; and

353 2. To compel a birth or adoptive parent to comply with the post-adoption contact and communication
354 agreement. The court may not award monetary damages as a result of the filing of a petition for
355 modification or compliance with the agreement. The court may modify the agreement at any time before
356 or after the adoption if the court, after notice and opportunity to be heard by the birth parent or
357 parents and the adoptive parents, determines that the child's best interests require the modification of
358 the agreement. Before the court modifies an agreement or hears a motion to compel compliance, the
359 court may appoint a guardian ad litem to represent the child's best interests.

360 C. The circuit court shall not grant a request to modify the terms of a post-adoption contact and
361 communication agreement unless the moving party establishes that there has been a change of
362 circumstances and the agreement is no longer in the child's best interests; provided, however, that no
363 modification shall affect the irrevocability of the adoption.

364 D. Failure to comply with the terms of a post adoption contact and communication agreement or an
365 order entered into pursuant to § 63.2-1228.1 shall not affect (i) the consent to the adoption, (ii) the
366 voluntary relinquishment of parental rights, (iii) the voluntary or involuntary termination of parental

367 *rights, or (iv) the finality of the adoption.*