

12100275D

HOUSE BILL NO. 451

Offered January 11, 2012

Prefiled January 10, 2012

A BILL to amend and reenact §§ 63.2-1203 and 63.2-1233 of the Code of Virginia, relating to adoptions; appointment of counsel.

Patrons—Toscano and Scott, J.M.

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 63.2-1203 and 63.2-1233 of the Code of Virginia are amended and reenacted as follows:

§ 63.2-1203. When consent is withheld or unobtainable.

A. If, after consideration of the evidence, the circuit court finds that the valid consent of any person or agency whose consent is required is withheld contrary to the best interests of the child as set forth in § 63.2-1205, or is unobtainable, the circuit court may grant the petition without such consent:

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

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

3. If a birth parent is deceased, upon the filing of a death certificate for a deceased birth parent with the court; or

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

An affidavit of the birth mother that the identity of the birth father is not reasonably ascertainable shall be sufficient evidence of this fact, provided there is no other evidence before the circuit 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. If the child is not in the custody of a child-placing agency and both parents are deceased, the circuit court, after hearing evidence to that effect, may grant the petition without the filing of any consent.

C. In any adoption proceeding, the court shall inform the birth parent(s) of their right to counsel prior to the adjudicatory hearing of a petition for adoption under this chapter, and may appoint counsel for any birth parent(s) and shall appoint counsel for any birth parent whose consent is required but who has not consented to the adoption if such parent has been determined to be indigent by the court pursuant to § 19.2-159.

§ 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 if the birth father consents under oath and in writing to the adoption.

b. 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 or if the putative father did not register with the Putative Father Registry pursuant to Article 7 (§ 63.2-1249 et seq.) of this chapter. If the identity of the birth father is reasonably ascertainable, but the whereabouts of the birth father are not reasonably ascertainable, verification of compliance with the Putative Father Registry shall be provided to the court.

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

INTRODUCED

HB451

59 clerk of the juvenile and domestic relations district court in which the petition was filed during the  
60 business day of the court, within the time period specified in this section. When no timely objection is  
61 filed, no hearing on this issue is required. Failure of the objecting party to appear at any scheduled  
62 hearing, either in person or by counsel, shall constitute a waiver of such objection.

63 d. The juvenile and domestic relations district court may accept the written consent of the birth father  
64 at the time of the child's conception or birth, provided that his identifying information required in  
65 § 63.2-1232 is filed in writing with the juvenile and domestic relations district court of jurisdiction. Such  
66 consent shall advise the birth father of his opportunity for legal representation, shall identify the court in  
67 which the case was or is intended to be filed, and shall be presented to the juvenile and domestic  
68 relations district court for acceptance. The consent may waive further notice of the adoption proceedings  
69 and shall contain the name, address and telephone number of the birth father's legal counsel or an  
70 acknowledgment that he was informed of his opportunity to be represented by legal counsel and  
71 declined such representation. For good cause shown, the court may dispense with the requirements  
72 regarding the filing of the birth father's identifying information pursuant to this subdivision 1. d.

73 e. In the event that the birth mother's consent is not executed in the juvenile and domestic relations  
74 district court, the consent of the birth father shall be executed in the juvenile and domestic relations  
75 district court.

76 f. A child born to a married birth mother shall be presumed to be the child of her husband and his  
77 consent shall be required, unless the court finds that the father's consent is withheld contrary to the best  
78 interests of the child as provided in § 63.2-1205 or if his consent is unobtainable. The consent of such  
79 presumed father shall be under oath and in writing and may be executed in or out of court. The  
80 presumption that the husband is the father of the child may be rebutted by sufficient evidence,  
81 satisfactory to the juvenile and domestic relations district court, which would establish by a  
82 preponderance of the evidence the paternity of another man or the impossibility or improbability of  
83 cohabitation of the birth mother and her husband for a period of at least 300 days preceding the birth of  
84 the child, in which case the husband's consent shall not be required. The executed denial of paternity by  
85 the putative father shall be sufficient to rebut the presumption that he is the father of the child. If the  
86 court is satisfied that the presumption has been rebutted, notice of the adoption shall not be required to  
87 be given to the presumed father.

88 2. After the application of the provisions of subdivision 1, if a birth parent is entitled to a hearing,  
89 the birth parent shall be given notice of the date and location of the hearing and be given the  
90 opportunity to appear before the juvenile and domestic relations district court. Such hearing may occur  
91 subsequent to the proceeding wherein the consenting birth parent appeared but may not be held until 15  
92 days after personal service of notice on the nonconsenting birth parent, or if personal service is  
93 unobtainable, 10 days after the completion of the execution of an order of publication against such birth  
94 parent. ~~The juvenile and domestic relations district court may appoint counsel for the birth parent(s).~~ If  
95 the juvenile and domestic relations district court finds that consent is withheld contrary to the best  
96 interests of the child, as set forth in § 63.2-1205, or is unobtainable, it may grant the petition without  
97 such consent and enter an order waiving the requirement of consent of the nonconsenting birth parent  
98 and transferring custody of the child to the prospective adoptive parents. No further consent or notice  
99 shall be required of a birth parent who fails to appear at any scheduled hearing, either in person or by  
100 counsel. If the juvenile and domestic relations district court denies the petition, the juvenile and  
101 domestic relations district court shall order that any consent given for the purpose of such placement  
102 shall be void and, if necessary, the court shall determine custody of the child as between the birth  
103 parents.

104 3. Except as provided in subdivisions 4 and 5, if consent cannot be obtained from at least one birth  
105 parent, the juvenile and domestic relations district court shall deny the petition and determine custody of  
106 the child pursuant to § 16.1-278.2.

107 4. If a child has been under the physical care and custody of the prospective adoptive parents and if  
108 both birth parents have failed, without good cause, to appear at a hearing to execute consent under this  
109 section for which they were given proper notice pursuant to § 16.1-264, the juvenile and domestic  
110 relations district court may grant the petition without the consent of either birth parent and enter an  
111 order waiving consent and transferring custody of the child to the prospective adoptive parents. Prior to  
112 the entry of such an order, the juvenile and domestic relations district court may appoint legal counsel  
113 for the birth parents and shall find by clear and convincing evidence (i) that the birth parents were given  
114 proper notice of the hearing(s) to execute consent and of the hearing to proceed without their consent;  
115 (ii) that the birth parents failed to show good cause for their failure to appear at such hearing(s); and  
116 (iii) that pursuant to § 63.2-1205, the consent of the birth parents is withheld contrary to the best  
117 interests of the child or is unobtainable. Under this subdivision, the court or the parties may waive the  
118 requirement of the simultaneous meeting under § 63.2-1231 and the requirements of subdivisions A 1, A  
119 3, and A 7 of § 63.2-1232 where the opportunity for compliance is not reasonably available under the  
120 applicable circumstances.

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

123 6. No consent shall be required from the birth father of a child placed pursuant to this section when  
124 such father is convicted of a violation of subsection A of § 18.2-61, § 18.2-63, subsection B of  
125 § 18.2-366, or an equivalent offense of another state, the United States, or any foreign jurisdiction, and  
126 the child was conceived as a result of such violation, nor shall the birth father be entitled to notice of  
127 any of the proceedings under this section.

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

132 8. A birth father may consent to the adoption prior to the birth of the child.

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

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