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HOUSE BILL NO. 413

Offered January 10, 2018

Prefiled January 5, 2018

A BILL to amend and reenact §§ 16.1-277.01, 63.2-1201, 63.2-1201.1, 63.2-1202, 63.2-1215, 63.2-1218, 63.2-1222, 63.2-1224, 63.2-1233, 63.2-1237, 63.2-1241, and 63.2-1250 of the Code of Virginia, relating to adoption; gender-neutral terms.

Patron—Simon

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-277.01, 63.2-1201, 63.2-1201.1, 63.2-1202, 63.2-1215, 63.2-1218, 63.2-1222, 63.2-1224, 63.2-1233, 63.2-1237, 63.2-1241, and 63.2-1250 of the Code of Virginia are amended and reenacted 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 89 days after the execution of an entrustment agreement for less than 90 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 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

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 45 days of the filing of a petition pursuant to subdivision A 1, A 2, or A 3, except where an order of publication has been ordered by the court, in which case the hearing shall be held within 75 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 12 years of age or older;

3. The guardian ad litem for the child; and

4. The child's parents, guardian, or 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~~ *person* shall be given notice of the proceedings if he is an acknowledged father pursuant to § 20-49.1, an adjudicated father pursuant to § 20-49.8, or a *person presumed to be the parent* pursuant to § 63.2-1202, or has registered with the Virginia Birth Father Registry pursuant to Article 7 (§ 63.2-1249 et seq.) of Chapter 12 of Title 63.2. An affidavit of the mother that the identity of the father is not reasonably ascertainable shall be sufficient evidence of this fact, provided *that* there is no other evidence before the court which would refute such an affidavit. Failure to register with the Virginia Birth 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~~ *outside* 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~~ *that* 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

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HB413

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~~ *that* provides for
76 the 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. This order shall
82 include, but need not be limited to, the following findings: (i) that there is no less drastic alternative to
83 granting the requested relief; and (ii) that reasonable efforts have been made to prevent removal and that
84 continued placement in the home would be contrary to the welfare of the child, if the order transfers
85 legal custody of the child to a local board of social services. At any time subsequent to the transfer of
86 legal custody of the child pursuant to this section, a birth parent or parents of the child and the
87 pre-adoptive parent or parents may enter into a written post-adoption contact and communication
88 agreement in accordance with the provisions of § 16.1-283.1 and Article 1.1 (§ 63.2-1220.2 et seq.) of
89 Chapter 12 of Title 63.2. The court shall not require a written post-adoption contact and communication
90 agreement as a precondition to entry of an order in any case involving the child.

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

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

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

§ 63.2-1201. Filing of petition for adoption; venue; jurisdiction; 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, or persons who were previously married who are permitted to adopt a child under § 63.2-1201.1, the petition shall be the joint petition of the ~~husband and wife~~ *spouses* or former spouses 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 this chapter applies to only one of the adoptive parents, then the court may waive the application of the procedural provision for the spouse of the adoptive parent to whom the provision applies. 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, except those filed pursuant to subdivisions 5 and 6 of § 63.2-1210, shall include an additional \$50 filing fee that shall be used to fund the Virginia Birth Father Registry established in Article 7 (§ 63.2-1249 et seq.) ~~of this chapter.~~

A petition filed while the child is under 18 years of age shall not become invalid because the child reaches 18 years of age prior to the entry of a final order of adoption. Any final order of adoption entered pursuant to § 63.2-1213 after a child reaches 18 years of age, where the petition was filed prior to the child turning 18 years of age, shall have the same effect as if the child was under 18 years of age at the time the order was entered by the circuit court, provided *that* the court has obtained the consent of the adoptee.

§ 63.2-1201.1. Previously married persons who stood in loco parentis during the time of the marriage may adopt in the same manner as married persons.

A. ~~A man and woman~~ *Persons* previously married to each other who stood in loco parentis to a child during their marriage to each other, and who could have adopted or readopted the child pursuant to this chapter while married to each other, but whose marriage is void, has been annulled, or has dissolved, may adopt or readopt the child pursuant to the provisions in this chapter that are applicable to married persons.

B. An individual previously married to a parent of a child by birth or adoption, and who stood in loco parentis to that child during the marriage, and who could have adopted the child pursuant to § 63.2-1241 during the marriage, may, with the consent of the prior spouse who is a parent of the child by birth or adoption, adopt the child; after the marriage has been dissolved, annulled, or voided; pursuant to the provisions of this chapter that are applicable to ~~step-parents~~ *stepparents*.

C. Any person or persons seeking to adopt or readopt pursuant to this section may be permitted to do so even if they have remarried.

D. Nothing in this section shall be construed to permit any child to have more than two living parents by birth or adoption; who have legal rights and obligations in respect to the child; ~~in the form of one father and one mother.~~

§ 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 in writing, signed under oath, 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 *that* 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 perform all acts related 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 birth mother and by any ~~man~~ *person* who:

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

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

c. Is a presumed ~~father~~ *parent* under subsection D; or

d. Has registered with the Virginia Birth Father Registry pursuant to Article 7 (§ 63.2-1249 et seq.).

Verification of compliance with the notice provisions of the Virginia Birth 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~~ *person* shall be presumed to be ~~the father~~ *a parent* of a child if:

1. ~~He~~ *Such person* and the mother of the child are married to each other and the child is born during the marriage;

2. ~~He~~ *Such person* 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 decree of separation, or within 300 days after the marriage is terminated by death, annulment, declaration of invalidity, or divorce; or

3. Before the birth of the child, ~~he~~ *such person* 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 decree 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~~ *a man other than such person* 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 *parent, other than the birth father* ~~mother~~, if ~~he~~ *such parent* 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. No notice or consent is required of any birth parent of a child for whom a guardianship order was granted when the child was approved by the United States Citizenship and Immigration Services for purposes of adoption.

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 immediately prior to the filing of the petition for adoption or the filing of a petition to accept consent to an 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 immediately prior to the filing of the petition for adoption or the filing of a petition to accept consent to an adoption. This provision shall not infringe upon the birth parent's right to be noticed and heard on the allegation of abandonment. For purposes of this section, the payment of child support, in the absence of other contact with the child, shall not be considered contact.

I. A ~~birth father~~ *parent* of the child, *other than the birth mother*, 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 any scheduled hearing, either in person or by counsel, after proper notice has been given to ~~said~~ *such* party, shall constitute a waiver of any objection and right to consent to the adoption.

K. If a birth parent, legal guardian, or prospective adoptee, executing a consent, entrustment, or other documents related to the adoption, cannot provide the identification required pursuant to § 47.1-14, the birth parent, legal guardian, or prospective adoptee may execute a self-authenticating affidavit as to his identity subject to the penalties contained in § 63.2-1217.

§ 63.2-1215. Legal effects of adoption.

The birth parents, and the parents by previous adoption, if any, other than any such parent who is the husband or wife spouse of one of the petitioners, shall, by final order of adoption, be divested of all legal rights and obligations in respect to the child including the right to petition any court for visitation with the child. Except where a final order of adoption is entered pursuant to § 63.2-1241, any person whose interest in the child derives from or through the birth parent or previous adoptive parent, including but not limited to grandparents, stepparents, former stepparents, blood relatives and family members shall, by final order of adoption, be divested of all legal rights and obligations in respect to the child, including the right to petition any court for visitation with the child. In all cases the child shall be free from all legal obligations of obedience and maintenance in respect to such persons divested of legal rights. Any child adopted under the provisions of this chapter shall, from and after the entry of the interlocutory order or from and after the entry of the final order where no such interlocutory order is entered, be, to all intents and purposes, the child of the person or persons so adopting him, and, unless and until such interlocutory order or final order is subsequently revoked, shall be entitled to all the rights and privileges, and subject to all the obligations, of a child of such person or persons born in lawful wedlock. An adopted person is the child of an adopting parent, and as such, the adopting parent shall be entitled to testify in all cases civil and criminal, as if the adopted child was born of the adopting parent in lawful wedlock.

§ 63.2-1218. Certain exchange of property, advertisement, and solicitation prohibited; penalty.

No person or child-placing agency shall charge, pay, give, or agree to give or accept any money, property, service, or other thing of value in connection with a placement or adoption or any act undertaken pursuant to this chapter except (i) reasonable and customary services provided by a licensed or duly authorized child-placing agency and fees paid for such services; (ii) payment or reimbursement for medical expenses and insurance premiums that are directly related to the birth mother's pregnancy and hospitalization for the birth of the child who is the subject of the adoption proceedings, for mental health counseling received by the a birth mother or birth father parent related to the adoption, and for expenses incurred for medical care for the child; (iii) payment or reimbursement for reasonable and necessary expenses for food, clothing, and shelter when, upon the written advice of her physician, the birth mother is unable to work or otherwise support herself due to medical reasons or complications associated with the pregnancy or birth of the child; (iv) payment or reimbursement for reasonable expenses incurred incidental to any required court appearance, including, but not limited to, transportation, food and lodging; (v) usual and customary fees for legal services in adoption proceedings; and (vi) payment or reimbursement of reasonable expenses incurred for transportation in connection with any of the services specified in this section or intercountry placements as defined in § 63.2-100 and as necessary for compliance with state and federal law in such placements. No person shall advertise or solicit to perform any activity prohibited by this section. Any person violating the provisions of this section shall be is guilty of a Class 6 felony. The Commissioner is authorized to investigate cases in which fees paid for legal services appear to be in excess of usual and customary fees in order to determine if there has been compliance with the provisions of this section.

§ 63.2-1222. 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. 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 such birth father did not register with the Virginia Birth Father Registry pursuant to Article 7 (§ 63.2-1249 et seq.) or the birth father named by the birth mother denies under oath and in writing the paternity of the child. An affidavit signed by the birth mother stating that the identity of the birth father is unknown may be filed with the court alleging that the identity of the birth father is not known or reasonably ascertainable. A birth father person shall be given notice of the entrustment if he is an acknowledged father pursuant to § 20-49.1, an adjudicated father pursuant to § 20-49.8, a presumed father parent pursuant to § 63.2-1202, or a putative father who has registered with the Virginia Birth Father Registry pursuant to Article 7 (§ 63.2-1249 et seq.). If the putative father's identity is reasonably ascertainable, he shall be given notice pursuant to the requirements of § 63.2-1250.

C. When a birth father person 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. An

objection to an entrustment agreement shall be in writing, signed by the objecting party or counsel of record for the objecting party and 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~~ *parent* except under the following circumstances: (i) if ~~he~~ *such person* denies paternity under oath and in writing in accordance with § 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~~ *a man other than such person* or the impossibility or improbability of cohabitation of the birth mother and her ~~husband~~ *spouse* for a period of at least 300 days preceding the birth of the child; (iii) if ~~another~~ *a man other than such person* 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 subsections C and D apply, notice of the entrustment shall be given to the presumed ~~father~~ *parent* 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~~ *parent, other than the birth mother*, 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 *parent, other than the birth father* ~~mother~~, if ~~he~~ *such parent* 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.

§ 63.2-1224. Explanation of process, legal effects of adoption required.

Prior to the placement of a child for adoption, the licensed child-placing agency or local board having custody of the child shall provide an explanation of the adoption process to the birth mother and, if reasonably available, ~~the man~~ *a person* who is an acknowledged father pursuant to § 20-49.1, an adjudicated father pursuant to § 20-49.8, a presumed ~~father~~ *parent* pursuant to § 63.2-1202, or a putative father who has registered with the Virginia Birth Father Registry pursuant to Article 7 (§ 63.2-1249 et seq.) of ~~this chapter~~.

§ 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~~ *parent, other than the birth mother*, if ~~the birth father~~ *such parent* 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 Virginia Birth 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 Virginia Birth Father Registry shall be provided to the court.

c. When a ~~birth father~~ *person* 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~~ *a parent, other than the birth mother*, at the time of the child's conception or birth, provided that his 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~~ *such parent* of his opportunity for legal representation, shall identify the court in which the case was or is intended to be filed, 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~~ *such parent'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 the filing of the birth father's identifying information pursuant to this subdivision 1. d.

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~~ *other parent* 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~~ *spouse* and his consent shall be required, unless the court finds that the ~~father's~~ *spouse'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~~ *spouse* shall be under oath and in writing and may be executed in or out of court. The presumption that the ~~husband~~ *spouse* is the ~~father~~ *parent* 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~~ *a man other than the spouse* or the impossibility or improbability of cohabitation of the birth mother and her ~~husband~~ *spouse* for a period of at least 300 days preceding the birth of the child, in which case the ~~husband's~~ *spouse's* consent shall not be required. The executed denial of paternity by the ~~putative father~~ *spouse* shall be sufficient to rebut the presumption that he is the ~~father~~ *parent* of the child. 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~~ *spouse*.

2. After the application of the provisions of subdivision 1, if a birth parent is entitled to a hearing, the birth parent shall be given notice of the date and location of the hearing 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. No further consent or notice shall be required of a birth parent who fails to appear at any scheduled hearing, either in person or by counsel. 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 subdivisions 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 a child has been under the physical care and custody of 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. 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~~ *parent, other than the birth mother*, may consent to the 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 (§ 63.2-1000 et seq.) ~~of this title~~, 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.

§ 63.2-1237. Petition for parental placement adoption; jurisdiction; contents.

Proceedings for the parental placement adoption of a minor child and for a change of name of such child shall be instituted only by petition to the circuit court in the county or city in which the petitioner resides or in the county or city where a birth parent has executed a consent pursuant to § 63.2-1233. Such petition may be filed by any natural person who resides in the Commonwealth or is the adopting parent(s) of a child who was subject to a consent proceeding held pursuant to § 63.2-1233. 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~~ *spouses* but, in the event the child to be adopted is legally the child by birth or adoption of one of the petitioners, such petitioner shall unite in the petition for the purpose of indicating his ~~or her~~ consent to the prayer thereof only. The petition shall contain a full disclosure of the circumstances under which the child came to live, and is living, in the home of the petitioner. Each petition for adoption shall be signed by the petitioner as well as by counsel of record, if any. In any case in which the petition seeks the entry of an adoption order without referral for investigation, the petition shall be under oath.

The petition shall state that the findings required by § 63.2-1232 have been made and shall be accompanied by appropriate documentation supporting such statement, to include copies of documents executing consent and transferring custody of the child to the prospective adoptive parents, and a copy of the report required by § 63.2-1231. The court shall not waive any of the requirements of this paragraph nor any of the requirements of § 63.2-1232 except as allowed pursuant to subsection D of § 63.2-1232 or subdivision 4 of § 63.2-1233.

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

§ 63.2-1241. Adoption of child by spouse of birth or adoptive parent.

A. In cases in which the spouse of a birth parent or parent by adoption who is not the birth parent of a child wishes to adopt the child, the birth parent and his spouse may file a petition for adoption in the circuit court of the county or city where the birth parent and his spouse reside or the county or city where the child resides. The petition shall be the joint petition of the birth parent and his spouse but the birth parent shall unite in the petition for the purpose of indicating consent to the prayer thereof only. The petition shall also state whether the petitioners seek to change the name of the child.

B. The court may order the proposed adoption and change of name without referring the matter to

the local director if (i) the birth parent or parent by adoption, other than the birth parent or parent by adoption joining in the petition for adoption, is deceased; (ii) the birth parent or parent by adoption, other than the birth parent or parent by adoption joining in the petition for adoption, consents to the adoption in writing and under oath; (iii) the acknowledged, adjudicated, ~~presumed~~, or putative father *or the presumed parent* denies paternity of the child; (iv) the birth mother swears under oath and in writing that the identity of the father is not reasonably ascertainable; (v) the child is the result of surrogacy and the birth parent, other than the birth parent joining in the petition, consents to the adoption in writing; (vi) the parent by adoption joining in the petition was not married at the time the child was adopted; or (vii) the child is 14 years of age or older and has lived in the home of the person desiring to adopt the child for at least five years. However, if the court in its discretion determines that there should be an investigation before a final order of adoption is entered, the court shall refer the matter to the local director for an investigation and report to be completed within such time as the circuit court designates. If an investigation is ordered, the circuit court shall forward a copy of the petition and all exhibits thereto to the local director and the provisions of § 63.2-1208 shall apply.

C. If an acknowledged, adjudicated, presumed, or putative birth parent or parent by adoption of a child refuses to consent to the adoption of a child by the spouse of the other birth parent or parent by adoption of the child, the court shall determine whether consent to the adoption is withheld contrary to the best interests of the child. If the court determines that consent to the adoption is withheld contrary to the best interests of the child, the court may order the adoption and change of name without referring the matter to the local director. However, if the court in its discretion determines that there should be an investigation before a final order of adoption is entered, the circuit court shall refer the matter to the local director for an investigation and report to be completed within such time as the circuit court designates. The order of reference may include a requirement that the local director investigate factors relevant to determining whether consent of a birth parent is withheld contrary to the best interests of the child, including factors set forth in § 63.2-1205. If an investigation is ordered, the circuit court shall forward a copy of the petition and all exhibits thereto to the local director and the provisions of § 63.2-1208 shall apply.

D. In any case involving adoption of a child by a stepparent pursuant to this section, the court may waive appointment of a guardian ad litem for the child.

§ 63.2-1250. Registration; notice; form.

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

B. A man who desires to be notified of a placement of a child by a local board pursuant to § 63.2-900, a proceeding for adoption, or a proceeding for termination of parental rights regarding a child that he may have fathered shall register with the Virginia Birth Father Registry.

C. Failure to timely register with the Virginia Birth Father Registry shall waive all rights of a man who is not acknowledged to be, presumed to be, or adjudicated the father to withhold consent to an adoption proceeding unless the man was led to believe through the birth mother's misrepresentation that (i) the pregnancy was terminated or the mother miscarried when in fact the baby was born or (ii) the child died when in fact the child is alive. Upon discovery of the misrepresentation, the man shall register with the Virginia Birth Father Registry within 10 days.

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

1. A father-child relationship between the man and the child has been established pursuant to § 20-49.1; or 20-49.8; or if the man is a presumed father as defined in *to be the parent pursuant to subsection D of § 63.2-1202*; or

2. The man commences a proceeding to adjudicate his paternity before a petition to accept consent or waive adoption consent is filed in the juvenile and domestic relations district court, or before a petition for adoption or a petition for the termination of his parental rights is filed with the court.

E. Registration is timely if it is received by the Department within (i) 10 days of the child's birth or (ii) the time specified in subsection C or F. Registration is complete when the signed registration form is first received by the Department. The signed registration form shall be submitted in the manner prescribed by the Department.

F. In the event that the identity and whereabouts of the birth father are reasonably ascertainable, the child-placing agency or adoptive parents shall give written notice to the birth father of the existence of an adoption plan and the availability of registration with the Virginia Birth Father Registry. Such written notice shall be provided by personal service or by certified mailing to the birth father's last known address. Registration is timely if the signed registration form is received by the Department within 10 days of personal service of the written notice or within 13 days of the certified mailing date of the written notice. The personal service or certified mailing may be completed either prior to or after the

551 birth of the child.

552 G. The child-placing agency or adoptive parent(s) shall give notice to a registrant who has timely
553 registered of a placement of a child by a local board pursuant to § 63.2-900, a proceeding for adoption,
554 or a proceeding for termination of parental rights regarding a child. Notice shall be given pursuant to the
555 requirements of this chapter or § 16.1-277.01 for the appropriate adoption proceeding.

556 H. 1. The Department shall prepare a form for registering with the agency that shall require (i) the
557 registrant's name, date of birth, and social security number; (ii) the registrant's driver's license number
558 and state of issuance; (iii) the registrant's home address, telephone number, and employer; (iv) the name,
559 date of birth, ethnicity, address, and telephone number of the putative mother, if known; (v) the state of
560 conception; (vi) the place and date of birth of the child, if known; (vii) the name and gender of the
561 child, if known; and (viii) the signature of the registrant. No form for registering with the Virginia Birth
562 Father Registry shall be complete unless signed by the registrant and the signed registration form is
563 received by the Department in the manner prescribed by the Department.

564 2. The form shall also state that (i) timely registration entitles the registrant to notice of a proceeding
565 for adoption of the child or termination of the registrant's parental rights, (ii) registration does not
566 commence a proceeding to establish paternity, (iii) the information disclosed on the form may be used
567 against the registrant to establish paternity, (iv) services to assist in establishing paternity are available to
568 the registrant through the Department, (v) the registrant should also register in another state if
569 conception or birth of the child occurred in another state, (vi) information on registries of other states
570 may be available from the Department, (vii) the form is signed under penalty of perjury, and (viii)
571 procedures exist to rescind the registration of a claim of paternity.

572 3. A registrant shall promptly notify the Virginia Birth Father Registry of any change in information,
573 including change of address. The Department shall incorporate all updated information received into its
574 records but is not required to request or otherwise pursue current or updated information for
575 incorporation in the registry.