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HOUSE BILL NO. 2046

Offered January 10, 2007

Prefiled January 8, 2007

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

Patrons—McQuigg, Athey, Cole, Miller, J.H. and Rust

Referred to Committee on Health, Welfare and Institutions

Be it enacted by the General Assembly of Virginia:

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

§ 63.2-903. Entrustment agreements; adoption.

A. Whenever a local board accepts custody of a child pursuant to an entrustment agreement entered into under the authority of § 63.2-900, or a licensed child-placing agency accepts custody of a child pursuant to an entrustment agreement entered into under the authority of § 63.2-1817, in the city or county juvenile and domestic relations district court a petition for approval of the entrustment agreement (i) shall be filed within a reasonable period of time, not to exceed 89 days after the execution of an entrustment agreement for less than 90 days, if the child is not returned to his home within that period; (ii) shall be filed within a reasonable period of time, not to exceed 30 days after the execution of an entrustment agreement for 90 days or longer or for an unspecified period of time, if such entrustment agreement does not provide for the termination of all parental rights and responsibilities with respect to the child; and (iii) may be filed in the case of a permanent entrustment agreement which provides for the termination of all parental rights and responsibilities with respect to the child.

B. For purposes of §§ 63.2-900, 63.2-1817 and this section, a parent who is less than 18 years of age shall be deemed fully competent and shall have legal capacity to execute a valid entrustment agreement, including an agreement that provides for the termination of all parental rights and responsibilities, and shall be as fully bound thereby as if such parent had attained the age of 18 years. An entrustment agreement for the termination of all parental rights and responsibilities shall be executed in writing and notarized. An entrustment agreement for the termination of all parental rights and responsibilities with respect to the child shall be valid notwithstanding that it is not signed by the father of a child born out of wedlock if the identity of the father is not reasonably ascertainable, or if such father is given notice of the entrustment by registered or certified mail to his last known address and fails to object to the entrustment within 24 15 days of mailing of such notice. An affidavit of the mother that the identity of the father is not reasonably ascertainable shall be sufficient evidence of this fact, provided there is no other evidence that would refute such an affidavit. The absence of such an affidavit shall not be deemed evidence that the identity of the father is reasonably ascertainable. For purposes of determining whether the identity of the father is reasonably ascertainable, the standard of what is reasonable under the circumstances shall control, taking into account the relative interests of the child, the mother and the father.

C. An entrustment agreement for the termination of parental rights and responsibilities with respect to the child shall be valid notwithstanding that it is not signed by the birth father of a child when such father has been convicted of a violation of subsection A of § 18.2-61, § 18.2-63, subsection B of § 18.2-366, or an equivalent offense of another state, the United States, or any foreign jurisdiction, and the child was conceived as a result of such violation.

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

§ 63.2-1202. 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 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

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59 parent had attained the age of 18 years.

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

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

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

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

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

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

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

82 D. Consent shall be executed:

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

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

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

86 c. Is a presumed father under subsection C;

87 d. (Effective until July 1, 2007) Has registered with the Putative Father Registry pursuant to Article
88 7 (§ 63.2-1249 et seq.) of this chapter; or

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

91 2. By the child-placing agency or the local board having custody of the child, with right to place him
92 for adoption, through court commitment or parental agreement as provided in § 63.2-900, 63.2-903 or
93 63.2-1221; or an agency outside the Commonwealth that is licensed or otherwise duly authorized to
94 place children for adoption by virtue of the laws under which it operates; and

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

97 C. Consent shall be executed:

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

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

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

101 c. (Effective until July 1, 2007) Has registered with the Putative Father Registry pursuant to Article
102 7 (§ 63.2-1249 et seq.) of this chapter; or

103 d. Is a presumed father under subsection C;

104 Verification of compliance with the notice provisions of the Putative Father Registry shall be
105 provided to the court.

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

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

112 D. A man shall be presumed to be the father of a child if:

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

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

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

invalidity, or divorce; or

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

3. (Effective July 1, 2007) Before the birth of the child, he and the mother of the child married each other in apparent compliance with the law, even if the attempted marriage is or could be declared invalid, and the child is born during the invalid marriage or within 300 days of their date of separation, as evidenced by a written agreement or 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 man or the impossibility or improbability of cohabitation with the birth mother for a period of at least 300 days prior to the birth of the child.

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

F. No consent shall be required of the birth father of a child when the birth father is convicted of a violation of subsection A of § 18.2-61, § 18.2-63, subsection B of § 18.2-366, or an equivalent offense of another state, the United States, or any foreign jurisdiction, and the child was conceived as a result of such violation.

G. No notice or consent shall be required of any person whose parental rights have been terminated by a court of competent jurisdiction, *including foreign courts that have competent jurisdiction*.

H. No consent shall be required of a birth parent who, without just cause, has neither visited nor contacted the child for a period of six months prior to the filing of the petition for adoption. The prospective adoptive parent(s) shall establish by clear and convincing evidence that the birth parent(s), without just cause, has neither visited nor contacted the child for a period of six months prior to the filing of the petition for adoption. This provision shall not infringe upon the birth parent's right to be noticed and heard on the allegation of abandonment.

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

J. The failure of the nonconsenting party to appear at ~~the~~any scheduled hearing, either in person or by counsel, after proper notice has been given to said party, shall constitute a waiver of any objection and right to consent to the adoption.

§ 63.2-1212. Visitations during probationary period and report.

A. Except as hereinafter provided, after the entry of an interlocutory order of adoption, (i) the licensed or duly authorized child-placing agency; (ii) if the child was not placed by an agency and the placement is not a parental placement, the local director; (iii) if the placement is a parental placement, the child-placing agency that submitted the home study; or, (iv) if the child was placed by an agency in another state or by an agency, court, or other entity in another country, the local director or licensed child-placing agency, whichever agency completed the home study or provided supervision, shall cause the child to be visited at least three times within a period of six months by an agent of such local board or local department or by an agent of such licensed or duly authorized child-placing agency. Whenever practicable, such visits shall be made within the six-month period immediately following the date of entry of the interlocutory order; however, no less than ninety days shall elapse between the first visit and the last visit. The agency that placed the child, the child-placing agency that submitted the home study, the local director or the licensed child-placing agency, as applicable, shall make a written report to the circuit court, in such form as the Commissioner may prescribe, of the findings made pursuant to such visitations. A copy of the report to the circuit court shall be furnished to the counsel of record for the parties, which copy shall be returned by such counsel as is required by § 63.2-1246 for the return of the original report. A copy of the report to the circuit court shall be served on the Commissioner by delivering or mailing a copy to him on or before the day of filing the report with the circuit court. On the report to the circuit court there shall be appended either acceptance of service or certification of the local director or the representative of the child-placing agency, that copies were served as this section requires, showing the date of delivery or mailing. ~~The Commissioner may notify the circuit court within twenty-one days of the date of delivery or mailing of the report as shown by the agency, during which time the circuit court shall withhold consideration of the merits of the report pending review of the report by the Commissioner, of any disapproval thereof stating reasons for any further action on the report that he deems necessary.~~

B. The three supervisory visits required in subsection A shall be conducted in the presence of the child. At least one such visit shall be conducted in the home of the petitioners in the presence of the

182 child and both petitioners, unless the petition was filed by a single parent or one of the petitioners is no
183 longer residing in the home.

184 C. When it is determined for purposes of subsection B that the petitioner no longer resides in the
185 adoptive home, the child-placing agency or local director shall contact the petitioner to determine
186 whether or not the petitioner wishes to remain a party to the proceedings and shall include in its report
187 to the circuit court the results of its findings.

188 § 63.2-1213. Final order of adoption.

189 After consideration of the report made pursuant to § 63.2-1212 or as permitted pursuant to
190 § 63.2-1210, if the circuit court is satisfied that the best interests of the child will be served thereby, the
191 circuit court shall enter the final order of adoption; ~~provided that the child has been in the physical~~
192 ~~custody of the petitioner for at least six months immediately prior to entry of the order.~~ However, a
193 final order of adoption shall not be entered until information has been furnished by the petitioner in
194 compliance with § 32.1-262 unless the circuit court, for good cause shown, finds the information to be
195 unavailable or unnecessary. No circuit court shall deny a petitioner a final order of adoption for the sole
196 reason that the child was placed in the physical custody of the petitioner by a person not authorized to
197 make such placements pursuant to § 63.2-1200. An attested copy of every final order of adoption shall
198 be forwarded, by the clerk of the circuit court in which it was entered, to the Commissioner and to the
199 child-placing agency that placed the child or to the local director, in cases where the child was not
200 placed by an agency.

201 § 63.2-1222. Execution of entrustment agreement by birth parent(s); exceptions; notice and objection
202 to entrustment; copy required to be furnished; requirement for agencies outside the Commonwealth.

203 A. For the purposes of this section, a birth parent who is less than 18 years of age shall be deemed
204 fully competent and shall have legal capacity to execute a valid entrustment agreement, including an
205 agreement that provides for the termination of all parental rights and responsibilities, and perform all
206 acts related to adoption and shall be as fully bound thereby as if such birth parent had attained the age
207 of 18 years.

208 B. (Effective until July 1, 2007) An entrustment agreement for the termination of all parental rights
209 and responsibilities with respect to the child shall be valid notwithstanding that it is not signed by the
210 birth father of a child born out of wedlock if the identity of the birth father is not reasonably
211 ascertainable, or if such birth father denies under oath and in writing the paternity of the child.

212 B. (Effective July 1, 2007) An entrustment agreement for the termination of all parental rights and
213 responsibilities with respect to the child shall be valid notwithstanding that it is not signed by the birth
214 father of a child born out of wedlock if the identity of the birth father is not reasonably ascertainable
215 ~~and or~~ such birth father did not register with the Putative Father Registry pursuant to Article 7
216 (§ 63.2-1249 et seq.) of this chapter or the birth father named by the birth mother denies under oath and
217 in writing the paternity of the child. A birth father shall be given notice of the ~~proceedings~~ *entrustment*
218 if he is an acknowledged father pursuant to § 20-49.1, an adjudicated father pursuant to § 20-49.8, or a
219 presumed father pursuant to § 63.2-1202, a putative father that has registered with Putative Father
220 Registry pursuant to Article 7 (§ 63.2-1249 et seq.) of this chapter, or a putative father that has not
221 registered with Putative Father Registry but whose identity is reasonably ascertainable *pursuant to*
222 *Article 7 (§ 63.2-1249 et seq.) of this chapter.*

223 C. When a birth father is required to be given notice, he may be given notice of the entrustment by
224 registered or certified mail to his last known address. If he fails to object to the entrustment within 15
225 days of the mailing of such notice, his entrustment shall not be required. Such objection shall be in
226 writing, signed by the objecting party or counsel of record for the objecting party and shall be filed with
227 the agency that mailed the notice of entrustment within the time period specified in § 63.2-1223.

228 D. The execution of an entrustment agreement shall be required of a presumed father except under
229 the following circumstances: (i) if he denies paternity under oath and in writing in accordance with
230 ~~subsection D of~~ § 63.2-1202; (ii) if the presumption is rebutted by sufficient evidence, satisfactory to the
231 circuit court, which would establish by a preponderance of the evidence the paternity of another man or
232 the impossibility or improbability of cohabitation of the birth mother and her husband for a period of at
233 least 300 days preceding the birth of the child; (iii) if another man admits, in writing and under oath,
234 that he is the biological father; or (iv) if an adoptive placement has been determined to be in the best
235 interests of the child pursuant to § 63.2-1205.

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

238 F. An entrustment agreement for the termination of all parental rights and responsibilities with
239 respect to the child shall be valid notwithstanding that it is not signed by the birth father of a child
240 when the birth father has been convicted of a violation of subsection A of § 18.2-61, § 18.2-63,
241 subsection B of § 18.2-366, or an equivalent offense of another state, the United States, or any foreign
242 jurisdiction, and the child was conceived as a result of such violation.

243 G. A birth father ~~not married to the mother of the child~~ may execute an entrustment agreement for

the termination of all of his parental rights prior to the birth of the child. Such entrustment shall be subject to the revocation provisions of § 63.2-1223.

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

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

J. When any agency outside the Commonwealth, or its agent, that is licensed or otherwise duly authorized to place children for adoption by virtue of the laws under which it operates executes an entrustment agreement in the Commonwealth with a birth parent for the termination of all parental rights and responsibilities with respect to the child, the requirements of §§ 63.2-1221 through 63.2-1224 shall apply. The birth parent may expressly waive, under oath and in writing, the execution of the entrustment under the requirements of §§ 63.2-1221 through 63.2-1224 in favor of the execution of an entrustment or relinquishment under the laws of another state if the birth parent is represented by independent legal counsel. Such written waiver shall expressly state that the birth parent has received independent legal counsel advising of the laws of Virginia and of the other state and that Virginia law is expressly being waived. The waiver also shall include the name, address, and telephone number of such legal counsel. Any entrustment agreement that fails to comply with such requirements shall be void.

§ 63.2-1223. Revocation of entrustment agreement.

A valid entrustment agreement terminating all parental rights and responsibilities to the child shall be revocable by either of the birth parents until (i) the child has reached the age of 10 days and (ii) seven days have elapsed from the date of execution of the agreement. In addition, a valid entrustment agreement shall be revocable by either of the birth parents if the child has not been placed in the physical custody of *the prospective* adoptive parents at the time of such revocation. Revocation of an entrustment agreement shall be in writing and signed by the revoking party. The written revocation shall be delivered to the child-placing agency or local board to which the child was originally entrusted. Delivery of the written revocation shall be made during the business day of the child-placing agency or local board to which the child was originally entrusted, in accordance with the applicable time period set out in this section. If the revocation period expires on a Saturday, Sunday, legal holiday or any day on which the agency or local board is officially closed, the revocation period shall be extended to the next day that is not a Saturday, Sunday, legal holiday or other day on which the agency or local board is officially closed. Upon revocation of the entrustment agreement, the child shall be returned to the parent revoking the agreement.

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

When the juvenile and domestic relations district court is satisfied that all requirements of § 63.2-1232 have been met with respect to at least one birth parent and the adoptive child is at least in the third calendar day of life, that birth parent or both birth parents, as the case may be, shall execute consent to the proposed adoption in compliance with the provisions of § 63.2-1202 while before the juvenile and domestic relations district court in person and in the presence of the prospective adoptive parents. The juvenile and domestic relations district court shall accept the consent of the birth parent(s) and transfer custody of the child to the prospective adoptive parents, pending notification to any nonconsenting birth parent, as described hereinafter.

1. a. The execution of consent before the juvenile and domestic relations district court shall not be required of a birth father ~~who is not married to the mother of the child at the time of the child's conception or birth~~ if the birth father consents under oath and in writing to the adoption.

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

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

c. When a birth father is required to be given notice, he may be given notice of the adoption by registered or certified mail to his last known address and if he fails to object to the adoption within 15 days of the mailing of such notice, his consent shall not be required. An objection shall be in writing, signed by the objecting party or counsel of record for the objecting party and shall be filed with the clerk of the juvenile and domestic relations district court in which the petition was filed during the

business day of the court, within the time period specified in this section. When no timely objection is filed, no hearing on this issue is required. Failure of the objecting party to appear at any scheduled hearing, either in person or by counsel, shall constitute a waiver of such objection.

d. The juvenile and domestic relations district court may accept the written consent of the birth father who is not married to the birth mother of the child at the time of the child's conception or birth, provided that the identifying information required in § 63.2-1232 is filed in writing with the juvenile and domestic relations district court of jurisdiction. Such consent shall advise the birth father of his opportunity for legal representation, and shall be presented to the juvenile and domestic relations district court for acceptance. The consent may waive further notice of the adoption proceedings and shall contain the name, address and telephone number of the birth father's legal counsel or an acknowledgment that he was informed of his opportunity to be represented by legal counsel and declined such representation.

e. In the event that the birth mother's consent is not executed in the juvenile and domestic relations district court, the consent of the birth father who is not married to the birth mother of the child shall be executed in the juvenile and domestic relations district court.

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

2. A birth parent whose consent is required as set forth in § 63.2-1202, whose identity is known and who neither consents before the juvenile and domestic relations district court as described above, nor executes a written consent to the adoption or a denial of paternity out of court as provided above, shall be given notice, including the date and location of the hearing, of the proceedings pending before the juvenile and domestic relations district court and be given the opportunity to appear before the juvenile and domestic relations district court. Such hearing may occur subsequent to the proceeding wherein the consenting birth parent appeared but may not be held until 15 days after personal service of notice on the nonconsenting birth parent, or if personal service is unobtainable, 10 days after the completion of the execution of an order of publication against such birth parent. The juvenile and domestic relations district court may appoint counsel for the birth parent(s). If the juvenile and domestic relations district court finds that consent is withheld contrary to the best interests of the child, as set forth in § 63.2-1205, or is unobtainable, it may grant the petition without such consent and enter an order waiving the requirement of consent of the nonconsenting birth parent and transferring custody of the child to the prospective adoptive parents. If the juvenile and domestic relations district court denies the petition, the juvenile and domestic relations district court shall order that any consent given for the purpose of such placement shall be void and, if necessary, the court shall determine custody of the child as between the birth parents.

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

4. If the child was placed by the birth parent(s) with the prospective adoptive parents and if both birth parents have failed, without good cause, to appear at a hearing to execute consent under this section for which they were given proper notice pursuant to § 16.1-264, the juvenile and domestic relations district court may grant the petition without the consent of either birth parent and enter an order waiving consent and transferring custody of the child to the prospective adoptive parents, which order shall become effective 15 days thereafter. Prior to the entry of such an order, the juvenile and domestic relations district court may appoint legal counsel for the birth parents and shall find by clear and convincing evidence (i) that the birth parents were given proper notice of the hearing(s) to execute consent and of the hearing to proceed without their consent; (ii) that the birth parents failed to show good cause for their failure to appear at such hearing(s); and (iii) that pursuant to § 63.2-1205, the consent of the birth parents is withheld contrary to the best interests of the child or is unobtainable. Under this subdivision, the court or the parties may waive the requirement of the simultaneous meeting under § 63.2-1231 and the requirements of subdivisions A 1, A 3, and A 7 of § 63.2-1232 where the opportunity for compliance is not reasonably available under the applicable circumstances.

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

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

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

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

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

A. When the spouse of a birth parent of a child born in wedlock or the spouse of a parent by adoption of the child has died, and the surviving birth parent or parent by adoption marries again and the new spouse desires to adopt the child, on a petition filed by the surviving birth parent or parent by adoption and new spouse for the adoption and change of name of the child, the circuit court may proceed to order the proposed adoption or change of name without referring the matter to the local director.

B. When a birth parent of a legitimate infant or a parent by adoption is divorced and marries again and the birth parent or parent by adoption desires the new spouse to adopt the child, on a petition filed by the birth parent or parent by adoption and the new spouse for the adoption and change of name of the child, or if the child is the result of surrogacy, the circuit court may proceed to order the proposed adoption or change of name without referring the matter to the local director if the other birth parent or parent by adoption consents in writing to the adoption or change of name or if the other birth parent or parent by adoption is deceased.

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

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

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

c. Is not a presumed father; and

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

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