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**HOUSE BILL NO. 451****AMENDMENT IN THE NATURE OF A SUBSTITUTE**

(Proposed by the House Committee for Courts of Justice  
on January 30, 2012)

(Patron Prior to Substitute—Delegate Toscano)

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

**Be it enacted by the General Assembly of Virginia:**

**1. That § 63.2-1203 of the Code of Virginia is 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 an adoption proceeding where the consent of a birth parent is required, but the petition for adoption alleges that the birth parent is withholding consent to the adoption, the court shall provide written notice to the birth parent of his right to be represented by counsel prior to any hearing or decision on the petition. Upon request, the court shall appoint counsel for any such birth parent if such parent has been determined to be indigent by the court pursuant to § 19.2-159.*