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HOUSE BILL NO. 2271

Offered January 11, 2017

A BILL to amend and reenact §§ 16.1-241, 20-124.1, 63.2-903, 63.2-1202, 63.2-1222, and 63.2-1233 of the Code of Virginia, relating to custodial rights of persons who committed sexual assault; clear and convincing evidence.

Patron—Krizek

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-241, 20-124.1, 63.2-903, 63.2-1202, 63.2-1222, and 63.2-1233 of the Code of Virginia are amended and reenacted as follows:

§ 16.1-241. Jurisdiction; consent for abortion.

The judges of the juvenile and domestic relations district court elected or appointed under this law shall be conservators of the peace within the corporate limits of the cities and the boundaries of the counties for which they are respectively chosen and within one mile beyond the limits of such cities and counties. Except as hereinafter provided, each juvenile and domestic relations district court shall have, within the limits of the territory for which it is created, exclusive original jurisdiction, and within one mile beyond the limits of said city or county, concurrent jurisdiction with the juvenile court or courts of the adjoining city or county, over all cases, matters and proceedings involving:

A. The custody, visitation, support, control or disposition of a child:

1. Who is alleged to be abused, neglected, in need of services, in need of supervision, a status offender, or delinquent except where the jurisdiction of the juvenile court has been terminated or divested;

2. Who is abandoned by his parent or other custodian or who by reason of the absence or physical or mental incapacity of his parents is without parental care and guardianship;

2a. Who is at risk of being abused or neglected by a parent or custodian who has been adjudicated as having abused or neglected another child in the care of the parent or custodian;

3. Whose custody, visitation or support is a subject of controversy or requires determination. In such cases jurisdiction shall be concurrent with and not exclusive of courts having equity jurisdiction, except as provided in § 16.1-244;

4. Who is the subject of an entrustment agreement entered into pursuant to § 63.2-903 or 63.2-1817 or whose parent or parents for good cause desire to be relieved of his care and custody;

5. Where the termination of residual parental rights and responsibilities is sought. In such cases jurisdiction shall be concurrent with and not exclusive of courts having equity jurisdiction, as provided in § 16.1-244; and

6. Who is charged with a traffic infraction as defined in § 46.2-100.

In any case in which the juvenile is alleged to have committed a violent juvenile felony enumerated in subsection B of § 16.1-269.1, and for any charges ancillary thereto, the jurisdiction of the juvenile court shall be limited to conducting a preliminary hearing to determine if there is probable cause to believe that the juvenile committed the act alleged and that the juvenile was 14 years of age or older at the time of the commission of the alleged offense, and any matters related thereto. In any case in which the juvenile is alleged to have committed a violent juvenile felony enumerated in subsection C of § 16.1-269.1, and for all charges ancillary thereto, if the attorney for the Commonwealth has given notice as provided in subsection C of § 16.1-269.1, the jurisdiction of the juvenile court shall be limited to conducting a preliminary hearing to determine if there is probable cause to believe that the juvenile committed the act alleged and that the juvenile was 14 years of age or older at the time of the commission of the alleged offense, and any matters related thereto. A determination by the juvenile court following a preliminary hearing pursuant to subsection B or C of § 16.1-269.1 to certify a charge to the grand jury shall divest the juvenile court of jurisdiction over the charge and any ancillary charge. In any case in which a transfer hearing is held pursuant to subsection A of § 16.1-269.1, if the juvenile court determines to transfer the case, jurisdiction of the juvenile court over the case shall be divested as provided in § 16.1-269.6.

In all other cases involving delinquent acts, and in cases in which an ancillary charge remains after a violent juvenile felony charge has been dismissed or a violent juvenile felony has been reduced to a lesser offense not constituting a violent juvenile felony, the jurisdiction of the juvenile court shall not be divested unless there is a transfer pursuant to subsection A of § 16.1-269.1.

The authority of the juvenile court to adjudicate matters involving the custody, visitation, support,

INTRODUCED

HB2271

59 control or disposition of a child shall not be limited to the consideration of petitions filed by a mother,  
60 father or legal guardian but shall include petitions filed at any time by any party with a legitimate  
61 interest therein. A party with a legitimate interest shall be broadly construed and shall include, but not  
62 be limited to, grandparents, step-grandparents, stepparents, former stepparents, blood relatives and family  
63 members. A party with a legitimate interest shall not include any person (i) whose parental rights have  
64 been terminated by court order, either voluntarily or involuntarily, (ii) whose interest in the child derives  
65 from or through a person whose parental rights have been terminated by court order, either voluntarily  
66 or involuntarily, including, but not limited to, grandparents, stepparents, former stepparents, blood  
67 relatives and family members, if the child subsequently has been legally adopted, except where a final  
68 order of adoption is entered pursuant to § 63.2-1241, or (iii) who has been convicted of a violation of  
69 subsection A of § 18.2-61, § 18.2-63, subsection B of § 18.2-366, or an equivalent offense of another  
70 state, the United States, or any foreign jurisdiction, *or who has been found by clear and convincing*  
71 *evidence to have engaged in the conduct prohibited by subsection A of § 18.2-61, § 18.2-63, or*  
72 *subsection B of § 18.2-366, whether or not the person has been charged with or convicted of the*  
73 *alleged violation*, when the child who is the subject of the petition was conceived as a result of such  
74 violation *or conduct*. The authority of the juvenile court to consider a petition involving the custody of a  
75 child shall not be proscribed or limited where the child has previously been awarded to the custody of a  
76 local board of social services.

77 B. The admission of minors for inpatient treatment in a mental health facility in accordance with the  
78 provisions of Article 16 (§ 16.1-335 et seq.) and the involuntary admission of a person with mental  
79 illness or judicial certification of eligibility for admission to a training center for persons with  
80 intellectual disability in accordance with the provisions of Chapter 8 (§ 37.2-800 et seq.) of Title 37.2.  
81 Jurisdiction of the involuntary admission and certification of adults shall be concurrent with the general  
82 district court.

83 C. Except as provided in subsections D and H, judicial consent to such activities as may require  
84 parental consent may be given for a child who has been separated from his parents, guardian, legal  
85 custodian or other person standing in loco parentis and is in the custody of the court when such consent  
86 is required by law.

87 D. Judicial consent for emergency surgical or medical treatment for a child who is neither married  
88 nor has ever been married, when the consent of his parent, guardian, legal custodian or other person  
89 standing in loco parentis is unobtainable because such parent, guardian, legal custodian or other person  
90 standing in loco parentis (i) is not a resident of the Commonwealth, (ii) has his whereabouts unknown,  
91 (iii) cannot be consulted with promptness, reasonable under the circumstances, or (iv) fails to give such  
92 consent or provide such treatment when requested by the judge to do so.

93 E. Any person charged with deserting, abandoning or failing to provide support for any person in  
94 violation of law.

95 F. Any parent, guardian, legal custodian or other person standing in loco parentis of a child:

96 1. Who has been abused or neglected;

97 2. Who is the subject of an entrustment agreement entered into pursuant to § 63.2-903 or 63.2-1817  
98 or is otherwise before the court pursuant to subdivision A 4; or

99 3. Who has been adjudicated in need of services, in need of supervision, or delinquent, if the court  
100 finds that such person has by overt act or omission induced, caused, encouraged or contributed to the  
101 conduct of the child complained of in the petition.

102 G. Petitions filed by or on behalf of a child or such child's parent, guardian, legal custodian or other  
103 person standing in loco parentis for the purpose of obtaining treatment, rehabilitation or other services  
104 that are required by law to be provided for that child or such child's parent, guardian, legal custodian or  
105 other person standing in loco parentis. Jurisdiction in such cases shall be concurrent with and not  
106 exclusive of that of courts having equity jurisdiction as provided in § 16.1-244.

107 H. Judicial consent to apply for a work permit for a child when such child is separated from his  
108 parents, legal guardian or other person standing in loco parentis.

109 I. The prosecution and punishment of persons charged with ill-treatment, abuse, abandonment or  
110 neglect of children or with any violation of law that causes or tends to cause a child to come within the  
111 purview of this law, or with any other offense against the person of a child. In prosecution for felonies  
112 over which the court has jurisdiction, jurisdiction shall be limited to determining whether or not there is  
113 probable cause.

114 J. All offenses in which one family or household member is charged with an offense in which  
115 another family or household member is the victim and all offenses under § 18.2-49.1.

116 In prosecution for felonies over which the court has jurisdiction, jurisdiction shall be limited to  
117 determining whether or not there is probable cause. Any objection based on jurisdiction under this  
118 subsection shall be made before a jury is impaneled and sworn in a jury trial or, in a nonjury trial,  
119 before the earlier of when the court begins to hear or receive evidence or the first witness is sworn, or it  
120 shall be conclusively waived for all purposes. Any such objection shall not affect or be grounds for

121 challenging directly or collaterally the jurisdiction of the court in which the case is tried.  
122 K. Petitions filed by a natural parent, whose parental rights to a child have been voluntarily  
123 relinquished pursuant to a court proceeding, to seek a reversal of the court order terminating such  
124 parental rights. No such petition shall be accepted, however, after the child has been placed in the home  
125 of adoptive parents.

126 L. Any person who seeks spousal support after having separated from his spouse. A decision under  
127 this subdivision shall not be res judicata in any subsequent action for spousal support in a circuit court.  
128 A circuit court shall have concurrent original jurisdiction in all causes of action under this subdivision.

129 M. Petitions filed for the purpose of obtaining an order of protection pursuant to § 16.1-253.1,  
130 16.1-253.4, or 16.1-279.1, and all petitions filed for the purpose of obtaining an order of protection  
131 pursuant to § 19.2-152.8, 19.2-152.9, or 19.2-152.10 if either the alleged victim or the respondent is a  
132 juvenile.

133 N. Any person who escapes or remains away without proper authority from a residential care facility  
134 in which he had been placed by the court or as a result of his commitment to the Virginia Department  
135 of Juvenile Justice.

136 O. Petitions for emancipation of a minor pursuant to Article 15 (§ 16.1-331 et seq.).

137 P. Petitions for enforcement of administrative support orders entered pursuant to Chapter 19  
138 (§ 63.2-1900 et seq.) of Title 63.2, or by another state in the same manner as if the orders were entered  
139 by a juvenile and domestic relations district court upon the filing of a certified copy of such order in the  
140 juvenile and domestic relations district court.

141 Q. Petitions for a determination of parentage pursuant to Chapter 3.1 (§ 20-49.1 et seq.) of Title 20.  
142 A circuit court shall have concurrent original jurisdiction to the extent provided for in § 20-49.2.

143 R. [Repealed.]

144 S. Petitions filed by school boards against parents pursuant to §§ 16.1-241.2 and 22.1-279.3.

145 T. Petitions to enforce any request for information or subpoena that is not complied with or to  
146 review any refusal to issue a subpoena in an administrative appeal regarding child abuse and neglect  
147 pursuant to § 63.2-1526.

148 U. Petitions filed in connection with parental placement adoption consent hearings pursuant to  
149 § 63.2-1233. Such proceedings shall be advanced on the docket so as to be heard by the court within 10  
150 days of filing of the petition, or as soon thereafter as practicable so as to provide the earliest possible  
151 disposition.

152 V. Petitions filed for the purpose of obtaining the court's assistance with the execution of consent to  
153 an adoption when the consent to an adoption is executed pursuant to the laws of another state and the  
154 laws of that state provide for the execution of consent to an adoption in the court of the  
155 Commonwealth.

156 W. Petitions filed by a juvenile seeking judicial authorization for a physician to perform an abortion  
157 if a minor elects not to seek consent of an authorized person.

158 After a hearing, a judge shall issue an order authorizing a physician to perform an abortion, without  
159 the consent of any authorized person, if he finds that (i) the minor is mature enough and well enough  
160 informed to make her abortion decision, in consultation with her physician, independent of the wishes of  
161 any authorized person, or (ii) the minor is not mature enough or well enough informed to make such  
162 decision, but the desired abortion would be in her best interest.

163 If the judge authorizes an abortion based on the best interests of the minor, such order shall  
164 expressly state that such authorization is subject to the physician or his agent giving notice of intent to  
165 perform the abortion; however, no such notice shall be required if the judge finds that such notice would  
166 not be in the best interest of the minor. In determining whether notice is in the best interest of the  
167 minor, the judge shall consider the totality of the circumstances; however, he shall find that notice is not  
168 in the best interest of the minor if he finds that (i) one or more authorized persons with whom the  
169 minor regularly and customarily resides is abusive or neglectful, and (ii) every other authorized person,  
170 if any, is either abusive or neglectful or has refused to accept responsibility as parent, legal guardian,  
171 custodian or person standing in loco parentis.

172 The minor may participate in the court proceedings on her own behalf, and the court may appoint a  
173 guardian ad litem for the minor. The court shall advise the minor that she has a right to counsel and  
174 shall, upon her request, appoint counsel for her.

175 Notwithstanding any other provision of law, the provisions of this subsection shall govern  
176 proceedings relating to consent for a minor's abortion. Court proceedings under this subsection and  
177 records of such proceedings shall be confidential. Such proceedings shall be given precedence over other  
178 pending matters so that the court may reach a decision promptly and without delay in order to serve the  
179 best interests of the minor. Court proceedings under this subsection shall be heard and decided as soon  
180 as practicable but in no event later than four days after the petition is filed.

181 An expedited confidential appeal to the circuit court shall be available to any minor for whom the

182 court denies an order authorizing an abortion without consent or without notice. Any such appeal shall  
183 be heard and decided no later than five days after the appeal is filed. The time periods required by this  
184 subsection shall be subject to subsection B of § 1-210. An order authorizing an abortion without consent  
185 or without notice shall not be subject to appeal.

186 No filing fees shall be required of the minor at trial or upon appeal.

187 If either the original court or the circuit court fails to act within the time periods required by this  
188 subsection, the court before which the proceeding is pending shall immediately authorize a physician to  
189 perform the abortion without consent of or notice to an authorized person.

190 Nothing contained in this subsection shall be construed to authorize a physician to perform an  
191 abortion on a minor in circumstances or in a manner that would be unlawful if performed on an adult  
192 woman.

193 A physician shall not knowingly perform an abortion upon an unemancipated minor unless consent  
194 has been obtained or the minor delivers to the physician a court order entered pursuant to this section  
195 and the physician or his agent provides such notice as such order may require. However, neither consent  
196 nor judicial authorization nor notice shall be required if the minor declares that she is abused or  
197 neglected and the attending physician has reason to suspect that the minor may be an abused or  
198 neglected child as defined in § 63.2-100 and reports the suspected abuse or neglect in accordance with  
199 § 63.2-1509; or if there is a medical emergency, in which case the attending physician shall certify the  
200 facts justifying the exception in the minor's medical record.

201 For purposes of this subsection:

202 "Authorization" means the minor has delivered to the physician a notarized, written statement signed  
203 by an authorized person that the authorized person knows of the minor's intent to have an abortion and  
204 consents to such abortion being performed on the minor.

205 "Authorized person" means (i) a parent or duly appointed legal guardian or custodian of the minor or  
206 (ii) a person standing in loco parentis, including, but not limited to, a grandparent or adult sibling with  
207 whom the minor regularly and customarily resides and who has care and control of the minor. Any  
208 person who knows he is not an authorized person and who knowingly and willfully signs an  
209 authorization statement consenting to an abortion for a minor is guilty of a Class 3 misdemeanor.

210 "Consent" means that (i) the physician has given notice of intent to perform the abortion and has  
211 received authorization from an authorized person, or (ii) at least one authorized person is present with  
212 the minor seeking the abortion and provides written authorization to the physician, which shall be  
213 witnessed by the physician or an agent thereof. In either case, the written authorization shall be  
214 incorporated into the minor's medical record and maintained as a part thereof.

215 "Medical emergency" means any condition which, on the basis of the physician's good faith clinical  
216 judgment, so complicates the medical condition of the pregnant minor as to necessitate the immediate  
217 abortion of her pregnancy to avert her death or for which a delay will create a serious risk of substantial  
218 and irreversible impairment of a major bodily function.

219 "Notice of intent to perform the abortion" means that (i) the physician or his agent has given actual  
220 notice of his intention to perform such abortion to an authorized person, either in person or by  
221 telephone, at least 24 hours previous to the performance of the abortion; or (ii) the physician or his  
222 agent, after a reasonable effort to notify an authorized person, has mailed notice to an authorized person  
223 by certified mail, addressed to such person at his usual place of abode, with return receipt requested, at  
224 least 72 hours prior to the performance of the abortion.

225 "Perform an abortion" means to interrupt or terminate a pregnancy by any surgical or nonsurgical  
226 procedure or to induce a miscarriage as provided in § 18.2-72, 18.2-73, or 18.2-74.

227 "Unemancipated minor" means a minor who has not been emancipated by (i) entry into a valid  
228 marriage, even though the marriage may have been terminated by dissolution; (ii) active duty with any  
229 of the Armed Forces of the United States; (iii) willingly living separate and apart from his or her  
230 parents or guardian, with the consent or acquiescence of the parents or guardian; or (iv) entry of an  
231 order of emancipation pursuant to Article 15 (§ 16.1-331 et seq.).

232 X. Petitions filed pursuant to Article 17 (§ 16.1-349 et seq.) relating to standby guardians for minor  
233 children.

234 The ages specified in this law refer to the age of the child at the time of the acts complained of in  
235 the petition.

236 Notwithstanding any other provision of law, no fees shall be charged by a sheriff for the service of  
237 any process in a proceeding pursuant to subdivision A 3, except as provided in subdivision A 6 of  
238 § 17.1-272, or subsection B, D, M, or R.

239 Notwithstanding the provisions of § 18.2-71, any physician who performs an abortion in violation of  
240 subsection W shall be guilty of a Class 3 misdemeanor.

241 **§ 20-124.1. Definitions.**

242 As used in this chapter:

243 "Joint custody" means (i) joint legal custody where both parents retain joint responsibility for the

244 care and control of the child and joint authority to make decisions concerning the child even though the  
 245 child's primary residence may be with only one parent, (ii) joint physical custody where both parents  
 246 share physical and custodial care of the child, or (iii) any combination of joint legal and joint physical  
 247 custody which the court deems to be in the best interest of the child.

248 "Person with a legitimate interest" shall be broadly construed and includes, but is not limited to,  
 249 grandparents, step-grandparents, stepparents, former stepparents, blood relatives and family members  
 250 provided any such party has intervened in the suit or is otherwise properly before the court. The term  
 251 shall be broadly construed to accommodate the best interest of the child. A party with a legitimate  
 252 interest shall not include any person (i) whose parental rights have been terminated by court order, either  
 253 voluntarily or involuntarily, (ii) whose interest in the child derives from or through a person whose  
 254 parental rights have been terminated, either voluntarily or involuntarily, including but not limited to  
 255 grandparents, stepparents, former stepparents, blood relatives and family members, if the child  
 256 subsequently has been legally adopted, except where a final order of adoption is entered pursuant to  
 257 § 63.2-1241, or (iii) who has been convicted of a violation of subsection A of § 18.2-61, § 18.2-63,  
 258 subsection B of § 18.2-366, or an equivalent offense of another state, the United States, or any foreign  
 259 jurisdiction, *or who has been found by clear and convincing evidence to have engaged in the conduct*  
 260 *prohibited by subsection A of § 18.2-61, § 18.2-63, or subsection B of § 18.2-366, whether or not the*  
 261 *person has been charged with or convicted for the alleged violation*, when the child who is the subject  
 262 of the petition was conceived as a result of such violation *or conduct*.

263 "Sole custody" means that one person retains responsibility for the care and control of a child and  
 264 has primary authority to make decisions concerning the child.

265 **§ 63.2-903. Entrustment agreements; adoption.**

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

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

293 C. An entrustment agreement for the termination of parental rights and responsibilities with respect to  
 294 the child shall be valid notwithstanding that it is not signed by the birth father of a child when such  
 295 father has been convicted of a violation of subsection A of § 18.2-61, § 18.2-63, subsection B of  
 296 § 18.2-366, or an equivalent offense of another state, the United States, or any foreign jurisdiction, *or*  
 297 *has been found by clear and convincing evidence to have engaged in the conduct prohibited by*  
 298 *subsection A of § 18.2-61, § 18.2-63, or subsection B of § 18.2-366, whether or not the person has been*  
 299 *charged with or convicted for the alleged violation*, and the child was conceived as a result of such  
 300 violation *or conduct*.

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

303 **§ 63.2-1202. Parental, or agency, consent required; exceptions.**

304 A. No petition for adoption shall be granted, except as hereinafter provided in this section, unless

305 written consent to the proposed adoption is filed with the petition. Such consent shall be in writing,  
306 signed under oath and acknowledged before an officer authorized by law to take acknowledgments. The  
307 consent of a birth parent for the adoption of his child placed directly by the birth parent shall be  
308 executed as provided in § 63.2-1233, and the circuit court may accept a certified copy of an order  
309 entered pursuant to § 63.2-1233 in satisfaction of all requirements of this section, provided the order  
310 clearly evidences compliance with the applicable notice and consent requirements of § 63.2-1233.

311 B. A birth parent who has not reached the age of 18 shall have legal capacity to give consent to  
312 adoption and perform all acts related to adoption, and shall be as fully bound thereby as if the birth  
313 parent had attained the age of 18 years.

314 C. Consent shall be executed:

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

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

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

318 c. Is a presumed father under subsection D; or

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

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

322 2. By the child-placing agency or the local board having custody of the child, with right to place him  
323 for adoption, through court commitment or parental agreement as provided in § 63.2-900, 63.2-903, or  
324 63.2-1221; or an agency outside the Commonwealth that is licensed or otherwise duly authorized to  
325 place children for adoption by virtue of the laws under which it operates; and

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

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

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

331 2. He and the mother of the child were married to each other and the child is born within 300 days  
332 of their date of separation, as evidenced by a written agreement or decree of separation, or within 300  
333 days after the marriage is terminated by death, annulment, declaration of invalidity, or divorce; or

334 3. Before the birth of the child, he and the mother of the child married each other in apparent  
335 compliance with the law, even if the attempted marriage is or could be declared invalid, and the child is  
336 born during the invalid marriage or within 300 days of their date of separation, as evidenced by a  
337 written agreement or decree of separation, or within 300 days after its termination by death, annulment,  
338 declaration of invalidity, or divorce.

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

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

346 F. No consent shall be required of the birth father of a child when the birth father is convicted of a  
347 violation of subsection A of § 18.2-61, § 18.2-63, subsection B of § 18.2-366, or an equivalent offense  
348 of another state, the United States, or any foreign jurisdiction, *or has been found by clear and*  
349 *convincing evidence to have engaged in the conduct prohibited by subsection A of § 18.2-61, § 18.2-63,*  
350 *or subsection B of § 18.2-366, whether or not the person has been charged with or convicted for the*  
351 *alleged violation, and the child was conceived as a result of such violation or conduct.*

352 G. No notice or consent shall be required of any person whose parental rights have been terminated  
353 by a court of competent jurisdiction, including foreign courts that have competent jurisdiction. No notice  
354 or consent is required of any birth parent of a child for whom a guardianship order was granted when  
355 the child was approved by the United States Citizenship and Immigration Services for purposes of  
356 adoption.

357 H. No consent shall be required of a birth parent who, without just cause, has neither visited nor  
358 contacted the child for a period of six months immediately prior to the filing of the petition for adoption  
359 or the filing of a petition to accept consent to an adoption. The prospective adoptive parent(s) shall  
360 establish by clear and convincing evidence that the birth parent(s), without just cause, has neither visited  
361 nor contacted the child for a period of six months immediately prior to the filing of the petition for  
362 adoption or the filing of a petition to accept consent to an adoption. This provision shall not infringe  
363 upon the birth parent's right to be noticed and heard on the allegation of abandonment. For purposes of  
364 this section, the payment of child support, in the absence of other contact with the child, shall not be  
365 considered contact.

366 I. A birth father of the child may consent to the termination of all of his parental rights prior to the

367 birth of the child.

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

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

375 **§ 63.2-1222. Execution of entrustment agreement by birth parent(s); exceptions; notice and**  
376 **objection to entrustment; copy required to be furnished; requirement for agencies outside the**  
377 **Commonwealth.**

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

383 B. An entrustment agreement for the termination of all parental rights and responsibilities with  
384 respect to the child shall be valid notwithstanding that it is not signed by the birth father of a child born  
385 out of wedlock if the identity of the birth father is not reasonably ascertainable or such birth father did  
386 not register with the Putative Father Registry pursuant to Article 7 (§ 63.2-1249 et seq.) or the birth  
387 father named by the birth mother denies under oath and in writing the paternity of the child. An  
388 affidavit signed by the birth mother stating that the identity of the birth father is unknown may be filed  
389 with the court alleging that the identity of the birth father is not known or reasonably ascertainable. A  
390 birth father shall be given notice of the entrustment if he is an acknowledged father pursuant to §  
391 20-49.1, an adjudicated father pursuant to § 20-49.8, a presumed father pursuant to § 63.2-1202, or a  
392 putative father who has registered with Putative Father Registry pursuant to Article 7 (§ 63.2-1249 et  
393 seq.). If the putative father's identity is reasonably ascertainable, he shall be given notice pursuant to the  
394 requirements of § 63.2-1250.

395 C. When a birth father is required to be given notice, he may be given notice of the entrustment by  
396 registered or certified mail to his last known address. If he fails to object to the entrustment within 15  
397 days of the mailing of such notice, his entrustment shall not be required. An objection to an entrustment  
398 agreement shall be in writing, signed by the objecting party or counsel of record for the objecting party  
399 and filed with the agency that mailed the notice of entrustment within the time period specified in  
400 § 63.2-1223.

401 D. The execution of an entrustment agreement shall be required of a presumed father except under  
402 the following circumstances: (i) if he denies paternity under oath and in writing in accordance with  
403 § 63.2-1202; (ii) if the presumption is rebutted by sufficient evidence, satisfactory to the circuit court,  
404 which would establish by a preponderance of the evidence the paternity of another man or the  
405 impossibility or improbability of cohabitation of the birth mother and her husband for a period of at  
406 least 300 days preceding the birth of the child; (iii) if another man admits, in writing and under oath,  
407 that he is the biological father; or (iv) if an adoptive placement has been determined to be in the best  
408 interests of the child pursuant to § 63.2-1205.

409 E. When none of the provisions of subsections C and D apply, notice of the entrustment shall be  
410 given to the presumed father pursuant to the requirements of § 16.1-277.01.

411 F. An entrustment agreement for the termination of all parental rights and responsibilities with  
412 respect to the child shall be valid notwithstanding that it is not signed by the birth father of a child  
413 when the birth father has been convicted of a violation of subsection A of § 18.2-61, § 18.2-63,  
414 subsection B of § 18.2-366, or an equivalent offense of another state, the United States, or any foreign  
415 jurisdiction, *or has been found by clear and convincing evidence to have engaged in the conduct*  
416 *prohibited by subsection A of § 18.2-61, § 18.2-63, or subsection B of § 18.2-366, whether or not the*  
417 *person has been charged with or convicted for the alleged violation, and the child was conceived as a*  
418 *result of such violation or conduct.*

419 G. A birth father may execute an entrustment agreement for the termination of all of his parental  
420 rights prior to the birth of the child. Such entrustment shall be subject to the revocation provisions of  
421 § 63.2-1223.

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

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

427 J. When any agency outside the Commonwealth, or its agent, that is licensed or otherwise duly

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

438 **§ 63.2-1233. Consent to be executed in juvenile and domestic relations district court; exceptions.**

439 When the juvenile and domestic relations district court is satisfied that all requirements of  
440 § 63.2-1232 have been met with respect to at least one birth parent and the adoptive child is at least in  
441 the third calendar day of life, that birth parent or both birth parents, as the case may be, shall execute  
442 consent to the proposed adoption in compliance with the provisions of § 63.2-1202 while before the  
443 juvenile and domestic relations district court in person and in the presence of the prospective adoptive  
444 parents. The juvenile and domestic relations district court shall accept the consent of the birth parent(s)  
445 and transfer custody of the child to the prospective adoptive parents, pending notification to any  
446 nonconsenting birth parent, as described hereinafter.

447 1. a. The execution of consent before the juvenile and domestic relations district court shall not be  
448 required of a birth father if the birth father consents under oath and in writing to the adoption.

449 b. The consent of a birth father who is not married to the mother of the child at the time of the  
450 child's conception or birth shall not be required if the putative father named by the birth mother denies  
451 under oath and in writing the paternity of the child or if the putative father did not register with the  
452 Putative Father Registry pursuant to Article 7 (§ 63.2-1249 et seq.) of this chapter. If the identity of the  
453 birth father is reasonably ascertainable, but the whereabouts of the birth father are not reasonably  
454 ascertainable, verification of compliance with the Putative Father Registry shall be provided to the court.

455 c. When a birth father is required to be given notice, he may be given notice of the adoption by  
456 registered or certified mail to his last known address and if he fails to object to the adoption within 15  
457 days of the mailing of such notice, his consent shall not be required. An objection shall be in writing,  
458 signed by the objecting party or counsel of record for the objecting party and shall be filed with the  
459 clerk of the juvenile and domestic relations district court in which the petition was filed during the  
460 business day of the court, within the time period specified in this section. When no timely objection is  
461 filed, no hearing on this issue is required. Failure of the objecting party to appear at any scheduled  
462 hearing, either in person or by counsel, shall constitute a waiver of such objection.

463 d. The juvenile and domestic relations district court may accept the written consent of the birth father  
464 at the time of the child's conception or birth, provided that his identifying information required in  
465 § 63.2-1232 is filed in writing with the juvenile and domestic relations district court of jurisdiction. Such  
466 consent shall advise the birth father of his opportunity for legal representation, shall identify the court in  
467 which the case was or is intended to be filed, and shall be presented to the juvenile and domestic  
468 relations district court for acceptance. The consent may waive further notice of the adoption proceedings  
469 and shall contain the name, address and telephone number of the birth father's legal counsel or an  
470 acknowledgment that he was informed of his opportunity to be represented by legal counsel and  
471 declined such representation. For good cause shown, the court may dispense with the requirements  
472 regarding the filing of the birth father's identifying information pursuant to this subdivision 1. d.

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

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

488 2. After the application of the provisions of subdivision 1, if a birth parent is entitled to a hearing,  
489 the birth parent shall be given notice of the date and location of the hearing and be given the

490 opportunity to appear before the juvenile and domestic relations district court. Such hearing may occur  
 491 subsequent to the proceeding wherein the consenting birth parent appeared but may not be held until 15  
 492 days after personal service of notice on the nonconsenting birth parent, or if personal service is  
 493 unobtainable, 10 days after the completion of the execution of an order of publication against such birth  
 494 parent. The juvenile and domestic relations district court may appoint counsel for the birth parent(s). If  
 495 the juvenile and domestic relations district court finds that consent is withheld contrary to the best  
 496 interests of the child, as set forth in § 63.2-1205, or is unobtainable, it may grant the petition without  
 497 such consent and enter an order waiving the requirement of consent of the nonconsenting birth parent  
 498 and transferring custody of the child to the prospective adoptive parents. No further consent or notice  
 499 shall be required of a birth parent who fails to appear at any scheduled hearing, either in person or by  
 500 counsel. If the juvenile and domestic relations district court denies the petition, the juvenile and  
 501 domestic relations district court shall order that any consent given for the purpose of such placement  
 502 shall be void and, if necessary, the court shall determine custody of the child as between the birth  
 503 parents.

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

507 4. If a child has been under the physical care and custody of the prospective adoptive parents and if  
 508 both birth parents have failed, without good cause, to appear at a hearing to execute consent under this  
 509 section for which they were given proper notice pursuant to § 16.1-264, the juvenile and domestic  
 510 relations district court may grant the petition without the consent of either birth parent and enter an  
 511 order waiving consent and transferring custody of the child to the prospective adoptive parents. Prior to  
 512 the entry of such an order, the juvenile and domestic relations district court may appoint legal counsel  
 513 for the birth parents and shall find by clear and convincing evidence (i) that the birth parents were given  
 514 proper notice of the hearing(s) to execute consent and of the hearing to proceed without their consent;  
 515 (ii) that the birth parents failed to show good cause for their failure to appear at such hearing(s); and  
 516 (iii) that pursuant to § 63.2-1205, the consent of the birth parents is withheld contrary to the best  
 517 interests of the child or is unobtainable. Under this subdivision, the court or the parties may waive the  
 518 requirement of the simultaneous meeting under § 63.2-1231 and the requirements of subdivisions A 1, A  
 519 3, and A 7 of § 63.2-1232 where the opportunity for compliance is not reasonably available under the  
 520 applicable circumstances.

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

523 6. No consent shall be required from the birth father of a child placed pursuant to this section when  
 524 such father is convicted of a violation of subsection A of § 18.2-61, § 18.2-63, subsection B of  
 525 § 18.2-366, or an equivalent offense of another state, the United States, or any foreign jurisdiction, *or*  
 526 *has been found by clear and convincing evidence to have engaged in the conduct prohibited by*  
 527 *subsection A of § 18.2-61, § 18.2-63, or subsection B of § 18.2-366, whether or not the person has been*  
 528 *charged with or convicted for the alleged violation*, and the child was conceived as a result of such  
 529 violation *or conduct*, nor shall the birth father be entitled to notice of any of the proceedings under this  
 530 section.

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

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

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

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