

**REPORT OF THE
JOINT SUBCOMMITTEE STUDYING**

**Direct Adoption Placement
and Unauthorized
Placement Activity**

**TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA**



HOUSE DOCUMENT NO. 67

**COMMONWEALTH OF VIRGINIA
RICHMOND
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Report of the
Joint Subcommittee Studying
Direct Adoption Placement
and Unauthorized Placement Activity

To
The Governor and the General Assembly of Virginia
Richmond, Virginia
January, 1989

To: Honorable Gerald L. Baliles, Governor of Virginia,
and
The General Assembly of Virginia

AUTHORITY FOR THE STUDY

House Joint Resolution No. 86, agreed to by the 1988 General Assembly, authorizes a joint subcommittee to study the practice and regulation of direct placement of children by their parents or legal guardians for adoption and to develop such recommendations as are necessary to protect all children so placed. The joint subcommittee is composed of members of the House Committee on Health, Welfare and Institutions and the Senate Committee on Rehabilitation and Social Services. The joint subcommittee is directed to complete its work and present its findings and recommendations to the 1989 Session of the General Assembly (Attachment 1).

BACKGROUND

The study was proposed by the Department of Social Services and endorsed by the Secretary of Human Resources in the course of the Secretary's study of licensing and regulation of children's programs during the summer and fall of 1987. The Department suggested that legislative guidance is needed to provide adequate protection of children separated permanently from their birth parents through direct adoption placement.

Current law in Virginia authorizes the direct placement of children by their parents for adoption if the birth parents and adoptive parents receive no assistance in effecting a placement from anyone other than an authorized child-placing agency. However, the Department of Social Services informed the study group that a significant number of adoption placements are arranged each year under the guise of direct placements by persons within and outside the Commonwealth who are not authorized to do so. Many of these placements reportedly are made by persons who know them to be illegal; many involve advertising for placements. Because such placements do not comply with the law, they may not be known to authorities who can ensure that the placements are appropriate for the children. Authorities may not be aware of these placements until the petition for adoption is filed. Once such a placement is known to authorities, the child may have formed an attachment to the family, and a reviewing court is reluctant to remove a child without a finding of abuse or neglect. Other children so placed may remain in uncertain legal status because their prospective adoptive parents

do not follow the statutory process required to formalize the adoption. Some persons making unauthorized placements have been advised of their illegality yet they reportedly continue to arrange these placements in the belief that no action will be taken against them.

Assistance offered by a relative of a birth mother is also technically unauthorized placement activity pursuant to the statute. However, it is not clear as to whether the law was intended to proscribe this assistance.

Unauthorized placement activity in interstate placements is more likely to be discovered prior to placement, when inappropriate placements can be prevented before attachments between child and adoptive parent are formed. The Department of Social Services, through its Office on Interstate Placement, must approve all requests for adoptive placements into and out of Virginia. When unauthorized placement activity is discovered, placements are denied.

While the number of non-agency placements has decreased since the 1981-82 fiscal year, when there were 2241 such placements in Virginia, there were 1794 non-agency placements in FY 86-87. For the past six years, there have consistently been more non-agency placements than agency placements. The latter numbered about 700-800 from FY 81-82 to FY 85-86 and about 1100 in FY 86-87. In calendar year 1986, there were an estimated 100 placements by unauthorized persons, and about eighty-one such placements in calendar year 1987. (Attachment 2) The estimated number of unauthorized placements is based on reports of local departments of social services, which are required to investigate adoptive placements. There may be more unauthorized placements, but they are not discovered and reported because the adoption is completed in another state, the court determines that a placement is direct when it is actually arranged through unauthorized placement activity, or the prospective adoptive parents fail to complete the legal adoption process and, therefore, the placement is never investigated.

Past Legislative Action

In 1977, the General Assembly established the Joint Subcommittee on the Placement of Children for Adoption (SJR 152; SD 18), chaired by Senator Joseph V. Gartlan, Jr., to study the issues presented by independent adoptions--those effected by other than licensed child-placing agencies. The joint subcommittee identified some risks of independent adoptions. These included the potential for "baby-selling," lack of permanency of the placement between initial placement and the final order of adoption, improper termination of parental rights, selection of inappropriate adoptive parents by intermediaries who either do not know or do not disclose information on the adoptive parents, inadequate counseling or legal representation of the birth mother, and the possibility that legal procedures leading to a final adoption order may never be completed.

The joint subcommittee noted that, in spite of these risks, there are a number of reasons that prospective adoptive parents choose not to use the services of agencies and why birth parents choose to place their children independently. Foremost among them is the shortage of healthy infants for adoption, leading prospective adoptive parents to circumvent the agencies' long waiting lists. Agency placements involve significant procedural requirements which both adoptive and birth parents may wish to avoid. They may also wish to avoid the stigma that may be attached to using the services of public welfare agencies or may lack knowledge of adoption and counseling services. Prospective adoptive parents may find fees of private agencies prohibitive. Birth parents may find that intermediaries are willing to arrange for the adoptive couple to pay medical and other expenses which agencies cannot provide. Birth parents may also wish to have information about the adoptive parents and the whereabouts of the child, which an agency will not give them.

The joint subcommittee concluded that the interests of children, birth parents and adoptive parents were best served by limiting adoption placements to those effected by birth parents or legal guardians, local boards of public welfare and licensed child-placing agencies. The joint subcommittee agreed that physicians, lawyers, clergymen and others who may be serving as intermediaries in the placement of children for adoption do not have the expertise or resources to protect and serve all parties affected by the adoption.

The joint subcommittee recommended a number of procedural safeguards, which were incorporated into the adoption statutes by the 1978 General Assembly. These included the requirement in independent (direct) adoptions that a valid consent to adoption be executed by a birth parent or legal guardian before the juvenile court. The juvenile court must then appoint the prospective adoptive parents as guardians of the child and review all such appointments annually until the final order of adoption is entered in the circuit court. The amendments included a requirement that all petitions for adoption state that the birth parent has been given an opportunity for counseling and that the consent of the birth parents to the adoption was obtained in an informed and uncoerced manner. Parental consent was made revocable prior to the final order of adoption if fraud or duress are proven or upon mutual consent of the birth parents and prospective adoptive parents. Investigations into adoption placements by the Commissioner of Social Services were required to include inquiries into what fees have been paid by the petitioner or on their behalf to persons or agencies which have assisted them in obtaining a child.

CURRENT LAW

Direct placements of children for adoption by birth parents are legal in Virginia as long as there is no unauthorized placement activity. (§ 63.1-220.1) Unauthorized placement activity is defined as assistance by anyone other than an authorized agency to a parent or adoptive family in effecting placement or placing a child or advertising to do the same. (§ 63.1-220)

When a parent directly places a child for adoption, he is required to execute a valid consent before the juvenile court. Consent is valid when the court determines that the placement did not involve unauthorized activity and that an opportunity for counseling was provided to the parent. A 1988 amendment also requires that the court determine whether the adoptive parents are in satisfactory physical and mental health to enable them to provide adequate care to the child. (§ 63.1-204) This process is preliminary to the actual adoption procedure. It is a means of obtaining consent from the natural parents and appointing the prospective adoptive parents as guardians for the child prior to adoption.

All adoption proceedings are begun by petition. When the placement is a direct one, the petition must state that the consent of the natural parent to the adoption was uncoerced and informed and that the natural mother was given an opportunity for counseling. A 1988 amendment also requires that the petition state that the petitioners are in satisfactory physical and mental health to enable them to care for the child. (§ 63.1-221) The petition is then forwarded to the local superintendent of public welfare, who must see that the matter is investigated and reported on in writing within sixty days. The investigation shall include, among other things, information as to whether the adoptive parent is morally suitable and in acceptable physical and mental health to care for and train the child and the circumstances under which the child came to live in the home of the petitioner. (§ 63.1-223)

After considering the report of the investigation and determining that all legal requirements have been met, the court enters an interlocutory order of adoption. (§ 63.1-226) The interlocutory order is revocable, upon notice, for good cause shown, anytime prior to the entry of the final order of adoption. (§ 63.1-227) Between the entry of the interlocutory order and the entry of the final order, the local welfare department, in the case of children not placed by an agency, must visit the child at least three times within a period of six months and report to the court its findings with regard to these visits. (§ 63.1-228) The court enters the final order of adoption no sooner than six months after the entry of the interlocutory order if it is satisfied after reviewing the report of the home visits that the placement will serve the best interests of the child. (§ 63.1-230) Until the entry of the final order, the court must review each pending adoption case annually. (§ 63.1-230.1)

The only statutory sanction provided against unauthorized adoption activities is found in § 63.1-215, which designates as a misdemeanor engaging in the activities of a child welfare agency without a license. Child placing agencies are included in the definition of child welfare agencies. Such offenses are punishable by a fine of not more than \$100, by imprisonment for not more than twelve months, or both.

ACTIVITIES OF THE JOINT SUBCOMMITTEE

The joint subcommittee reviewed with adoption and licensing staff of the Department of Social Services current direct adoption procedures

and the specific issues presented by the study, particularly barriers to agency placements which cause adoptive and birth parents to use direct placement, legal safeguards needed to protect both children and families in the process, and enforcement of laws prohibiting unauthorized placement activity.

A representative of the Virginia Association of Licensed Child-placing Agencies presented the views of the private adoption agencies.

A representative of ADOPT, an organization of public and private adoption agencies, parents and advocacy groups which has studied these issues for more than a year, presented the joint subcommittee with its assessment of the issues and its proposals for addressing the problems.

The joint subcommittee directed that staff prepare, with the assistance of adoption professionals, a legislative proposal which addresses the issues presented in direct adoption placements. Staff worked with representatives of the Department of Social Services, several local departments of social services, the Children's Home Society, Catholic Charities and ADOPT. The proposal was distributed and the joint subcommittee received comments on it as well as general comments at a public hearing held in October.

Speakers at the public hearing included representatives of the Department of Social Services, the Virginia Association of Licensed Child-placing Agencies, ADOPT, private adoption agencies, Families for Private Adoption, and the National Committee for Adoption. Also testifying were several adoptive parents who had received placement both directly from birth parents and through agencies, a birth parent who placed her child directly with an adoptive family, and an attorney who assists in direct placements.

FINDINGS AND RECOMMENDATIONS

Based on testimony received and materials reviewed during the study, the joint subcommittee agreed that additional protections are needed for children, birth parents and adoptive parents who participate in direct adoptive placements. Its recommendations, described in detail below, attempt to provide these protections by ensuring that the adoptive home is investigated as early in the direct adoption process as possible, that both the birth and adoptive parents make informed decisions regarding the adoption, and that prohibited placement and adoption activities are clearly defined and that laws addressing these activities are effectively enforced.

1. The joint subcommittee recommends that the preadoption placement process, now set forth in § 63.1-204C in Chapter 10 of Title 63.1, and adoption proceedings, contained in Chapter 11, be combined in Chapter 11, and that the circuit court's authority to waive the requirements of the section setting forth the juvenile court's duties in accepting consent be removed.

Placement procedures in Chapter 10 include procedures for execution of consent for adoption by the birth parents and appointment of the adoptive parents as legal guardian of the child by the juvenile court. The circuit court has jurisdiction over adoption procedures, set forth in Chapter 11. It was brought to the attention of the joint subcommittee that the findings which the juvenile court is required to make in executing consent--that there has been no unauthorized placement activity, that the birth parents have had an opportunity for counseling, and that the adoptive parents are in satisfactory physical and mental health--are not consistently made before consent is accepted by the court. Upon the filing of a petition for adoption, the circuit court is authorized to waive these requirements regarding obtaining consent if they are found to be contrary to the best interests of the child. The circuit court may also waive these requirements when the juvenile court has made the required findings and denied consent. If the circuit court does so, then screening functions are inadequate and a child may be placed in an inappropriate adoptive home or in a placement arranged illegally by an intermediary. No further investigation of the placement takes place until the adoptive parents petition for adoption. However, the petition may not be filed until months or years later or may never be filed. Without findings regarding consent, the birth father's rights may also be neglected. Including all procedures related to adoption, from preadoption placement through entry of final order, in one chapter of the Code and removing the circuit court's authority to waive the necessary findings will help to ensure that placements are screened adequately at the beginning of the process.

2. The joint subcommittee recommends that preadoption placement procedures be expanded to ensure that adoptive parents and birth parents know each others' identity and have exchanged pertinent information on each other and to provide for investigation of the adoptive home by an adoption professional as early in the adoption process as possible, and in all cases prior to acceptance of consent. Prior to accepting consent, the juvenile court shall find that:

- The birth parents are aware of adoption procedures, alternatives to adoption, and opportunities for placement with other adoptive families, and that their consent is informed and uncoerced.
- A child-placing agency has counseled the adoptive parents regarding alternatives to adoption, adoption procedures, and other adoption opportunities; that their decision is informed and uncoerced; and that they intend to proceed toward a final order of adoption.
- The birth and adoptive parents have exchanged identifying information, including names, addresses, and health and other background information necessary to promote the welfare of the child.

- Any financial agreement, exchange of property or fees paid for services related to the placement or adoption have been disclosed to the court and that there has been no unauthorized exchange of property or money in connection with the placement.
- That a child-placing agency has performed a home study which addresses the same issues addressed in an investigation of an agency adoption placement.

Placement of a child for adoption by his birth parent in the home of the parent's choice is authorized based on the premise that birth parents and adoptive parents are competent to make adoption decisions based on full information regarding the needs and qualifications of all involved parties. When adoptions are arranged by intermediaries or birth or adoptive parents meet each other through printed advertisements, under current placement and adoption procedures there is no assurance that they will have such knowledge of each other. The procedures set out above are intended to provide birth and adoptive parents with the necessary information regardless of the circumstances of their acquaintance with each other. It is hoped that requiring these findings prior to execution of consent will ensure the appropriateness of a placement early in the process so that alternative plans can be made on a timely basis if needed. The provision of the required services by a licensed or authorized child-placing agency ensures that an adoption professional is available to review the placement and to assist the parties should the placement process break down.

3. The joint subcommittee recommends eliminating the current definition of "unauthorized placement activity" and recommends instead a specific prohibition of exchange of property or advertising to exchange property in connection with an adoption placement, designating violation of such prohibition a Class 5 felony.

The current definition of unauthorized placement activity attempts to restrict assistance which could be provided to birth and adoptive parents in effecting a placement by controlling practices of intermediaries. The term was interpreted as prohibiting assistance by such persons as parents of a birth mother, yet it did not prohibit practices that amounted to "baby-selling." The preadoption placement procedures recommended above provide safeguards necessary to ensure that all parties make informed decisions regarding a placement, thus permitting removal of restrictions on who may assist a birth or adoptive parent in locating a child for placement and permitting birth parents and adoptive parents to locate each other through advertising or any other means available to them. The prohibition against exchange of property in connection with an adoption placement will proscribe "baby-selling." It is anticipated that such a prohibition will provide controls on the participation of intermediaries involved in direct adoptions inappropriately for profit.

4. The joint subcommittee recommends that specific procedures be set forth for reporting prohibited placement activities, in order to ensure that violations are prosecuted. Any child-placing agency performing the activities required prior to execution of consent which suspects that there has been a violation of the law governing placement shall report such findings to the Commissioner of Social Services for appropriate action. The Commissioner shall report suspected violations in the course of the practice of a licensed or regulated profession or occupation to the appropriate regulatory authority for investigation and disciplinary action. The duty of the attorney for the Commonwealth in prosecuting all violations with respect to adoptive placements should be clearly set out.

Enforcement of violations of prohibitions against unauthorized placement activity has been inadequate. It is anticipated that enforcement will be enhanced by (i) clarifying what placement activities are prohibited, so that authorities do not find themselves in the position of prosecuting parties such as the birth mother's relatives for providing her with placement information, (ii) designating clearly prohibited activities a felony rather than a misdemeanor, and (iii) providing more specific reporting procedures when illegal activity is suspected.

Legislation implementing these recommendations is contained in Attachment 3 to this report.

Respectfully submitted,

Joseph V. Gartlan, Jr.
Thomas J. Michie, Jr.
George F. Allen *
Jean W. Cunningham
Jay W. DeBoer
Edwina P. Dalton
Kenneth R. Melvin

* See attached comment.



COMMONWEALTH OF VIRGINIA
HOUSE OF DELEGATES
RICHMOND

GEORGE F. ALLEN
109 E. JEFFERSON STREET
CHARLOTTESVILLE, VIRGINIA 22901
FIFTY-EIGHTH DISTRICT

COMMITTEE ASSIGNMENTS:
GENERAL LAWS
HEALTH, WELFARE AND INSTITUTIONS
MILITIA AND POLICE

Comment Regarding Finding/Recommendation No. 2

Home Study

This is a relatively minor aspect of this Report. I do believe a "Home Study" is very important and needed.

I am not convinced that licensed or authorized child placing agencies are the only entities or persons qualified to perform a professional home study or to assist the families. It seems to me that there are licensed social workers competent to handle this requirement.

Further, I could foresee conflicts and problems with the required use of licensed child-placing agencies who do not approve of direct placement. These agencies prefer a significantly different approach to adoption. It was evident from the testimony of some licensed child-placing agencies that they strongly believed in their own system and had sufficient interest to curtail use of direct adoption.

I hope that my foregoing fears will not be realized. However, the General Assembly should be alert to exorbitant fees, unnecessary delays, or counter-productive action by such agencies in performing the home-study and "assistance" to the parties.

George F. Allen

HOUSE JOINT RESOLUTION NO. 86

Establishing a joint subcommittee to study direct adoption placement and unauthorized placement activity.

Agreed to by the House of Delegates, March 11, 1988

Agreed to by the Senate, March 9, 1988

WHEREAS, in fiscal year 1981, 409 children were placed for adoption by private and public agencies; in 1982, 754 children were placed by agencies; in 1983, 717 children were placed by agencies; in 1984, 648 children were placed by agencies; in 1985, 551 children were placed by agencies; and in fiscal year 1986, 640 children were placed by agencies; and

WHEREAS, in calendar year 1981, 55 children were placed by unauthorized persons; in 1982, 56 children; in 1983, 69 children; in 1984, 84 children; in 1985, 113 children; in 1986, 100 children; and through October, 1987, 70 children; and

WHEREAS, an undetermined number of children are placed for adoption in each of these years whose prospective legal parents never file for legal adoption of their child; and

WHEREAS, there is no law or regulation addressing whether or how much money can be paid out by couples or natural parents for services rendered to any party involved in an adoption; and

WHEREAS, couples desperate for children are willing to pay undisclosed and varying amounts of money to any number of persons, in and out of state and from other nations, who can provide them with a child they can adopt; and

WHEREAS, the child may not be in the care of persons authorized to provide such care until such time as custody is properly transferred from the parent(s) to the legal guardian; and

WHEREAS, in direct placements, children are being transferred to their prospective parents upon discharge from the hospital without proper legal transfer of guardianship or custody; and

WHEREAS, the juvenile court often determines a placement to be a direct one when in fact it is a placement arranged through an unauthorized placement activity; and

WHEREAS, often the rights of the natural father are not considered and/or properly terminated as natural mothers are improperly counseled to deny knowledge of the identity and whereabouts of the father; and

WHEREAS, one or both natural parents are often denied the opportunity for counseling regarding their options prior to placement of the child; and

WHEREAS, the prospective adoptive couple has not been approved by an authorized agency as to their suitability to adopt, nor received counseling regarding legal and psychological aspects of adoption; and

WHEREAS, often the natural parents are under age, emotionally immature and feel coerced or pressured to release their child for adoption, even though they have the right to change their minds and may wish to do so; and

WHEREAS, the natural parents sign legal consent to the adoption of their child by a designated couple, in accordance with direct placement procedures, even though they often do not know who they are, have never met them, or know very little about them; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That a joint subcommittee be established to study the issue of direct adoption placements and how they should be regulated so that all children in the Commonwealth, whether placed within Virginia or outside the state, are assured the same protection under the law.

The joint subcommittee shall be composed of four members of the House Committee on Health, Welfare and Institutions to be appointed by the Speaker, and three members of the Senate Committee on Rehabilitation and Social Services to be appointed by the Senate Committee on Privileges and Elections. The joint subcommittee shall complete its study and make its recommendations to the 1989 Session of the General Assembly.

The indirect costs of this study are estimated to be \$13,045; the direct costs of this study shall not exceed \$6,305.

ADOPTION PLACEMENT STATISTICS
ALL PLACEMENTS

FY	STEP- PARENT	OTHER RELATIVE	NOT RELATED	UNKNOWN	TOTAL
1981-82	1759	279	976	9	3023
1982-83	1731	299	986	21	3037
1983-84	1680	284	907	18	2889
1984-85	1490	255	865	11	2621
1985-86 (ESTIMATE)	1268	234	912	10	2424
1986-87	1364	228	985	19	2596

ADOPTION PLACEMENT STATISTICS
NON-AGENCY PLACEMENTS

FY	STEP- PARENT	OTHER RELATIVE	NOT RELATED	UNKNOWN	TOTAL
1981-82	1758	275	200	8	2241
1982-83	1730	283	234	21	2268
1983-84	1679	268	196	18	2161
1984-85	1488	246	196	10	1940
1985-86	1268	222	180	10	1680
1986-87	1355	217	203	19	1794

ADOPTION PLACEMENT STATISTICS
AGENCY PLACEMENTS

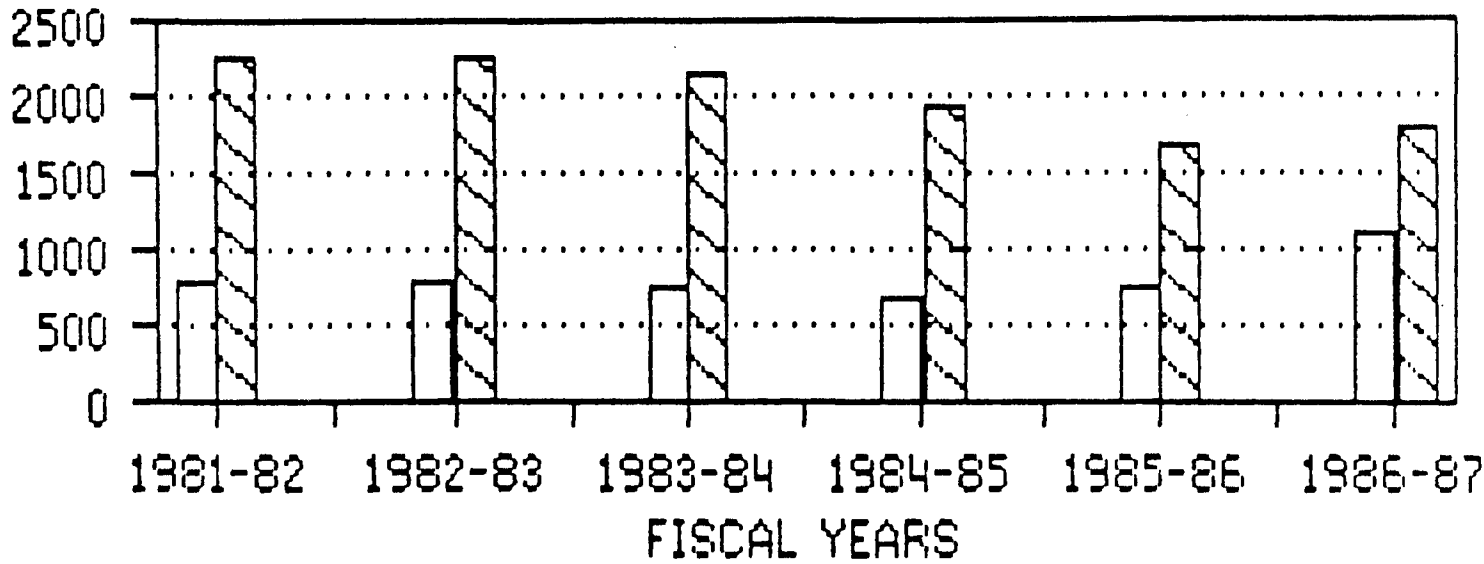
FY	STEP- PARENT	OTHER RELATIVE	NOT RELATED	UNKNOWN	TOTAL
1981-82	1	4	776	1	782
1982-83	1	16	752	0	769
1983-84	1	16	711	0	728
1984-85	2	9	669	1	681
1985-86	0	12	732	0	744
1986-87	9	11	1082	0	1102

ADOPTION PLACEMENT STATISTICS
AGENCY AND NON-AGENCY PLACEMENTS

AGENCY NON-AGENCY



PLACEMENTS



FY 1985-86 ARE ESTIMATES

LD5553450

HOUSE BILL NO. 1491

Offered January 23, 1989

A BILL to amend and reenact §§ 63.1-195, 63.1-204, 63.1-220, 63.1-220.1, 63.1-221, 63.1-223, 63.1-225, 63.1-226 and 63.1-228 of the Code of Virginia, to amend the Code of Virginia by adding in Chapter 11 of Title 63.1 sections numbered 63.1-220.2 through 63.1-220.5, 63.1-238.01 and 63.1-238.02, and to repeal § 63.1-211.1 of the Code of Virginia, relating to adoption; penalty.

Patrons—Cunningham, J. W., Melvin, DeBoer and Allen; Senators: Gartlan, Michie and Dalton

Referred to the Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 63.1-195, 63.1-204, 63.1-220, 63.1-220.1, 63.1-221, 63.1-223, 63.1-225, 63.1-226 and 63.1-228 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 11 of Title 63.1 sections numbered 63.1-220.2 through 63.1-220.5, 63.1-238.01 and 63.1-238.02 as follows:

§ 63.1-195. Definitions.—As used in this chapter:

“Adoptive home” means any family home selected and approved by a parent, local board of public welfare or social services or a licensed child-placing agency for the placement of a child with the intent of adoption ; .

“Adoptive placement” means arranging for the care of a child who is in the custody of a child-placing agency in an approved home for the purpose of adoption ; .

“Child” means any natural person under eighteen years of age ; .

“Child-care center” means any facility operated for the purpose of providing care, protection and guidance to a group of children separated from their parents or guardian during a part of the day only , except a facility required to be licensed as a summer camp under § 35.1-1 et seq.; a public school or a private school unless the Commissioner determines that such private school is operating a child-care center outside the scope of regular classes; a school operated primarily for the educational instruction of children from two to five years of age at which children two through four years of age do not attend in excess of four hours per day and children five years of age do not attend in excess of six and one-half hours per day; a facility operated by a hospital on the hospital's premises, which provides care to the children of the hospital's employees, while such employees are engaged in performing work for the hospital; and a Sunday school conducted by a religious institution or a facility operated by a religious organization where children are cared for during short periods of time while persons responsible for such children are attending religious services. An hourly child-care service providing care to children on an occasional basis shall be subject to applicable child-care center standards ; ~~on~~ . *On* applying those standards, due consideration shall be given to the number of children in care, the maximum hours any child is in care and the type of service provided ; .

“Child-caring institution” means any institution, other than an institution operated by the Commonwealth, a county or city, and maintained for the purpose of receiving children for full-time care, maintenance, protection and guidance separated from their parents or guardians, except:

(1) [Repealed.]

(2) A bona fide educational institution whose pupils, in the ordinary course of events, return annually to the homes of their parents or guardians for not less than two months of summer vacation;

(3) An establishment required to be licensed as a summer camp by § 35.1-1 et seq.; and

(4) A bona fide hospital legally maintained as such ; .

“Child-placing agency” means any person licensed to place *who places* children in

1 foster homes, adoptive homes or independent living arrangements pursuant to § 63.1-205.1
2 or a local board of public welfare or social services authorized to place *which places*
3 children in foster homes or adoptive homes pursuant to §§ 63.1-56 and , 63.1-204 and
4 63.1-220.2 ; .

5 "Child-welfare agency" means a child-placing agency, child-caring institution,
6 independent foster home, child-care center, family day-care system or family day-care
7 home ; .

8 "Direct placement" means locating or effecting the placement of a child or the placing
9 of a child in a family home by the child's parent or legal guardian for the purpose of
10 foster care or adoption when there has been no unauthorized placement activity;

11 "Family day-care home" means any private family home in which more than five
12 children, except children related by blood or marriage to the person who maintains the
13 home, are received for care, protection and guidance during only a part of the
14 twenty-four-hour day, except (i) homes which accept children exclusively from local
15 departments of welfare or social services, (ii) homes which have been approved by a
16 licensed day-care system or (iii) homes which accept up to ten children, at least five of
17 whom are of school age and are not in the home for longer than three hours immediately
18 before and three hours immediately after school hours each day ; .

19 "Family day-care system" means any person who approves family day-care homes as
20 members of its system; who refers children to available day-care homes in that system;
21 and who, through contractual arrangement, may provide central administrative functions
22 including, but not limited to, training of operators of family day-care homes; technical
23 assistance and consultation to operators of family day-care homes; inspection, supervision,
24 monitoring, and evaluation of family day-care homes; and referral of children to available
25 health and social services ; .

26 "Foster care" means the provision of services or substitute care and supervision for a
27 child (i) who has been identified as needing services to prevent or eliminate the need for
28 foster care placement, (ii) who has been committed or entrusted to a local board of public
29 welfare or child welfare agency, or (iii) for whom the board or child welfare agency has
30 accepted supervision, in a temporary living situation until the child can return to his or
31 her family or be placed in a permanent foster care placement or in an adoptive home ; .

32 "Foster care placement" means placement of a child in the custody of a child-placing
33 agency in suitable foster family homes, child-caring institutions, residential facilities or
34 group homes ; .

35 "Foster home" means the place of residence of any natural person in which any child,
36 other than a child by birth or adoption of such person, resides as a member of the
37 household ; .

38 "Group home" means a child-caring institution *which is* operated by any person at any
39 place other than in an individual's family home or residence , *and* which does not care for
40 more than twelve children ; .

41 "Independent foster home" means a private family home in which any child, other than
42 a child by birth or adoption of such person, resides as a member of the household and has
43 been placed therein independently of a child-placing agency except ~~(1)~~ (i) a home in which
44 are received only children related by birth or adoption of the person who maintains such
45 home and legitimate children of personal friends of such person and ~~(2)~~ (ii) a home in
46 which is received a child or children committed under the provisions of § 16.1-279,
47 subdivisions *subdivision* A 3, C 5, or E 9 ; .

48 "Intercountry placement" means the arrangement for the care of a child in an adoptive
49 home or foster care placement into or out of the Commonwealth by a licensed
50 child-placing agency, court, or other entity authorized to make such placements in
51 accordance with the laws of the foreign country under which it operates ; .

52 "Interstate placement" includes the arrangement for the care of a child in an adoptive
53 home, foster care placement or in the home of the child's parent or with a relative or
54 nonagency guardian, into or out of the Commonwealth of Virginia, by a child-placing

1 agency or court when the full legal right of the child's parent or nonagency guardian to
2 plan for the child has been voluntarily terminated or limited or severed by the action of
3 any court ; .

4 "Permanent foster care placement" means the place of residence in which a child
5 resides and in which he or she has been placed pursuant to the provisions of §§ 63.1-56
6 and 63.1-206.1 with the expectation and agreement between the placing agency and the
7 place of permanent foster care that the child shall remain in the placement until he or
8 she reaches the age of majority unless modified by court order or unless removed pursuant
9 to § 16.1-251 or § 63.1-248.9. A permanent foster care placement may be a place of
10 residence of any natural person or persons deemed appropriate to meet a child's needs on
11 a long-term basis ; .

12 "Person" means any natural person, or any association, partnership or corporation ; .

13 "Unauthorized placement activity" means any assistance provided to a parent, legal
14 guardian or prospective adoptive family in locating or effecting the placement of a child or
15 placing a child, or performing any combination of these activities, in an adoptive home or
16 foster home by any person other than a local board of public welfare or social services or
17 duly authorized child-placing agency, or the advertisement or solicitation to perform any of
18 the above activities by other than a local board of public welfare or social services or duly
19 authorized child-placing agency. Unauthorized placement activity shall not include the
20 counseling of any person with respect to the options available and the procedures that must
21 be followed to place a child for adoption or to adopt a child.

22 § 63.1-204. Acceptance and control over children –A. A licensed child-welfare agency
23 shall have the right to accept, for any purpose not contrary to the limitations contained in
24 its license, such children as may be entrusted or committed to it by the parents, guardians,
25 relatives or other persons having legal custody thereof, or committed by any court of
26 competent jurisdiction. The agency shall, within the terms of its license and the agreement
27 or order by which such child is entrusted or committed to its care, have custody and
28 control of every such child so entrusted or committed and accepted, until he is lawfully
29 discharged, has been adopted, or has attained his majority.

30 An agency which is licensed as a child-placing agency by the Department of Social
31 Services and certified as a proprietary school for the handicapped by the Department of
32 Education shall not be required to take custody of any child placed in its special education
33 program but shall enter into a placement agreement with the parents or guardian of the
34 child concerning the respective responsibilities of the agency and the parents or guardian
35 for the care and control of the child. Such an agency shall conform with all other legal
36 requirements of licensed child-placing agencies including the provisions of §§ 16.1-281 and
37 16.1-282.

38 B. Whenever a licensed child-welfare agency accepts custody of a child pursuant to a
39 temporary entrustment agreement entered into under the authority of this section, except
40 when the entrustment agreement between the parent or parents and the licensed
41 child-welfare agency provides for the termination of all parental rights and responsibilities
42 with respect to the child, such child-welfare agency except a child-caring institution when
43 the child is placed there by a parent or parents shall petition the juvenile and domestic
44 relations district court of the city or county for approval of such agreement within a
45 reasonable time, not to exceed thirty days, after its execution; however, such petition shall
46 not be required when the agreement stipulates in writing that the temporary entrustment
47 shall be for less than ninety days and the child is returned to his or her home within that
48 period.

49 C. A child may be placed for adoption by a licensed child-placing agency ; or a local
50 board of public welfare or social services or by the child's natural parent or legal guardian
51 , in accordance with the provisions of § 63.1-220.2 .

52 1. A licensed child-placing agency, or local board of public welfare or social services
53 may place for adoption, and is empowered to consent to the adoption of, any child who is
54 properly committed or entrusted to its care when the order of commitment or the

1 entrustment agreement between the parent or parents and the agency or board provides
2 for the termination of all parental rights and responsibilities with respect to the child for
3 the purpose of placing and consenting to the adoption of such child.

4 Prior to the placement of a child for adoption, the licensed child-placing agency or
5 local board having custody of the child shall provide the natural mother or, if reasonably
6 available, both natural parents with an opportunity for counseling concerning the disposition
7 of their child. In determining the appropriate home in which to place a child for adoption,
8 the agency or board may consider the recommendations of a physician or attorney,
9 licensed in the Commonwealth, or a clergyman who is familiar with the situation of the
10 proposed adoptive parents or the child. The physician, attorney or clergyman shall not
11 charge any fee for recommending such a placement to a board or agency and shall not
12 advertise that he is available to make such recommendations.

13 Notwithstanding the terms of §§ 63.1-233 and 63.1-237, a valid entrustment agreement
14 terminating all parental rights and responsibilities to the child shall not be revocable by
15 either of the natural parents after fifteen days from the date of execution of the
16 agreement, or if the child is not at least twenty-five days old at the end of the fifteen-day
17 period, then after the child reaches the age of twenty-five days, and such agreement shall
18 divest the natural parents of all legal rights and obligations with respect to the child, and
19 the child shall be free from all legal obligations of obedience and maintenance with
20 respect to them; provided that such rights and obligations may be restored to the natural
21 parent or parents and the child by court order prior to entry of final order of adoption
22 upon proof of fraud or duress; and further provided that either parent or both parents, if
23 married, may revoke such agreement and the child may be returned if the child has not
24 been placed in the home of adoptive parents at the time of such revocation.

25 2. The natural parent or legal guardian of a child may place the child for adoption
26 directly with the adoptive parents of his or her choice only after executing a valid consent
27 to the proposed adoption before a juvenile and domestic relations district court of
28 competent jurisdiction. Prior to the court's acceptance of the required consent of the
29 natural parent, the court shall ascertain (i) whether the placement is a direct placement as
30 defined in §§ 63.1-195 and 63.1-220, (ii) whether the natural mother, or, if reasonably
31 available, both natural parents, have had an opportunity for counseling concerning the
32 disposition of the child and (iii) whether the adoptive parents are in satisfactory physical
33 and mental health to enable them to provide adequate care to the child. If the court
34 determines that the placement is a direct placement, the opportunity for counseling has
35 been provided and the adoptive parents are in satisfactory physical and mental health to
36 enable them to provide adequate care to the child, the court may accept the consent and
37 shall appoint the proposed adoptive parents to be the child's guardians, who shall be
38 responsible for the care of the child until such time as the court order is modified. The
39 juvenile court shall review such orders of appointment at least annually until such time as
40 a final order of adoption is entered in the circuit court. If the court does not accept the
41 consent, the court shall refer the natural parent or legal guardian to the local board of
42 public welfare or social services.

43 D. For the purposes of this section, a parent who is less than eighteen years of age
44 shall be deemed fully competent and shall have legal capacity to execute a valid
45 entrustment agreement, including an agreement which provides for the termination of all
46 parental rights and responsibilities, and shall be as fully bound thereby as if such parent
47 had attained the age of eighteen years. An entrustment agreement for the termination of
48 all parental rights and responsibilities with respect to the child shall be valid
49 notwithstanding that it is not signed by the father of a child born out of wedlock if the
50 identity of the father is not reasonably ascertainable, or if such father is given notice of
51 the entrustment by registered or certified mail to his last known address and such father
52 fails to object to the entrustment within twenty-one days of the mailing of such notice. An
53 affidavit of the mother that the identity of the father is not reasonably ascertainable shall
54 be sufficient evidence of this fact, provided there is no other evidence which would refute

1 such an affidavit. The absence of such an affidavit shall not be deemed evidence that the
 2 identity of the father is reasonably ascertainable. For purposes of determining whether the
 3 identity of the father is reasonably ascertainable, the standard of what is reasonable under
 4 the circumstances shall control, taking into account the relative interests of the child, the
 5 mother and the father.

6 § 63.1-220. Definitions.—As used in this chapter:

7 “Adoptive home” means any family home selected and approved by a parent, local
 8 board of public welfare or social services or a licensed child-placing agency for the
 9 placement of a child with the intent of adoption ; .

10 “Adoptive placement” means arranging for the care of a child who is in the custody of
 11 a child-placing agency in an approved home for the purpose of adoption ; .

12 “Child-placing agency” means any person licensed pursuant to the provisions of Chapter
 13 10 (§ 63.1-195 et seq.) to place *who places* children in foster homes or adoptive homes or
 14 a local board of public welfare or social services authorized to place *which places* children
 15 in foster homes or adoptive homes pursuant to §§ 63.1-56 and , 63.1-204 and 63.1-220.2 ; .

16 “ *Direct Parental* placement” means locating or effecting the placement of a child or
 17 the placing of a child in a family home by the child’s parent or legal guardian for the
 18 purpose of foster care or adoption ~~when there has been no unauthorized placement activity;~~
 19 .

20 “Person” means any natural person or association, partnership or corporation ; .

21 “Unauthorized placement activity” means any assistance provided to a parent, legal
 22 guardian or prospective adoptive family in locating or effecting the placement of a child or
 23 placing a child, or performing any combination of these activities, in an adoptive home or
 24 foster home by any person other than a local board of public welfare or social services or
 25 duly authorized child-placing agency, or the advertisement or solicitation to perform any of
 26 the above activities by other than a local board of public welfare or social services or duly
 27 authorized child-placing agency. Unauthorized placement activity shall not include the
 28 counseling of any person with respect to the options available and the procedures that must
 29 be followed to place a child for adoption or to adopt a child.

30 § 63.1-220.1. Who may place children for adoption.—A child may be placed for adoption
 31 by:

- 32 1. A licensed child-placing agency;
- 33 2. A local board of public welfare or social services;
- 34 3. The child’s parent or legal guardian if the placement is a *direct parental* placement
 35 as defined in § § 63.1-195 and 63.1-220; and
- 36 4. Any agency outside the Commonwealth which is licensed or otherwise duly authorized
 37 to place children for adoption by virtue of the laws under which it operates.

38 § 63.1-220.2. *Placement of children for adoption by agency or local board.*—A licensed
 39 child-placing agency or local board of public welfare or social services may place for
 40 adoption, and is empowered to consent to the adoption of, any child who is properly
 41 committed or entrusted to its care, in accordance with the provisions of § 63.1-56, §
 42 63.1-204 or this section, when the order of commitment or the entrustment agreement
 43 between the parent or parents and the agency or board provides for the termination of all
 44 parental rights and responsibilities with respect to the child for the purpose of placing and
 45 consenting to the adoption of such child.

46 *For the purposes of this section, a parent who is less than eighteen years of age shall*
 47 *be deemed fully competent and shall have legal capacity to execute a valid entrustment*
 48 *agreement, including an agreement which provides for the termination of all parental*
 49 *rights and responsibilities, and shall be as fully bound thereby as if such parent had*
 50 *attained the age of eighteen years. An entrustment agreement for the termination of all*
 51 *parental rights and responsibilities with respect to the child shall be valid notwithstanding*
 52 *that it is not signed by the father of a child born out of wedlock if the identity of the*
 53 *father is not reasonably ascertainable, or if such father is given notice of the entrustment*
 54 *by registered or certified mail to his last known address and such father fails to object to*

1 *the entrustment within twenty-one days of the mailing of such notice. An affidavit of the*
2 *mother that the identity of the father is not reasonably ascertainable shall be sufficient*
3 *evidence of this fact, provided there is no other evidence which would refute such an*
4 *affidavit. The absence of such an affidavit shall not be deemed evidence that the identity*
5 *of the father is reasonably ascertainable. For purposes of determining whether the identity*
6 *of the father is reasonably ascertainable, the standard of what is reasonable under the*
7 *circumstances shall control, taking into account the relative interests of the child, the*
8 *mother and the father.*

9 *A valid entrustment agreement terminating all parental rights and responsibilities to*
10 *the child shall be revocable by either of the birth parents until (i) the child has reached*
11 *the age of twenty-five days and (ii) fifteen days have elapsed from the date of execution*
12 *of the agreement. Such agreement shall divest the birth parents of all legal rights and*
13 *obligations with respect to the child, and the child shall be free from all legal obligations*
14 *of obedience and maintenance with respect to them, provided that such rights and*
15 *obligations may be restored to the birth parents and the child by court order prior to*
16 *entry of final order of adoption upon proof of fraud or duress. In addition, a valid*
17 *entrustment agreement shall be revocable by either of the birth parents if the child has*
18 *not been placed in the home of adoptive parents at the time of such revocation. Upon*
19 *revocation of the entrustment agreement, the child shall be returned to the parent*
20 *revoking the agreement.*

21 *Prior to the placement of a child for adoption, the licensed child-placing agency or*
22 *local board having custody of the child shall counsel the birth mother or, if reasonably*
23 *available, both birth parents, concerning the disposition of their child. In determining the*
24 *appropriate home in which to place a child for adoption, the agency or board may*
25 *consider the recommendations of a physician or attorney licensed in the Commonwealth,*
26 *or a clergyman who is familiar with the situation of the proposed adoptive parents or the*
27 *child. The physician, attorney or clergyman shall not charge any fee for recommending*
28 *such a placement to a board or agency and shall not advertise that he is available to*
29 *make such recommendations.*

30 *§ 63.1-220.3. Placement of children for adoption by parent or guardian.—A. The birth*
31 *parent or legal guardian of a child may place his child for adoption directly with the*
32 *adoptive parents of his choice only after executing a valid consent to the proposed*
33 *adoption before a juvenile and domestic relations district court of competent jurisdiction,*
34 *upon compliance with the provisions of this section.*

35 *B. The court shall not accept consent until it determines that:*

36 *1. The birth parents are aware of alternatives to adoption, adoption procedures, and*
37 *opportunities for placement with other adoptive families, and that the birth parents'*
38 *consent is informed and uncoerced.*

39 *2. A licensed or duly authorized child-placing agency has counseled the prospective*
40 *adoptive parents with regard to alternatives to adoption, adoption procedures, including*
41 *the need to address the parental rights of birth parents, the procedures for terminating*
42 *such rights, and opportunities for adoption of other children; that the prospective adoptive*
43 *parents' decision is informed and uncoerced; and that they intend to file an adoption*
44 *petition and proceed toward a final order of adoption.*

45 *3. The birth parents and adoptive parents have exchanged identifying information*
46 *including but not limited to full names, addresses, physical, mental, social and*
47 *psychological information and any other information necessary to promote the welfare of*
48 *the child.*

49 *4. Any financial agreement or exchange of property among the parties and any fees*
50 *charged or paid for services related to the placement or adoption of the child have been*
51 *disclosed to the court and that all parties understand that no binding contract regarding*
52 *placement or adoption of the child exists.*

53 *5. There has been no violation of the provisions of § 63.1-220.4 in connection with the*
54 *placement; however, if it appears there has been such violation, the court shall not reject*

1 consent of the birth parent to the adoption for that reason alone but shall report the
2 alleged violation as required by subsection F of this section.

3 6. A licensed or duly authorized child-placing agency has conducted a home study of
4 the prospective adoptive home in accordance with regulations established by the State
5 Board of Social Services and has provided to the court a report of such home study,
6 which shall contain the agency's recommendation regarding the suitability of the
7 placement. The home study shall include but not be limited to inquiry as to (i) whether
8 the prospective adoptive parents are financially able, morally suitable, and in satisfactory
9 physical and mental health to enable them to care for the child; (ii) the physical and
10 mental condition of the child, if known; (iii) the circumstances under which the child came
11 to live, or will be living, in the home of the prospective adoptive family, as applicable; (iv)
12 what fees have been paid by the prospective adoptive family or in their behalf to persons
13 or agencies which have assisted them in the placement of the child; and (v) any other
14 matters specified by the court. In the course of the home study, the agency shall meet at
15 least once with the birth parents and prospective adoptive parents simultaneously.

16 C. When the court is satisfied that all requirements of subsection B of this section
17 have been met and the adoptive child is at least ten days old, the birth parent or parents
18 shall execute consent to the proposed adoption in compliance with the provisions of §
19 63.1-225 while before the court in person and in the presence of the prospective adoptive
20 parents. Consent shall be revocable for up to fifteen days from its execution for any
21 reason and shall be revocable prior to the final order of adoption (i) upon proof of fraud
22 or duress, or (ii) after placement of the child in an adoptive home, upon written, mutual
23 consent of the birth parents and proposed adoptive parents. Such revocation shall be in
24 writing and filed with the court which accepted consent. After accepting the consent, the
25 court shall appoint the prospective adoptive parents to be the child's guardians, to be
26 responsible for the care of the child until such time as the court order is modified. The
27 court shall review such orders of appointment at least annually until such time as the
28 final order of adoption is entered. Upon execution of consent and appointment of
29 guardian, the prospective adoptive family may file a petition for adoption of the child
30 pursuant to § 63.1-221.

31 D. The court shall not accept the consent if the requirements of subsection B of this
32 section have not been met. In such cases, it shall refer the birth parent to a licensed or
33 duly authorized child-placing agency for investigation and recommendation in accordance
34 with subsection B above. If the court determines that any of the parties is financially
35 unable to obtain the required services, it shall refer the matter to the local superintendent
36 of public welfare.

37 E. If the court determines from the information provided to it that placement in the
38 prospective adoptive home will be contrary to the best interests of the child, it shall so
39 inform the birth parents. If the birth parents choose not to retain custody of the child nor
40 to designate other prospective adoptive parents, or if the birth parents whereabouts are
41 not reasonably ascertainable, the court shall determine custody of the child.

42 F. If the court or any participating licensed or duly authorized child-placing agency
43 suspects that there has been a violation of § 63.1-220.4 in connection with the placement,
44 it shall report such findings to the Commissioner of Social Services for investigation and
45 appropriate action. If the Commissioner suspects that a person has violated § 63.1-220.4 in
46 the course of the practice of a profession or occupation licensed or regulated pursuant to
47 Title 54.1, he shall report such findings to the appropriate regulatory authority for
48 investigation and appropriate disciplinary action.

49 G. The Department of Social Services shall develop and disseminate information to the
50 public regarding the provisions of this law, including the desirability of initiating the
51 procedures required by subsection B of § 63.1-220.3 as early in the placement and
52 adoption process as possible to ensure that birth parents are aware of the provisions of
53 this law and begin required procedures in a timely manner.

54 § 63.1-220.4. Certain exchange of property prohibited; penalty.—No person or

1 *child-placing agency shall charge, pay, give, - or agree to give or accept any money,*
2 *property, service or other thing of value in connection with a placement or adoption or*
3 *any act undertaken pursuant to this chapter except (i) reasonable and customary services*
4 *provided by a licensed or duly authorized child-placing agency and fees paid for such*
5 *services, (ii) payment or reimbursement for medical expenses directly related to the birth*
6 *mother's pregnancy and hospitalization for the birth of the child who is the subject of the*
7 *adoption proceedings and for expenses incurred for medical care for the child, (iii)*
8 *payment or reimbursement for transportation necessary to execute consent pursuant to §*
9 *63.1-220.3, (iv) usual and customary fees for legal services in adoption proceedings, and (v)*
10 *payment or reimbursement of reasonable expenses incurred for transportation in*
11 *intercountry placements as defined in § 63.1-195 and as necessary for compliance with*
12 *state and federal law in such placements. No person shall advertise or solicit to perform*
13 *any activity prohibited by this section. Any person or agency violating the provisions of*
14 *this section shall be guilty of a Class 5 felony. The Commissioner is authorized to*
15 *investigate cases in which fees paid for legal services appear to be in excess of usual and*
16 *customary fees in order to determine if there has been compliance with the provisions of*
17 *this section.*

18 *§ 63.1-220.5. Removal of child from adoptive home.—When a child is placed in an*
19 *adoptive home pursuant to an adoptive home placement agreement by a local board of*
20 *public welfare or social services or by a licensed child-placing agency pursuant to §*
21 *63.1-220.2, or by the birth parent or legal guardian of the child pursuant to § 63.1-220.3,*
22 *and a court of competent jurisdiction has not entered an interlocutory order of adoption,*
23 *such child shall not be removed from the physical custody of the adoptive parents, except*
24 *(i) with the consent of the adoptive parents, (ii) upon order of the juvenile and domestic*
25 *relations district court or the circuit court of competent jurisdiction, (iii) pursuant to §*
26 *63.1-211, which removal shall be subject to review by the juvenile and domestic relations*
27 *district court upon petition of the adoptive parents, or (iv) upon order of the court which*
28 *accepted consent when consent has been revoked as authorized by § 63.1-220.3 or §*
29 *63.1-225.*

30 *When a child has been placed in an adoptive home directly by the birth parents or*
31 *legal guardian of the child, the adoptive parents have been appointed guardians of the*
32 *child pursuant to § 63.1-220.3, and it becomes necessary to remove that child from the*
33 *home of the adoptive parents, the court entering such an order shall commit the child to*
34 *the care and custody of the local board of public welfare or social services with the*
35 *authority to place that child for adoption.*

36 *§ 63.1-221. Jurisdiction and proceedings.—Proceedings for the adoption of a minor child*
37 *and for a change of name of such child shall be instituted only by petition to a court of*
38 *record having chancery jurisdiction in the county or city in which the petitioner resides or*
39 *in the city or county in which is located the child-placing agency which placed the child ,*
40 *provided that the Circuit Court of the City of Richmond, Division I, shall have exclusive*
41 *jurisdiction in every such case arising in the said city if the petitioner resides on the north*
42 *side of the James River, and that the Circuit Court of the City of Richmond, Division II,*
43 *shall have exclusive jurisdiction if the petitioner resides in the said city on the south side*
44 *of the James River . Such petition may be filed by any natural person who resides in the*
45 *Commonwealth or who has custody of a child placed by a child-placing agency of the*
46 *Commonwealth, for leave to adopt a minor child not legally his by birth and, if it be is so*
47 *desired by the petitioner, also to change the name of such child. In the case of married*
48 *persons , the petition shall be the joint petition of the husband and wife but , in the event*
49 *the child to be adopted is legally the child by birth or adoption of one of the petitioners,*
50 *such petitioner shall unite in the petition for the purpose of indicating his or her consent*
51 *to the prayer thereof only. The petition shall contain a full disclosure of the circumstances*
52 *under which the child came to live and is living , in the home of the petitioner.*

53 *Where* ~~When~~ *the natural birth parent has placed the child directly with the petitioners*
54 *pursuant to the provisions of paragraph G 2 of § 63.1-204 § 63.1-220.3 , the petition shall*

1 state that the consent of the natural parent was obtained in an informed and uncoerced
2 manner before a juvenile and domestic relations district court of competent jurisdiction and
3 that the same court appointed the petitioners guardians of the child at such time pursuant
4 to § 63.1-204 or that the child was in custody of a local board of public welfare or social
5 services pursuant to § 63.1-211.1 at the time of the placement. All petitions for adoption of
6 a child shall state that the natural mother, or, if reasonably available, both natural parents,
7 have been provided with an opportunity for counseling and that the petitioners are in
8 satisfactory physical and mental health to enable them to provide adequate care to the
9 child, as required in § 63.1-204 *C findings required by that section have been made and*
10 *shall be accompanied by appropriate documentation supporting such statement, to include*
11 *copies of documents executing consent and appointing the adoptive parents legal*
12 *guardians of the child, and a copy of the report required by subdivision B 6 of §*
13 *63.1-220.3. The court shall have the authority to not waive any of the requirements of this*
14 *paragraph nor any of the requirements of § 63.1-220.3 related to the obtaining of consent,*
15 *appointment of guardians and opportunity for counseling, if they are found to be contrary*
16 *to the best interests of the child .*

17 A petition for the adoption of a child placed in the home of the petitioners by a
18 child-placing agency shall be filed in the name by which the child will be known after
19 adoption, provided the name is followed by the registration number of the child's original
20 birth certificate and the state or country in which the registration occurred unless it is
21 verified by the registrar of vital statistics of the state or country of original birth that such
22 information is not available ; ~~provided further, that the .~~ *The* report of investigation
23 required by § 63.1-223 and, when applicable, the report required by § 63.1-228 *is shall be*
24 identified with the child's name as it appears on the birth certificate, the birth registration
25 number and the name by which the child is to be known after the final order of adoption
26 is entered.

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

31 When a foster parent who has a child placed in the foster parents' home by a *licensed*
32 *or duly authorized* child-placing agency desires to adopt the child and (i) the child has
33 resided in the home of such foster parent continuously for at least eighteen months and
34 (ii) the ~~natural birth~~ parents' rights to the child have been terminated, the court shall
35 accept the petition filed by the foster parent and shall order a thorough investigation of
36 the matter to be made pursuant to § 63.1-223. The court may refer the matter for
37 investigation to a *licensed or duly authorized* child-placing agency other than the agency
38 holding custody of the child. Upon completion of the investigation and report and filing of
39 the consent of the agency holding custody of the child, or upon the finding contemplated
40 by § 63.1-225 C, the court may enter a final order of adoption pursuant to § 63.1-229 (a)
41 waiving visitation requirements, if the court determines that the adoption is in the best
42 interests of the child.

43 § 63.1-223. Preliminary investigations; report to court.—A. Upon the filing of the petition,
44 the court wherein the petition is filed, or the clerk thereof upon order of the court, shall
45 forward a copy of the petition and all exhibits thereto to the Commissioner and to the
46 agency which placed the child or, ~~in cases where if~~ the child was not placed by an
47 agency, to the *licensed child-placing agency or the* local superintendent of public welfare ,
48 *as applicable* . The agency which placed the child or the local superintendent of public
49 welfare, except as hereinafter provided in ~~subsection~~ *subsections B and F* , shall ~~cause to~~
50 ~~be made~~ *make* a thorough investigation of the matter and report thereon in writing, in
51 such form as the Commissioner may prescribe, to the court within sixty days after the
52 copy of the petition and all exhibits thereto are forwarded. A copy of the report to the
53 court shall be served on the Commissioner by delivering or mailing a copy to him on or
54 before the day of filing the report with the court. On the report to the court there shall be

1 appended either acceptance of service or certificate of the local superintendent of public
2 welfare, or other welfare agency of the county or city or the representative of the
3 child-placing agency, that copies were served as this section requires, showing the date of
4 delivery or mailing. The Commissioner may notify the court within twenty-one days of the
5 date of delivery or mailing of the report as shown by the agency, during which time the
6 court shall withhold consideration of the merits of the petition pending review of the
7 agency report by the Commissioner, of any disapproval thereof stating reasons for any
8 further action on the report which he deems necessary.

9 B. The Commissioner shall ~~cause to be made~~ *make* the thorough investigation required
10 in subsection A hereof and report thereon in writing to the court within ninety days after
11 the copy of the petition and all exhibits thereto are forwarded, when:

12 1. A petition is filed in a state court by residents of this Commonwealth and the child
13 to be adopted was placed by an agency outside the Commonwealth;

14 2. A petition is filed in a state court and the petitioners move outside the
15 Commonwealth prior to completion of the investigation by the local child-placing agency; or

16 3. Petitioners are legal residents of this Commonwealth but do not reside within the
17 Commonwealth at the time of filing the petition in a state court.

18 ~~In cases where~~ *When* the preliminary investigation reveals that the child was placed in
19 an adoptive home in the Commonwealth by a person who is not authorized to make such
20 placements pursuant to § 63.1-220.1, the Commissioner shall so inform the court wherein
21 the petition for adoption is filed.

22 C. ~~In the event~~ *If* the report required in subsection A or subsection B is not made to
23 the court within the periods specified, the court may proceed to hear and determine the
24 merits of the petition and enter such order or orders as the court may deem appropriate.

25 D. The investigation requested by the court shall include, in addition to other inquiries
26 which the court may require the Commissioner, child-placing agency or local
27 superintendent of public welfare to make, inquiries as to (i) whether the petitioner is
28 financially able, except as provided in Chapter 11.1 (§ 63.1-238.1 et seq.) of this title,
29 morally suitable, in satisfactory physical and mental health and a proper person to care for
30 and to train the child ; ; (ii) what the physical and mental condition of the child is , ; (iii)
31 why the parents, if living, desire to be relieved of the responsibility for the custody, care
32 and maintenance of the child, and what their attitude is toward the proposed adoption , ;
33 (iv) whether the parents have abandoned the child or are morally unfit to have custody
34 over him , ; (v) the circumstances under which the child came to live, and is living, in the
35 same home of the petitioner , ; (vi) whether the child is a suitable child for adoption by
36 the petitioner ; and (vii) what fees have been paid by the petitioners or in their behalf to
37 persons or agencies which have assisted them in obtaining the child. Any report made to
38 the court shall include a recommendation as to ~~the~~ action to be taken by the court on the
39 petition. ~~In cases where~~ *A copy of any report made to the court shall be furnished counsel*
40 *of record representing the adopting parent or parents. When* the investigation reveals that
41 the child was placed in an adoptive home in the Commonwealth by a person who is not
42 authorized to make such placements pursuant to ~~there may have been a violation of~~ §
43 63.1-220.1 or § 63.1-220.4 , the local superintendent or child-placing agency shall so inform
44 the court and shall make such violation known to the Commissioner. ~~A copy of any report~~
45 ~~made to the court shall be furnished counsel of record representing the adopting parent or~~
46 ~~parents.~~

47 E. The report shall include the relevant physical and mental history of the biological
48 birth parents if known to the person making the report. However, nothing in this subsection
49 shall require that an investigation be made.

50 F. *When a placement is a parental placement and consent has been executed in*
51 *accordance with the provisions of § 63.1-220.3, the court may proceed without the*
52 *investigations and report required by this section.*

53 § 63.1-225. Parental, etc., consent.—A. No petition for adoption shall be granted, except
54 as hereinafter provided in this section, unless written consent to the proposed adoption is

1 filed with the petition. Such consent shall be signed and acknowledged before an officer
 2 authorized by law to take acknowledgments. The consent of a parent for the adoption of
 3 his child placed directly by the parent shall ~~not be valid unless the child is at least ten~~
 4 ~~days old at the time the parental consent is signed~~ *be executed as provided in § 63.1-220.3*
 5 .

6 *B. A parent who has not reached the age of eighteen shall have legal capacity to give*
 7 *consent to adoption and shall be as fully bound thereby as if the parent had attained the*
 8 *age of eighteen years.*

9 ~~*B. Consent by the child shall be necessary if the child is fourteen years of age or*~~
 10 ~~*older, unless the court finds that the best interests of the child will be served by not*~~
 11 ~~*requiring such consent.*~~

12 *C. Consent shall be executed:*

13 ~~(1)~~ *1. By the parents or surviving parent of a child born in wedlock; however, if the*
 14 *parents are divorced and the residual parental rights and responsibilities as defined in §*
 15 *16.1-228 of one parent have been terminated by terms of the divorce, or other order of a*
 16 *court having jurisdiction, the petition may be granted without the consent of such parent;*
 17 *or*

18 ~~(2)~~ *2. By the parents or surviving parent of a child born out of wedlock. The consent*
 19 *of the father of a child born to an unmarried woman shall not be required (i) if the*
 20 *identity of the father is not reasonably ascertainable, or (ii) if the identity of such father*
 21 *is ascertainable and his whereabouts are known, such father is given notice of the adoption*
 22 *proceeding by registered or certified mail to his last known address and such father fails*
 23 *to object to the adoption proceeding within twenty-one days of the mailing of such notice;*
 24 *or*

25 ~~(3)~~ *3. By the child-placing agency or the local board of public welfare or social*
 26 *services having custody of the child, with right to place him for adoption, through court*
 27 *commitment or parental agreement as provided in § 63.1-56 or , § 63.1-204 or § 63.1-220.2 ;*
 28 *or an agency outside the Commonwealth which is licensed or otherwise duly authorized to*
 29 *place children for adoption by virtue of the laws under which it operates ; and*

30 *4. By the child if he is fourteen years of age or older, unless the court finds that the*
 31 *best interests of the child will be served by not requiring such consent .*

32 *G. D. If after hearing evidence the court finds that the valid consent of any person or*
 33 *agency whose consent is hereinabove required is withheld contrary to the best interests of*
 34 *the child or is unobtainable, the court may grant the petition without such consent:*

35 ~~(1)~~ *1. Twenty-one days after personal service of notice of petition on the party or*
 36 *parties whose consent is required by this section; or*

37 ~~(2)~~ *2. If personal service is unobtainable, ten days after the completion of the execution*
 38 *of an order of publication against the party or parties whose consent is required by this*
 39 *section concerning the petition; or*

40 ~~(3)~~ *3. If the judge certifies on the record that the identity of any person whose consent*
 41 *is hereinabove required is not reasonably ascertainable.*

42 *For the purposes of this section, an affidavit of the mother that the identity of the*
 43 *father is not reasonably ascertainable shall be sufficient evidence of this fact, provided*
 44 *there is no other evidence before the court which would refute such an affidavit. The*
 45 *absence of such an affidavit shall not be deemed evidence that the identity of the father is*
 46 *reasonably ascertainable. For purposes of determining whether the identity of the father is*
 47 *reasonably ascertainable, the standard of what is reasonable under the circumstances shall*
 48 *control, taking into account the relative interests of the child, the mother and the father.*

49 *E. If the child is not in the custody of a child-placing agency and both parents are*
 50 *deceased, the court, after hearing evidence to that effect, may grant the petition without*
 51 *the filing of any consent.*

52 *F. Parental consent to an adoption executed pursuant to this section shall be revocable*
 53 *prior to the final order of adoption (i) upon proof of fraud or duress, or (ii) after*
 54 *placement of the child in an adoptive home, upon written, mutual consent of the natural*

1 *birth* parents and proposed adoptive parents.

2 § 63.1-226. Entry of interlocutory order.—If, after considering the report provided for by
3 § 63.1-220.3 or § 63.1-223, the court is satisfied that all of the requirements of this chapter
4 have been complied with, that the petitioner is financially able to maintain adequately,
5 except as provided in Chapter 11.1 (§ 63.1-238.1 et seq.) of this title, and is morally
6 suitable and a proper person to care for and train the child, that the child is suitable for
7 adoption by the petitioner, and that the best interests of the child will be promoted by the
8 adoption, it shall enter an interlocutory order of adoption declaring that henceforth, subject
9 to the probationary period hereinafter provided for and to the provisions of the final order
10 of adoption, the child will be, to all intents and purposes, the child of the petitioner, and,
11 if the petition includes a prayer for a change of the child's name and the court is satisfied
12 that such change is ~~for~~ *in* the best interests of the child, that, upon entry of final order,
13 the name of the child shall be changed. An attested copy of every interlocutory order of
14 adoption shall be forwarded forthwith by the clerk of the court in which it was entered to
15 the Commissioner and to the *licensed or duly authorized* child-placing agency or the local
16 superintendent of public welfare which filed the report required in § 63.1-220.3 or
17 63.1-223 (a) A ; ~~provided~~, however, the interlocutory order need not be sent to the
18 child-placing agency, or the local superintendent of public welfare, when the petitioners
19 have moved outside the Commonwealth after completion of the investigation required in §
20 63.1-223 but prior to entry of the interlocutory order.

21 If the court denies the petition for adoption and if it appears to the court that the child
22 is without proper care, custody or guardianship, the court may, in its discretion, appoint a
23 guardian for the child or commit the child to a custodial agency as provided for in §§ 31-5
24 and 16.1-279, respectively.

25 § 63.1-228. Visitations during probationary period and report.— ~~(a) A. After~~ *Except as*
26 *hereinafter provided, after* the entry of an interlocutory order of adoption, (i) the *licensed*
27 *or duly authorized* child-placing agency, or, ~~in cases where~~ (ii) if the child was not placed
28 by an agency *and the placement is not a parental placement*, the local superintendent of
29 public welfare, or (iii) if the placement is a parental placement, the child-placing agency
30 which submitted the report pursuant to § 63.1-220.3, ~~except as hereinafter provided in~~
31 subsection (b), shall cause the child to be visited, at least three times within a period of
32 six months, ~~such visits whenever~~ by an agent of such local board or department of public
33 welfare or social services or by an agent of such licensed or duly authorized child-placing
34 agency. ~~Whenever~~ *Whenever* practicable, ~~to~~ *such visits shall* be made within the six months' period
35 immediately following the date of entry of the interlocutory order, by an agent of a local
36 board or department of public welfare or social services, or by an agent of a child-placing
37 agency; ~~provided, however, that there be not~~ ; ~~however, no less than ninety days shall~~
38 *elapse* between the first visit and the last visit. The agency which placed the child, ~~the~~
39 *child-placing agency which submitted the report pursuant to § 63.1-220.3* or the local
40 superintendent of public welfare, ~~as applicable~~, shall make a written report to the court.
41 in such form as the Commissioner may prescribe, of the findings made pursuant to such
42 visitations, within fifteen days after completion of the last visit made in compliance with
43 this section. A copy of the report to the court shall be furnished to the counsel of record
44 for the parties, which copy shall be returned by such counsel as is required by § 63.1-236
45 for the return of the original report. A copy of the report to the court shall be served on
46 the Commissioner by delivering or mailing a copy to him on or before the day of filing
47 the report with the court. On the report to the court there shall be appended either
48 acceptance of service or certificate of the local superintendent of public welfare, or other
49 welfare agency of the county or city or the representative of the child-placing agency, that
50 copies were served as this section requires, showing the date of delivery or mailing. The
51 Commissioner may notify the court within twenty-one days of the date of delivery or
52 mailing of the report as shown by the agency, during which time the court shall withhold
53 consideration of the merits of the report pending review of the report by the
54 Commissioner, of any disapproval thereof stating reasons for any further action on the

1 report which he deems necessary.
 2 (b) B. The Commissioner shall cause the child to be visited as required in subsection
 3 (a) A hereof, when the petitioners live outside the Commonwealth or move outside the
 4 Commonwealth prior to completion of the visitations and probationary period, by a
 5 representative of a public welfare agency, or of any agency approved by the public welfare
 6 authorities, of the state, territory or country in which the petitioner lives or has relocated.
 7 ~~The~~ *Within thirty days after the Commissioner has received the report covering the last*
 8 *visit made in compliance with this section, the* Commissioner shall make to the court a
 9 written report of his findings made pursuant to such visitations ; ~~within thirty days after~~
 10 ~~receipt by the Commissioner of the report covering the last visit made in compliance with~~
 11 ~~this section and shall furnish a copy of such report to counsel of record for the parties ,~~
 12 ~~which copy shall be returned by such counsel as is required by § 63.1-236 for the return of~~
 13 ~~the original report.~~

14 (c) C. The three supervisory visits required in subsections (a) A and (b) B shall be
 15 conducted in the presence of the child. At least one such visit shall be conducted in the
 16 home of the petitioners in the presence of the child and both petitioners, unless the
 17 petition was filed by a single parent or one of the petitioners is no longer residing in the
 18 home.

19 (d) D. ~~Where~~ *When* it is determined ~~in~~ *for purposes of* subsection (c) C that the
 20 petitioner no longer resides in the adoptive home, the child-placing agency or local
 21 superintendent of public welfare pursuant to subsection (a) A or the Commissioner pursuant
 22 to subsection (b) B shall contact the petitioner to determine whether or not the *said*
 23 petitioner wishes to remain a party to the proceedings and shall include in its report to the
 24 court the results of its findings.

25 § 63.1-238.01. *Unauthorized child-placement activities; penalty.—Any person who, in*
 26 *carrying out the provisions of this chapter, engages in the activities of a child-placing*
 27 *agency without a license to do so shall be subject to the provisions of §§ 63.1-214 and*
 28 *63.1-215.*

29 § 63.1-238.02. *Duty of attorneys for the Commonwealth.—It shall be the duty of the*
 30 *attorney for the Commonwealth of every county and city to prosecute all violations of this*
 31 *chapter.*

32 2. That § 63.1-211.1 of the Code of Virginia is repealed.

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