

**REPORT OF THE
JOINT SUBCOMMITTEE STUDYING**

**THE COMMONWEALTH'S
ADOPTION LAWS**

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



HOUSE DOCUMENT NO. 65

**COMMONWEALTH OF VIRGINIA
RICHMOND
1995**

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STAFF

Division of Legislative Services

Jessica French Bolecek, *Senior Attorney*
Gayle Nowell Vergara, *Research Associate*
Megan Zwisohn, *Intern*
Carol S. Agee, *Operations Staff Assistant*

Office of the Clerk, House of Delegates

Ann Howard, *Committee Clerk*

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**RICHMOND, VIRGINIA
MAY, 1995**

I. AUTHORITY

House Joint Resolution No. 100, agreed to by the 1994 General Assembly, established a joint subcommittee to study the need to reform the Commonwealth's adoption laws, particularly pertaining to the consent period for parental placements (Appendix A). The resolution states that the deliberations of the joint subcommittee shall include, but not be limited to, the following issues:

1. The appropriate amount of time that the birth parents should wait after the birth of the child in order to make their final decision about placing the child for adoption;
2. Whether or not the birth parents should be given the option to revoke their decision, and if so, the number of days allowed to do so;
3. Whether Virginia should adopt the Uniform Adoption Act proposed by the National Conference of Commissioners on Uniform State Laws;
4. Whether the child should be placed with foster parents or with adoptive parents if the birth parents are considering revoking their decision; and
5. The rights of the father if he does not have the opportunity to come forward at the time of the decision.

II. BACKGROUND

A. Prior Legislative Studies

1. Report of the Joint Subcommittee on the Placement of Children for Adoption (Senate Document No. 18, 1977).

This 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. Recommended procedural safeguards, which were incorporated into the adoption statutes by the 1978 General Assembly, included requiring that a valid consent to parental placement adoptions be executed before the juvenile court and that birth parents have the opportunity for counseling.

2. Report of the Joint Subcommittee Studying Direct Adoption Placement and Unauthorized Placement Activity (House Document No. 67, 1989).

As a result of this study, additional protections were added for parental placement adoptions. The General Assembly adopted subcommittee recommendations that the adoptive home be investigated as early in the adoption process as possible, that both the birth and adoptive parents make informed decisions regarding the adoption, and that prohibited placement and adoption activities be clearly defined and that laws addressing these activities be effectively enforced.

B. Applicable Statutes

Laws governing parental placement and agency adoption are located in Chapter 11 of Title 63.1 (§ 63.1-220 et seq.) of the Virginia Code. Laws relating to consent for parental placement adoptions are as follows:

§ 63.1-220. **Definitions.** This section defines "parental placement" as "locating or effecting the placement of a child or the placing of a child in a family home by the child's parent or legal guardian for the purpose of foster care or adoption."

§ 63.1-220.1. **Who may place children for adoption.** The child's parent or legal guardian may place the child for adoption if the placement is a parental placement as defined in § 63.1-220.

§ 63.1-220.3. **Placement of children for adoption by parent or guardian.** This section sets forth requirements which must be met before a child can be placed for adoption by a parent or legal guardian.

The court must determine that the birth parents are aware of alternatives to adoption, adoption procedures and opportunities for placement with other adoptive families. The prospective adoptive parents must receive counseling regarding adoption from a child-placing agency. A home study of the prospective adoptive parents must be completed by a child-placing agency. In addition, the birth and adoptive parents must exchange certain identifying information, and any financial arrangement between the parties must be disclosed to the court.

Consent must be executed in compliance with the provisions of § 63.1-225 while before the court in person and in the presence of the perspective adoptive parents. Consent cannot be executed until the child is 10 days old. There is a 15-day revocation period after valid consent has been executed. Consent is revocable for any reason prior to the end of the 15-day period.

If the child is born to an unmarried woman, the father does not have to execute consent before the court if (i) he consents under oath and in writing to the adoption; (ii) the mother swears under written oath that the identity of the father is not reasonably ascertainable and there is no evidence to refute this; (iii) he fails to object within 21 days after notice of the proceedings is mailed to his last known address; or (iv) he denies paternity under written oath.

§ 63.1-225. **Parental, etc., consent.** Consent must be in writing and filed with the petition. Such consent must be signed and acknowledged before an officer authorized by law to take acknowledgments. The consent of a parent for the adoption of his child placed directly by the parent shall be executed as provided in § 63.1-220.3, and the court may accept a certified copy of an order entered pursuant to § 63.1-220.3 in satisfaction of all requirements of this section, provided the order clearly evidences compliance with the applicable notice and consent requirements of § 63.1-220.3.

C. Present Study

The subcommittee concentrated its deliberations on parental placement adoption.

Each year more newborns are placed through parental placement adoption than through agency adoption.¹ Parental placement adoptions allow birth parents to select adoptive parents for their child. Birth parents and adoptive parents often find each other through classified advertisements or through word of mouth. Although Virginia prohibits the exchange of anything of value in connection with an adoption, adoptive parents may provide financial assistance with the medical expenses of the birth mother and child, legal expenses of the adoption and living expenses of the birth mother if she is unable to work for medical reasons. (Va. Code § 63.1-220.4.)

Parental placement adoptions are attractive to birth parents for the following reasons: a desire by birth parents to play an active role in the selection of adoptive parents, a desire on the part of birth parents for the child to go directly into the physical custody of the adoptive parents rather than into temporary foster care and a perception that agencies are bureaucratic in their treatment of birth parents.² Parental placement adoptions are attractive to adoptive parents because they have a chance to play an active role in the selection of specific birth parents, they hope to avoid a long waiting period and they do not have to meet certain criteria required by an agency.³

A major concern for the adoptive parents in parental placement adoption is the potentiality that the birth parents will change their minds about placing the child for adoption, either prior to the birth of the child, at the time of the birth or after the child is in the physical custody of the adoptive parents. The period in which consent may be revoked exists to ensure that the birth parents' have made an informed and considered decision. A period of time at the end of which the birth parents' consent

¹ McDermott, Mark T., "Agency Versus Independent Adoption: The case for Independent Adoption," The Future of Children, Adoption, Center for the Future of Children: The David and Lucile Packard Foundation. v. 3, no. 1, pg. 146-152. (Spring 1993).

² *supra* fn. 1 at 147.

³ *supra* fn. 1 at 147.

becomes irrevocable is also a necessary element in the finalization of the adoption.

Currently in Virginia, a child must be at least 25 days old before consent without the possibility of revocation by birth parents can be achieved. Consent cannot be executed until 10 days after the child's birth, and consent can be revoked for 15 days after it is executed. The actual time before consent becomes final is often much longer than 25 days because the 15-day revocation period does not begin until valid consent is executed.

Recent court cases which have received national media attention, such as the Baby Jessica case (*DeBoers v. Schmidt*, 442 Mich. 648, 502 N.W.2d 649 (1993)), have spurred public interest in the rights of birth fathers along with concern about the turmoil imposed on the child when custody disputes arise.

III. SUBCOMMITTEE ACTIVITIES

A. First and Second Meetings.

The joint subcommittee met on four occasions. The first two meetings were used to acquaint subcommittee members with the central issues and variety of perspectives surrounding parental placement adoption.

1. Testimony

The subcommittee heard from the representatives of several organizations concerned with parental placement adoption as well as members of the general community involved with the adoption process on an individual basis.

Two sets of prospective adoptive parents urged the subcommittee to reconsider Virginia's adoption laws regarding the execution of parental consent. In both instances the prospective adoptive parents met the birth mother prior to the birth and took the baby home from the hospital; the birth mother had executed consent but revoked it within the revocation period. One birth mother revoked her consent when the infant was one month old but did not come for the child until two weeks later. In the other instance, the child was two months old when consent was revoked but due to a series of legal problems continued to live with the prospective adoptive parents until the age of six months.

The subcommittee also heard from a birth parent who spoke of the anguish she suffered by placing her baby for adoption. She stressed that the placement of a child for adoption has life-time consequences and is probably the most difficult decision anyone could ever make. Regarding the subcommittee's consideration of the appropriate consent period, she made the following observations: it is crucial that the decision of the birth parents be an informed decision, that they receive counseling which includes information on the long-term effects of their decision, that the decision not be made before the baby is born, that the immediate post-partum period is an inappropriate time for making this important decision, and that protections should be available to ensure that there is no coercion. Instead of reducing the current consent period, she advocated a 6-week consent period. She also advocated placing the child in foster care until the end of the consent period in order to protect the child in circumstances where the birth parents are unable to care for the child during that time (rather than the current practice of placement with the adoptive parents prior to the time when consent is considered final).

Another birth parent also strongly urged the subcommittee to reject any attempt to reduce the time for making the irrevocable decision by a parent to relinquish the child for adoption.

The National Council for Adoption (NCFCA), an association of 135 private nonprofit adoption agencies (four of which are licensed in Virginia) and over 4,000 adoptive parents, birth parents and adopted persons, whose mission is to actively promote and ensure sound and ethical adoption practices, pointed out that although several contested cases received a lot of media attention, of the 50,000 domestic unrelated adoptions in the United States annually, very few are contested. NCFCA advocated a "best interest of the child" provision in adoption laws, the establishment of a putative father registry and close examination of the parenting ability of an unmarried birth father who wishes to block an adoption that is desired by the birth mother. Although there are many areas of Virginia law that do not need changes, NCFCA suggested that there may be some provisions of the Uniform Adoption Act recently adopted by the National Conference of Commissioners on Uniform State Laws (NCCUSL) that would improve Virginia's laws.

Families for Private Adoption, a group of approximately 400 families from Virginia and the metropolitan Washington area, who have or who are in the process of going through the independent adoption process, spoke in support of existing Virginia law regarding independent adoptions.

The American Academy of Adoption Attorneys (AAAA), a national organization of 250 attorneys with expertise in adoption law practice (16 of whom practice in Virginia), commented on several possible improvements to

Virginia's adoption laws. According to the Academy, the parental placement consent delays are problematic and occur because of crowded court dockets, unavailability of one or both birth parents, or failure of the parties to act promptly. The Academy also noted that Virginia is somewhat unusual in requiring both an in-court consent and a revocation period after the in-court consent is given and questioned whether it is necessary to have both. AAAA suggested several changes to Virginia's adoption laws, including a suggestion that the 15-day period of revocation after a court supervised consent is unnecessary since: (i) a 10-day waiting period prior to the court supervised consent is presently mandatory and should remain in effect to provide adequate time for a clear, voluntary and informed consent to be made by the birth parent(s), (ii) the court supervision and statutory mandates of §63.1-220.3 fully protect the birth parent(s)' rights, (iii) the elimination of the revocation period would help to bring closure to the consent issue for all parties after the court supervised consent, and (iv) the 10-day period exceeds the 8-day period recommended by the Uniform Adoption Act. A repeal of the requirement that out-of-state birth mothers appear in a Virginia juvenile court (most other states do not have a similar requirement) was recommended. Instead, parallel court procedures in the location of the birth mother should be required in a court of competent jurisdiction. AAAA also suggested requiring a timely appearance in court, a best-interest hearing for the child, and a strict statute of limitations concerning the ability to attack an adoption proceeding, and imposing criminal sanctions on anyone who knowingly commits fraud in the adoption procedure. Other issues that were discussed briefly were docket preference, procedural revisions, and "clean up" revisions.

The Coalition for Adoption Reform is composed of the membership of all of Virginia's search and support groups and some individual professionals. The Coalition believes strongly that any change in adoption laws and policies must consider the rights, needs and perspectives of all members of the adoption triad--adoptees, birth parents and adoptive parents. Because parental placement consent is often not able to be given until far beyond a child's 10th day of life due to crowded court dockets, children are left in legal limbo, birth parents' desire to finalize their decision is unnecessarily delayed and adoptive parents' anxieties are heightened.

Coordinators/2, a licensed child-placing agency which assists birth parents who make an adoption plan for their child and places children currently in foster care with adoptive families, stated that the time frame for consent should be no less than 10 days. The decision to make an adoption plan is a process that is often begun before a child is born, re-evaluated once the baby is born and cannot be made until the birth mother has time to recuperate from delivery, understand and begin to feel the loss and be sure the reasons for making the adoption plan still exist.

A joint committee of the Virginia Association of Child Placing Agencies (VALCPA) and Adoption Development Outreach Planning Team (ADOPT) studying termination of parental rights stated that the termination issues that exist for parental placement adoptions also exist for agency placements. At the request of this committee, Delegate Marshall introduced House Bill 1413 (1994) which allowed a best-interests-of-the-child hearing if a birth parent revokes consent or if more than 15 days have elapsed following the birth parent's failure to appear at a hearing to execute consent, for which the parent received notice and had no good cause for failing to appear. The bill also provided that under certain circumstances there is no legal presumption in favor of any party in a best-interest hearing. Further, the bill provided that the knowing and intentional provision of false information or concealment of information which is material to an adoptive placement is a Class 5 felony. The bill was carried over to the 1995 General Assembly Session where no action was taken on the bill by the House Committee on Courts of Justice.

2. Uniform Adoption Act

The subcommittee received a report on the provisions of the Uniform Adoption Act which was recently adopted by the National Conference of Commissioners on Uniform State Laws (NCCUSL). The Uniform Adoption Act (UAA) was presented to the American Bar Association for approval and then submitted to the states for their adoption. The subcommittee reviewed the UAA provisions on preferred placements, relinquishment, how to consent to adoption, exceptions to consent, requirements for valid consent and relinquishment and the revocation of consent and relinquishment, effect of revocation, procedures for notice of adoption, confidentiality of records, release of identifying information, and permitted and prohibited activities. Regarding consent, the UAA provides that it can only be executed after birth and is unilaterally revocable in writing within 192 hours of birth, it must be in the birth parents' native language, it must include specific instructions for revocation, it must state the effect of execution, and it must be signed or confirmed before a witness (court, agency, uninvolved lawyer, etc.). The witness is required to ascertain that the parent, before consent execution, received information regarding its meaning/consequences, and information regarding the availability of counseling, procedures for release of information about the parents which will affect the physical or psychological well-being of the minor, and procedures for consensual release of identifying information, and in the case of minor parents, that they had access to counseling and the advice of an uninvolved lawyer. Adoption records are to be retained permanently and sealed for 99 years after birth. A statewide registry will

receive, file and retain documents requesting and/or authorizing, or not authorizing, the release of identifying information. Identifying information can be released only if there is mutual consent from the birth parent and the adoptee, adoptive parent, or descendent to exchange information.

3. Putative Father Registries

The subcommittee explored the usefulness of putative father registries. Currently 14 states have putative father registries, which provide states with a method to ensure the finalization of an adoption while providing unwed fathers who are not legal fathers a way in which they can statutorily establish their interest in the child and receive notice of any adoption hearing concerning the child. In *Lehr v. Robertson*, 463 U.S. 248 (1983), the United States Supreme Court held putative father registries to be constitutional. The Court found New York's putative father registry to be a legitimate balance between the putative father's desire to accept responsibility for developing a relationship with his child and the State's desire to ensure finality in adoption proceedings. The burden to register is on the putative father. Lack of knowledge of the pregnancy, or of the registry, is not considered a defense to not filing. The registries are usually housed in the state social services or health agency. Once the father has registered, the mother is notified and given the opportunity to refute the identity of the father with a court-ordered paternity test. Confidentiality of registry provisions vary by state. A fees is often not imposed on the putative father for fear it might discourage filing.

B. Third Meeting.

The subcommittee sorted through the broad range of adoption issues and legislative suggestions put before it during its two prior meetings. In order to ensure a comprehensive representation of interests and an accurate understanding of the problems affecting Virginia's adoption laws, the subcommittee invited Virginia's adoption community to participate and assist in the discussion on action to be taken by the subcommittee. Representatives of various organizations and viewpoints attended the meeting and participated in the discussion. The subcommittee worked from a list of the suggestions made at its previous meetings and discussed each with those in attendance. Topics discussed included consent periods, docket preference, foster care, best interest of the child, criminal sanctions, and birth father rights. The ideas endorsed by the subcommittee at its third meeting were incorporated into draft legislation that was mailed to interested parties prior to the fourth meeting.

Organizations whose members participated in discussions regarding the drafting of the proposed legislation and which were not previously mentioned are: the Parental Placement Committee of ADOPT, Catholic Charities, Children's Home Society, the Barker Foundation, and Concerned United Birth Parents.

C. Fourth Meeting.

The subcommittee reviewed the draft legislation that it had previously authorized. The legislation was explained and discussed among subcommittee members and with the representatives of various adoption groups attending the meeting. The subcommittee approved the draft legislation with some changes and refinements and voted to have the legislation prepared for introduction during the 1995 General Assembly Session. The subcommittee learned that verification was not intended for petitions seeking to schedule a hearing for birth parents' consent in parental placement adoptions and that inconsistent application of this rule by various courts has caused confusion as to the proper form of the petition to be used in each jurisdiction. Verification is often difficult to obtain because the birth mother may still be in the hospital. This amendment is intended to provide statewide consistency.

V. FINDINGS AND RECOMMENDATIONS

The discussion on consent periods focused on the need to maintain parallel consent periods in both agency and parental placement adoptions and whether Virginia's current time frames for executing and revoking consent are sufficient to meet the needs of all involved parties. It was expressed by many that most of the problems concerning consent periods relate to the necessary parties to the adoption into court. Rather than revising the time periods, the subcommittee decided to recommend that Virginia's adoption laws be amended to require a timely appearance by the birth parent or parents in court along with enforcement mechanisms. The subcommittee decided not to take any action relating to the establishment of a putative fathers registry or the use of foster care in the parental placement process. It was the feeling of the subcommittee that the changes being made in other areas of Virginia's adoption laws would adequately address the issues of fathers' rights and foster care. The legislation proposed a number of changes to Virginia's adoption laws, most of which are designed to make the adoption process run more smoothly.

Two identical bills were introduced, House Bill 2489 (Patron: Delegate Puller) and Senate Bill 1096 (Patron: Senator Earley). The bills were amended substantially during the legislative process. Both bills passed and were identical when signed by the Governor (Appendix B). The effective date of the bills is July 1, 1995.

The legislation, as passed, contains the following provisions:

Birth parents' failure to appear at hearing to execute consent--The bill provides that if the birth parent(s) placed the child with prospective adoptive parents and if both birth parents failed, without good cause, to appear at a hearing to execute consent after receiving proper notice, the court may grant the petition without the consent of either birth parent. The court may enter an order waiving consent and transferring custody of the child to the prospective adoptive parents, effective in fifteen days. Prior to the entry of such an order, the court may appoint legal counsel for the birth parents and shall find by clear and convincing evidence that (i) the birth parents were given proper notice of the hearing to execute consent and of the hearing to proceed without their consent, (ii) the birth parents failed to show good cause for their failure to appear at such hearing(s) and (iii) pursuant to § 63.1-225.1, the consent of the birth parents is withheld contrary to the best interests of the child or is unobtainable.

Birth parents' failure to execute consent--The court must consider whether the failure to grant the adoption petition would be detrimental to the child when determining whether the valid consent of any person whose consent is required is withheld contrary to the best interests of the child or is unobtainable. All relevant factors must be considered by the court, including: the birth parent(s)' efforts to obtain or maintain legal and physical custody of the child, whether the birth parent(s)' efforts to assert parental rights were thwarted by other people, the birth parent(s)' ability to care for the child, the age of the child, the quality of any previous relationship between the birth parent(s) and the child and between the birth parent(s) and any other minor children, the duration and suitability of the child's present custodial environment and the effect of a change of physical custody on the child.

No parental presumption--If the birth parent attempts to gain custody of the child after the expiration of a birth parent's revocation period, there shall be no parental presumption in favor of any party. The court shall determine if the birth parent's consent is required and, if so, whether consent is being withheld contrary to the best interests of the child or unobtainable. This provision was not recommended by the subcommittee.

Adult great uncles and aunts--Adult great-uncles and -aunts are added to the list of prospective adoptive parent relatives that a birth parent may place his child with and execute consent before an authorized officer rather than in the juvenile and domestic relations district court.

Husband not the father--The bill provides that the consent of the birth mother's husband is not required where there is evidence that the husband is not the father of the child and clarifies that an additional court hearing after the order of publication is finished is not necessary to determine if the petition should be granted without consent, i.e., that the court may consider the evidence without holding a hearing.

One birth parent consents--If one of the birth parents meets all of the requirements of parental placement, then the court shall accept that birth parent's consent pending notification to any non-consenting birth parent. This allows each birth parent to have a separate hearing and will not require a birth mother to wait until after an order of publication on the birth father before she can execute consent.

Unmarried birth father--A birth father who is not married to the birth mother of the child at the time of the child's conception or birth, may execute an out-of-court consent after the child's birth. The consent shall advise the birth father of his opportunity for representation, shall include the name, address and telephone number of his counsel or an acknowledgment or waiver of counsel and may waive further notice of adoption proceedings.

Nonconsenting birth parent--When a birth parent whose consent is required is known and has neither consented nor denied paternity, he shall be given notice and an opportunity to be heard. The hearing may be heard subsequent to the consenting birth parent's hearing, but may not be heard until 21 days after personal service or 10 days after completion of an order of publication. The court may appoint counsel for the nonconsenting birth parent. If the court finds that consent is withheld contrary to the best interests of the child or is unobtainable, the court may grant the petition without such consent. If the court denies the petition, any previous consent shall be void, and the court shall determine custody of the child between the birth parents.

Out-of-state birth parent--The bill provides that a birth parent who does not live in Virginia may execute consent in a court having jurisdiction of child custody matters in the jurisdiction where the birth parent resides upon request of that court pursuant to the Uniform Child Custody Jurisdiction Act. This will avoid the expense and inconvenience of having an out-of-state birth mother travel to Virginia.

Revocation of consent--Specific requirements for revocation of consent are added so that birth parents will know exactly how to revoke their consent and so that it will be clear as to whether or not a revocation has occurred.

Custody after consent--The bill specifically provides that the adoptive parents have custody of the child after the court's acceptance of the birth parents' consent.

Persons without a legitimate interest--A recent amendment to § 16.1-241 A 6 provides that a person convicted of incest, forced rape or intercourse with a person under the age of thirteen resulting in the birth of a child cannot be a party with a legitimate interest in determining the custody of the child. Throughout the bill, amendments eliminate the need for consent of or notice to such a birth father when the child is the subject of an adoption petition.

Docket preference--The bill requires a consent hearing to be advanced on the docket so as to be heard by the court within 10 days of filing the petition or as soon thereafter as possible. In some jurisdictions it takes months to get on the docket, which results in a period of uncertainty for the birth parents, child and adoptive parents. It was agreed that creating a docket preference for adoption cases would be highly beneficial in promoting an important sense of timing for the parties.

Provision of false information--The bill provides that it is a Class 6 felony for any person to knowingly and intentionally provide false information, in writing and under oath, which is material to an adoptive placement. The Commissioner of Social Services is authorized to investigate such cases and refer them to the Commonwealth's attorney.

Allowable expenses--The bill broadens and clarifies what expenses may be paid for the adoption and on behalf of the birth parents. Insurance premiums directly related to the birth mother's pregnancy and hospitalization for the birth of the child, mental health counseling for the birth parents if related to the adoption, reasonable expenses (including but not limited to transportation, food and lodging) incurred incident to any court appearance required for a parental placement adoption, and transportation for any of the services for which payment is allowed, are added. The penalty for violating the section is reduced from a Class 5 to a Class 6 felony.

Venue--Venue for adoption hearings may be commenced in one of three jurisdictions: where the birth mother resides, where the child was born, or where the prospective adoptive parents reside.

Jurisdiction--The bill provides that jurisdiction for parental placement adoption consent hearings is in the juvenile and domestic relations district court (or family court if it comes into being).

Petition verification--The bill clarifies that parental placement consent petitions do not have to be verified but can be signed by the petitioner's counsel. Several courts in the state require that a petition filed pursuant to § 63.1-220.3 be verified as a result of language in § 16.1-262 (5).

Legal counsel--The bill requires that birth parents must be informed of their opportunity to be represented by legal counsel.

Attack of final order of adoption--The bill strengthens an existing Code section stating that a final order of adoption is not subject to attack after six months by stating that such an order is not subject to attack "for any reason, including but not limited to fraud, duress, failure to give any required notice, failure of any procedural requirement, or lack of jurisdiction over any person."

Stepparent adoption investigations--The bill clarifies that in stepparent adoptions an investigation by the local department of social services is undertaken only if the court determines that one is necessary.

Definition of birth parent--A definition of "birth parent" is added. It provides that a parent by a previous adoption is a birth parent so that an adoptive parent may place an adopted child for adoption. Throughout various Code sections "birth" is added before "parent" for clarity and consistency. Currently, "parent," "natural parent," "biological parent," and "birth parent" are used.

Removal from adoptive home--If a child is removed from the prospective adoptive parents' home after the court has granted custody, the court shall void any consent previously given and shall determine custody of the child. Currently the court must commit the child to the local department of social services and the local department has the authority to place the child for adoption.

Agency visits and filing of petition--Current law provides that in agency or foreign placements the three required agency visits must be within the six months immediately preceding the filing of the petition. This

requirement to file the petition immediately upon the close of the six months may be waived by the court for good cause shown as long as the three visits were made in some six-month period preceding the filing. Because current law gives a very narrow window for filing unless good cause is shown, the bill provides that the visits must have occurred in the eight months immediately preceding the filing. The visits themselves must still occur within a six-month period.

VI. CONCLUSION

The subcommittee concluded that Virginia's adoption laws are fundamentally sound but that certain revisions could be made which would better accommodate the parties' intentions, better protect the interests of all parties and minimize technical challenges to adoption proceedings. The legislation sponsored by the subcommittee seeks to accomplish these objectives.

Respectfully submitted,

The Honorable Linda T. Puller, *Chairman*
The Honorable Edward M. Holland, *Vice-Chair*
The Honorable Howard E. Copeland
The Honorable W. Roscoe Reynolds
The Honorable Phillip A. Hamilton
The Honorable Jackson E. Reasor, Jr.
The Honorable Mark L. Earley

HOUSE JOINT RESOLUTION NO. 100

Establishing a joint subcommittee to study the need to reform the Commonwealth's adoption laws, particularly pertaining to the consent period for parental placement adoptions.

Agreed to by the House of Delegates, March 2, 1994

Agreed to by the Senate, February 28, 1994

WHEREAS, recent custody battles resulting from parental placement adoptions have increased national awareness concerning adoption laws; and

WHEREAS, adoption laws differ from state to state, and are often characterized by differing lengths of time during which the birth parents may revoke their consent; and

WHEREAS, if consent may be revoked for any reason within a lengthy period of time, the decision to place a child for adoption may be made with less deliberation since the birth parents know that they may revoke their consent; and

WHEREAS, before the birth parents make the final decision to put the child up for adoption, enough time must pass so that the birth mother's decision-making skills are not impaired by medication; and

WHEREAS, the placement of a child with an adoptive family prior to the expiration of the time in which birth parents may revoke their consent is an "at risk" placement; and

WHEREAS, if the birth parents revoke their decision to place the child for adoption, the child must be removed from the adoptive parents, thereby interrupting the bonding process which is crucial to the child's future development as a healthy individual; and

WHEREAS, delayed or disrupted bonding experiences can have a long-lasting detrimental effect on the well-being of the child; and

WHEREAS, the decision to place a child is a painful and agonizing decision that birth parents make because they believe that it is in the best interests of the child, and a reduced amount of time between when the birth parents execute their consent and the time during which they are able to revoke it may also reduce the grieving process for the birth parents; and

WHEREAS, at the present time, Virginia law provides that consent may not be executed before a child is ten days old and must be executed in court, that the birth parents must be made aware of alternatives to adoption, adoption procedures, and opportunities for placement with other adoptive families, and that the birth parents' consent is informed and not coerced; and

WHEREAS, pursuant to § 63.1-220.3 of the Code of Virginia, consent is revocable for up to fifteen days from its execution; and

WHEREAS, the National Council for Adoption Committee on Ethical Standards in Adoption recommends that an irrevocable consent may be taken at any time after seventy-two hours following the birth of the child or just prior to the release of the mother from the hospital; and

WHEREAS, the National Conference of Commissioners on Uniform State Laws is drafting a model uniform adoption statute which would provide that if a birth parent executes a consent before the child is 120 hours old, the parent may revoke the consent within 120 hours after the child's birth; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That a joint subcommittee be established to study the Commonwealth's parental placement adoption laws. Issues to be studied shall include (i) the appropriate amount of time that birth parents should wait after the birth of the child in order to make their final decision about placing the child for adoption; (ii) whether or not the birth parents should be given the option to revoke their decision, and if so, the number of the days allowed to do so; (iii) whether the state of Virginia should adopt the Uniform State Law; (iv) whether the child should be placed with foster parents or with adoptive parents if the birth parents are considering revoking their decision; (v) the rights of the father if he does not have the opportunity to come forward at the time of the decision; and (vi) any other issues that the joint subcommittee deems necessary.

The joint subcommittee shall be composed of seven members as follows: four members of the House of Delegates to be appointed by the Speaker of the House of Delegates; and three members of the Senate to be appointed by the Senate Committee on Privileges and Elections.

The joint subcommittee shall complete its work in time to submit its findings and recommendations to the Governor and the 1995 Session of the General Assembly as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents.

The direct costs of this study shall not exceed \$5,250.

Implementation of this resolution is subject to subsequent approval and certification by the Joint Rules Committee. The Committee may withhold expenditures or delay the period for the conduct of the study.

APPENDIX B
VIRGINIA ACTS OF ASSEMBLY -- 1995 RECONVENED SESSION

CHAPTER 772

REENROLLED

CHAPTER 826

An Act to amend and reenact §§ 16.1-241, 16.1-243, 16.1-262, and 63.1-204 as they are currently effective and as they may become effective, §§ 63.1-220 and 63.1-220.2, § 63.1-220.3 as it is currently effective and as it may become effective, § 63.1-220.4, §§ 63.1-220.5, 63.1-221 and 63.1-222 as they are currently effective and as they may become effective, §§ 63.1-223, 63.1-225, 63.1-227, 63.1-229, 63.1-231, and 63.1-233, § 63.1-236 as it is currently effective and as it may become effective, §§ 63.1-236.01, 63.1-236.1, and 63.1-237 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 63.1-220.6, 63.1-220.7 and 63.1-225.1, relating to adoption; penalties.

[H 2489] [S 1096]

Approved April 6, 1995

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-241, 16.1-243, 16.1-262, and 63.1-204 as they are currently effective and as they may become effective, §§ 63.1-220 and 63.1-220.2, § 63.1-220.3 as it is currently effective and as it may become effective, § 63.1-220.4, §§ 63.1-220.5, 63.1-221 and 63.1-222 as they are currently effective and as they may become effective, §§ 63.1-223, 63.1-225, 63.1-227, 63.1-229, 63.1-231, and 63.1-233, § 63.1-236 as it is currently effective and as it may become effective, §§ 63.1-236.01, 63.1-236.1, and 63.1-237 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 63.1-220.6, 63.1-220.7 and 63.1-225.1 as follows:

§ 16.1-241. Jurisdiction.

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 under the provisions of § 16.1-269.6;

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 § 63.1-56 or § 63.1-204 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;

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

The authority of the juvenile court to adjudicate matters involving the custody, visitation, support, control or disposition of a child shall not be limited to the consideration of petitions filed by a mother, father or legal guardian but shall include petitions filed at any time by any party with a legitimate interest therein. A party with a legitimate interest shall be broadly construed and shall include, but not be limited to, grandparents, stepparents, former stepparents, blood relatives and family members. A party with a legitimate interest shall not include any person (i) whose parental rights have been involuntarily terminated by court order if the child subsequently has been legally

adopted, or (ii) who has been convicted of a violation of subsection A of § 18.2-61 or subsection B of § 18.2-366 when the child who is the subject of the petition was conceived as a result of such violation. The authority of the juvenile court to consider a petition involving the custody of a child shall not be proscribed or limited where the child has previously been awarded to the custody of a local board of social services.

B. The admission of minors for inpatient treatment in a mental health facility in accordance with the provisions of Article 16 (§ 16.1-335 et seq.) of this chapter and the commitment of a mentally ill person or judicial certification of eligibility for admission to a treatment facility of a mentally retarded person in accordance with the provisions of Chapters 1 (§ 37.1-1 et seq.) and 2 (§ 37.1-63 et seq.) of Title 37.1. Jurisdiction of the commitment and certification of adults shall be concurrent with the general district court.

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

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

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

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

1. Who has been abused or neglected;
2. Who is the subject of an entrustment agreement entered into pursuant to § 63.1-56 or § 63.1-204 or is otherwise before the court pursuant to subdivision A 4 of this section;
3. Who has been adjudicated in need of services, in need of supervision, or delinquent, if the court finds that such person has by overt act or omission induced, caused, encouraged or contributed to the conduct of the child complained of in the petition.

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

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

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

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

In prosecution for felonies over which the court has jurisdiction, jurisdiction shall be limited to determining whether or not there is probable cause. For purposes of this subsection, "family or household member," as defined in § 16.1-228, shall also be construed to include parent and child, stepparent and stepchild, brothers and sisters, and grandparent and grandchild, regardless of whether such persons reside in the same home.

K. Petitions filed by a natural parent, whose parental rights to a child have been voluntarily relinquished pursuant to a court proceeding, to seek a reversal of the court order terminating such parental rights. No such petition shall be accepted, however, after the child has been placed in the home of adoptive parents.

L. Any person who seeks spousal support after having separated from his spouse. A decision

under this subdivision shall not be res judicata in any subsequent action for spousal support in a circuit court. A circuit court shall have concurrent original jurisdiction in all causes of action under this subdivision.

M. Petitions filed for the purpose of obtaining an order of protection pursuant to § 16.1-253.1 or § 16.1-279.1.

N. Any person who escapes or remains away without proper authority from a residential care facility in which he had been placed by the court or as a result of his commitment to the Virginia Department of Youth and Family Services.

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

P. Petitions for enforcement of administrative support orders entered pursuant to Chapter 13 (§ 63.1-249 et seq.) of Title 63.1, or by another state in the same manner as if the orders were entered by a juvenile and domestic relations district court upon the filing of a certified copy of such order in the juvenile and domestic relations district court.

Q. Petitions for a determination of parentage pursuant to Chapter 3.1 (§ 20-49.1 et seq.) of Title 20.

R. Petitions for the purpose of obtaining an emergency protective order pursuant to § 16.1-253.4.

S. Petitions filed by school boards against a parent pursuant to § 16.1-241.2.

T. Petitions filed in connection with parental placement adoption consent hearings, pursuant to § 63.1-220.3. Such proceedings shall be advanced on the docket so as to be heard by the court within ten days of filing of the petition, or as soon thereafter as practicable so as to provide the earliest possible disposition.

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

§ 16.1-241. (Delayed effective date) Jurisdiction.

The judges of the family 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 family 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 family 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 family court has been terminated under the provisions of § 16.1-269.6;

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;

4. Who is the subject of an entrustment agreement entered into pursuant to § 63.1-56 or § 63.1-204 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;

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

The authority of the family court to adjudicate matters involving the custody, visitation, support, control or disposition of a child shall not be limited to the consideration of petitions filed by a mother, father or legal guardian but shall include petitions filed at any time by any party with a legitimate interest therein. A party with a legitimate interest shall be broadly construed and shall include, but not be limited to, grandparents, stepparents, former stepparents, blood relatives and family members. A party with a legitimate interest shall not include any person (i) whose parental rights have been involuntarily terminated by court order if the child subsequently has been legally adopted, or (ii) who has been convicted of a violation of subsection A of § 18.2-61 or subsection B of § 18.2-366 when the child who is the subject of the petition was conceived as a result of such

violation. The authority of the family court to consider a petition involving the custody of a child shall not be proscribed or limited where the child has previously been awarded to the custody of a local board of social services.

B. The admission of minors for inpatient treatment in a mental health facility in accordance with the provisions of Article 16 (§ 16.1-335 et seq.) of this chapter and the commitment of a mentally ill person or judicial certification of eligibility for admission to a treatment facility of a mentally retarded person in accordance with the provisions of Chapters 1 (§ 37.1-1 et seq.) and 2 (§ 37.1-63 et seq.) of Title 37.1. Jurisdiction of the commitment and certification of adults shall be concurrent with the general district court.

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

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

E. Any person charged with deserting, abandoning or failing to provide support for any person in violation of law pursuant to Chapter 5 (§ 20-61 et seq.) of Title 20.

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

1. Who has been abused or neglected;
2. Who is the subject of an entrustment agreement entered into pursuant to § 63.1-56 or § 63.1-204 or is otherwise before the court pursuant to subdivision A 4 of this section;
3. Who has been adjudicated in need of services, in need of supervision, or delinquent, if the court finds that such person has by overt act or omission induced, caused, encouraged or contributed to the conduct of the child complained of in the petition.

G. Petitions filed by or on behalf of a child or such child's parent, guardian, legal custodian or other person standing in loco parentis for the purpose of obtaining treatment, rehabilitation or other services which are required by law to be provided for that child or such child's parent, guardian, legal custodian or other person standing in loco parentis.

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

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

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

In prosecution for felonies over which the court has jurisdiction, jurisdiction shall be limited to determining whether or not there is probable cause. For purposes of this subsection, "family or household member," as defined in § 16.1-228, shall also be construed to include parent and child, stepparent and stepchild, brothers and sisters, and grandparent and grandchild, regardless of whether such persons reside in the same home.

K. Petitions filed by a natural parent, whose parental rights to a child have been voluntarily relinquished pursuant to a court proceeding, to seek a reversal of the court order terminating such parental rights. No such petition shall be accepted, however, after the child has been placed in the home of adoptive parents.

L. Any person who seeks spousal support after having separated from his spouse.

M. Petitions filed for the purpose of obtaining an order of protection pursuant to § 16.1-253.1 or § 16.1-279.1.

N. Any person who escapes or remains away without proper authority from a residential care

facility in which he had been placed by the court or as a result of his commitment to the Virginia Department of Youth and Family Services.

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

P. Petitions for enforcement of administrative support orders entered pursuant to Chapter 13 (§ 63.1-249 et seq.) of Title 63.1, or by another state in the same manner as if the orders were entered by a family court upon the filing of a certified copy of such order in the family court.

Q. Petitions for a determination of parentage pursuant to Chapter 3.1 (§ 20-49.1 et seq.) of Title 20.

R. Petitions for the purpose of obtaining an emergency protective order pursuant to § 16.1-253.4.

S. Suits for divorce and for annulling or affirming marriage in accordance with Title 20.

T. Suits for separate maintenance.

U. Suits for equitable distribution based on a foreign decree in accordance with § 20-107.3.

V. Petitions for adoption.

W. Petitions for change of name when incident to suits for annulling or affirming marriage, divorce, or adoption or when ancillary to any action within the jurisdiction of the family court.

X. Petitions regarding records of birth pursuant to Chapter 7 (§ 32.1-249 et seq.) of Title 32.1.

Y. Judicial review of school board actions pursuant to § 22.1-87 and of hearing officer decisions pursuant to §§ 22.1-214 and 22.1-214.1.

Z. Petitions filed by school boards against a parent pursuant to § 16.1-241.2.

AA. Petitions filed in connection with parental placement adoption consent hearings, pursuant to § 63.1-220.3. Such proceedings shall be advanced on the docket so as to be heard by the court within ten days of filing of the petition, or as soon thereafter as practicable so as to provide the earliest possible disposition.

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

§ 16.1-243. Venue.

A. Original venue:

1. Cases involving children, other than support: Proceedings with respect to children under this law, except support proceedings, shall:

a. Delinquency: If delinquency is alleged, be commenced in the city or county where the acts constituting the alleged delinquency occurred or they may, with the written consent of the child and the attorney for the Commonwealth for both jurisdictions, be commenced in the city or county where the child resides; and

b. Custody or visitation: In cases involving custody or visitation, be commenced in the court of the city or county which, in order of priority, (i) is the home of the child at the time of the filing of the petition, or had been the home of the child within six months before the filing of the petition and the child is absent from the city or county because of his removal or retention by a person claiming his custody or for other reasons, and a parent or person acting as a parent continues to live in the city or county, (ii) has significant connection with the child and in which there is substantial evidence concerning the child's present or future care, protection, training and personal relationships, (iii) is where the child is physically present and the child has been abandoned or it is necessary in an emergency to protect the child because he has been subjected to or threatened with mistreatment or abuse or is otherwise neglected or dependent or (iv) it is in the best interest of the child for the court to assume jurisdiction as no other city or county is an appropriate venue under the preceding provisions of this subdivision;

c. Adoption: *In parental placement adoption consent hearings pursuant to §§ 16.1-241 and 63.1-220.3, be commenced (i) in the city or county where the child to be adopted was born, (ii) in the city or county where the birth parent(s) reside, or (iii) in the city or county where the prospective adoptive parent(s) reside; and*

d. All other cases: In all other proceedings, be commenced in the city or county where the child resides or in the city or county where the child is present when the proceedings are commenced.

2. Support: Proceedings that involve child or spousal support or child and spousal support, exclusive of proceedings arising under Chapter 5 (§ 20-61 et seq.) of Title 20, shall be commenced in

the city or county where either party resides or in the city or county where the respondent is present when the proceeding commences.

3. Spousal abuse: Proceedings in which an order of protection is sought as a result of spousal abuse shall be commenced where either party has his or her principal residence or where the abuse occurred.

B. Transfer of venue:

1. Generally: Except in custody, visitation and support cases, if the child resides in a city or county of the Commonwealth and the proceeding is commenced in a court of another city or county, that court may at any time, on its own motion or a motion of a party for good cause shown, transfer the proceeding to the city or county of the child's residence for such further action or proceedings as the court receiving the transfer may deem proper. However, such transfer may occur only after adjudication in delinquency proceedings.

2. Custody and visitation: In custody and visitation cases, if venue lies in one of several cities or counties, the court in which the motion for transfer is made shall determine which such city or county is the most appropriate venue unless the parties mutually agree to the selection of venue. In the consideration of the motion, the best interests of the child shall determine the most appropriate forum.

3. Support: In support proceedings, exclusive of proceedings arising under Chapter 5 (§ 20-61 et seq.) of Title 20, if the respondent resides in a city or county in the Commonwealth and the proceeding is commenced in a court of another city or county, that court may, at any time on its own motion or a motion of a party for good cause shown or by agreement of the parties, transfer the proceeding to the city or county of the respondent's residence for such further action or proceedings as the court receiving the transfer may deem proper. For the purposes of determining venue of cases involving support, the respondent's residence shall include any city or county in which the respondent has resided within the last six months prior to the commencement of the proceeding or in which the respondent is residing at the time that the motion for transfer of venue is made. If venue is transferable to one of several cities or counties, the court in which the motion for transfer is made shall determine which such city or county is the most appropriate venue unless the parties mutually agree to the selection of such venue.

When the support proceeding is a companion case to a child custody or visitation proceeding, the provisions governing venue in the proceeding involving the child's custody or visitation shall govern.

4. Subsequent transfers: Any court receiving a transferred proceeding as provided in this section may in its discretion transfer such proceeding to a court in an appropriate venue for good cause shown based either upon changes in circumstances or mistakes of fact or upon agreement of the parties. In any transfer of venue in cases involving children, the best interests of the child shall be considered in deciding if and to which court a transfer of venue would be appropriate.

5. Enforcement of orders for support, maintenance and custody: Any juvenile and domestic relations district court to which a suit is transferred for enforcement of orders pertaining to support, maintenance, care or custody pursuant to § 20-79 (c) may transfer the case as provided in this section.

C. Records: Originals of all legal and social records pertaining to the case shall accompany the transfer of venue. The transferor court may, in its discretion, retain such copies as it deems appropriate.

§ 16.1-243. (Delayed effective date) Venue.

A. Original venue:

1. Cases involving children, other than support: Proceedings with respect to children under this law, except support proceedings, shall:

a. Delinquency: If delinquency is alleged, be commenced in the city or county where the acts constituting the alleged delinquency occurred or they may, with the written consent of the child and the attorney for the Commonwealth for both jurisdictions, be commenced in the city or county where the child resides; and

b. Custody or visitation: In cases involving custody or visitation, be commenced in the court of the city or county which, in order of priority, (i) is the home of the child at the time of the filing of the petition, or had been the home of the child within six months before the filing of the petition and the child is absent from the city or county because of his removal or retention by a person claiming his custody or for other reasons, and a parent or person acting as a parent continues to live in the city

or county, (ii) has significant connection with the child and in which there is substantial evidence concerning the child's present or future care, protection, training and personal relationships, (iii) is where the child is physically present and the child has been abandoned or it is necessary in an emergency to protect the child because he has been subjected to or threatened with mistreatment or abuse or is otherwise neglected or dependent or (iv) it is in the best interest of the child for the court to assume jurisdiction as no other city or county is an appropriate venue under the preceding provisions of this subdivision;

c. Adoption: In parental placement adoption consent hearings pursuant to §§ 16.1-241 and 63.1-220.3, be commenced (i) in the city or county where the child to be adopted was born, (ii) in the city or county where the birth parent(s) reside, or (iii) in the city or county where the prospective adoptive parent(s) reside; and

d. All other cases: In all other proceedings, be commenced in the city or county where the child resides or in the city or county where the child is present when the proceedings are commenced.

2. Support: Proceedings that involve child or spousal support or child and spousal support, exclusive of proceedings arising under Chapter 5 (§ 20-61 et seq.) of Title 20, shall be commenced in the city or county where either party resides or in the city or county where the respondent is present when the proceeding commences.

3. Spousal abuse: Proceedings in which an order of protection is sought as a result of spousal abuse shall be commenced where either party has his or her principal residence or where the abuse occurred.

4. Divorce, annulment, affirmation, separate maintenance or equitable distribution: Suits for divorce, annulment or affirmation of marriage, separate maintenance or equitable distribution based on a foreign decree shall be governed by Chapter 5 (§ 8.01-257 et seq.) of Title 8.01.

5. Adoption: Proceedings for adoption shall be governed by §§ 63.1-221 and 63.1-222.

6. Emancipation: Proceedings for emancipation shall be governed by § 16.1-331.

7. Injunction: Proceedings to award an injunction shall be governed by Chapter 5 (§ 8.01-257 et seq.) of Title 8.01.

8. Change of name: Proceedings to change a name shall be governed by § 8.01-217.

B. Transfer of venue:

1. Generally: Except in custody, visitation and support cases, if the child resides in a city or county of the Commonwealth and the proceeding is commenced in a court of another city or county, that court may at any time, on its own initiative or a motion of a party for good cause shown, transfer the proceeding to the city or county of the child's residence for such further action or proceedings as the court receiving the transfer may deem proper. However, such transfer may occur only after adjudication in delinquency proceedings.

2. Custody and visitation: In custody and visitation cases, if venue lies in one of several cities or counties, the court in which the motion for transfer is made shall determine which such city or county is the most appropriate venue unless the parties mutually agree to the selection of venue. In the consideration of the motion, the best interests of the child shall determine the most appropriate forum.

3. Support: In support proceedings, exclusive of proceedings arising under Chapter 5 (§ 20-61 et seq.) of Title 20, if the respondent resides in a city or county in the Commonwealth and the proceeding is commenced in a court of another city or county, that court may, at any time on its own motion or a motion of a party for good cause shown or by agreement of the parties, transfer the proceeding to the city or county of the respondent's residence for such further action or proceedings as the court receiving the transfer may deem proper. For the purposes of determining venue of cases involving support, the respondent's residence shall include any city or county in which the respondent has resided within the last six months prior to the commencement of the proceeding or in which the respondent is residing at the time that the motion for transfer of venue is made. If venue is transferable to one of several cities or counties, the court in which the motion for transfer is made shall determine which such city or county is the most appropriate venue unless the parties mutually agree to the selection of such venue.

When the support proceeding is a companion case to a child custody or visitation proceeding, the provisions governing venue in the proceeding involving the child's custody or visitation shall govern.

4. Subsequent transfers: Any court receiving a transferred proceeding as provided in this section

may in its discretion transfer such proceeding to a court in an appropriate venue for good cause shown based either upon changes in circumstances or mistakes of fact or upon agreement of the parties. In any transfer of venue in cases involving children, the best interests of the child shall be considered in deciding if and to which court a transfer of venue would be appropriate.

5. Enforcement of orders for support, maintenance and custody: Any family court to which a suit is transferred for enforcement of orders pertaining to support, maintenance, care or custody pursuant to § 20-79 (c) may transfer the case as provided in this section.

6. Transfer of venue in suits for divorce, annulment or affirmation of marriage, separate maintenance, or equitable distribution based on a foreign decree, or to award an injunction shall be governed by Chapter 5 (§ 8.01-257 et seq.) of Title 8.01 as these provisions relate to circuit court.

C. Records: Originals of all legal and social records pertaining to the case shall accompany the transfer of venue. The transferor court may, in its discretion, retain such copies as it deems appropriate.

§ 16.1-262. Form and content of petition.

The petition shall contain the facts below indicated:

"Commonwealth of Virginia, In re " a
(name of child)

child under eighteen years of age.

"In the Juvenile and Domestic Relations District Court of the
county (or city) of....."

1. Statement of name, age, date of birth, if known, and residence of the child.
2. Statement of names and residence of his parents, guardian, legal custodian or other person standing in loco parentis and spouse, if any.
3. Statement of names and residence of the nearest known relatives if no parent or guardian can be found.
4. Statement of the specific facts which allegedly bring the child within the purview of this law. If the petition alleges a delinquent act, it shall make reference to the applicable sections of the Code which designate the act a crime.
5. Statement as to whether the child is in custody, and if so, the place of detention or shelter care, and the time the child was taken into custody, and the time the child was placed in detention or shelter care.

If any of the facts herein required to be stated are not known by the petitioner, the petition shall so state. The petition shall be verified, *except that petitions filed under § 63.1-220.3 may be signed by the petitioner's counsel*, and may be upon information.

In accordance with § 16.1-69.32, the Supreme Court may formulate rules for the form and content of petitions in the juvenile court concerning matters related to the custody, visitation or support of a child and the protection, support or maintenance of an adult where the provisions of this section are not appropriate.

§ 16.1-262. (Delayed effective date) Form and content of petition.

The petition shall contain the facts below indicated:

"Commonwealth of Virginia, In re " a
(name of child)

child under eighteen years of age.

"In the Family Court of the county (or city) of"

1. Statement of name, age, date of birth, if known, and residence of the child.
2. Statement of names and residence of his parents, guardian, legal custodian or other person standing in loco parentis and spouse, if any.
3. Statement of names and residence of the nearest known relatives if no parent or guardian can be found.
4. Statement of the specific facts which allegedly bring the child within the purview of this law. If the petition alleges a delinquent act, it shall make reference to the applicable sections of the Code which designate the act a crime.
5. Statement as to whether the child is in custody, and if so, the place of detention or shelter care, and the time the child was taken into custody, and the time the child was placed in detention or

shelter care.

If any of the facts herein required to be stated are not known by the petitioner, the petition shall so state. The petition shall be verified, *except that petitions filed under § 63.1-220.3 may be signed by the petitioner's counsel*, and may be upon information.

In accordance with § 16.1-69.32, the Supreme Court may formulate rules for the form and content of petitions in the family court concerning matters related to the custody, visitation or support of a child and the protection, support or maintenance of an adult and any other matters where the provisions of this section are not appropriate.

§ 63.1-204. Acceptance and control over children.

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

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

A licensed private child-placing agency may accept placement of a child through an agreement with a local department of social services where the local department of social services retains legal custody of the child or where the parents or legal guardian of the child retain legal custody but have entered into a placement agreement with the local department or the public agency designated by the community policy and management team.

Whenever a licensed child-placing agency accepts legal custody of a child, the agency shall comply with §§ 16.1-281 and 16.1-282.

A child-caring institution licensed as a temporary emergency shelter may accept a child for placement provided that verbal agreement for placement is obtained from the parents, guardians, relatives or other persons having legal custody thereof, within eight hours of the child's arrival at the facility and provided that a written placement agreement is completed and signed by the legal guardian and the facility representative within twenty-four hours of the child's arrival or by the end of the next business day after the child's arrival.

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

C. A child may be placed for adoption by a licensed child-placing agency or a local board of public welfare or social services, in accordance with the provisions of § 63.1-220.2.

For the purposes of this section, a parent who is less than eighteen years of age shall be deemed fully competent and shall have legal capacity to execute a valid entrustment agreement, including an agreement which provides for the termination of all parental rights and responsibilities, and shall be as fully bound thereby as if such parent had attained the age of eighteen years. An entrustment agreement for the termination of all parental rights and responsibilities with respect to the child shall be valid notwithstanding that it is not signed by the father of a child born out of wedlock if the identity of the father is not reasonably ascertainable, or if such father is given notice of the

entrustment by registered or certified mail to his last known address and such father fails to object to the entrustment within twenty-one days of the mailing of such notice. An affidavit of the mother that the identity of the father is not reasonably ascertainable shall be sufficient evidence of this fact, provided there is no other evidence which would refute such an affidavit. The absence of such an affidavit shall not be deemed evidence that the identity of the father is reasonably ascertainable. For purposes of determining whether the identity of the father is reasonably ascertainable, the standard of what is reasonable under the circumstances shall control, taking into account the relative interests of the child, the mother and the father.

An entrustment agreement for the termination of all parental rights and responsibilities with respect to the child shall be valid notwithstanding that it is not signed by the birth father of a child when such father has been convicted of a violation of subsection A of § 18.2-61 or subsection B of § 18.2-366, and the child was conceived as the result of such violation.

§ 63.1-204. (Delayed effective date) Acceptance and control over children.

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

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

A licensed private child-placing agency may accept placement of a child through an agreement with a local department of social services where the local department of social services retains legal custody of the child or where the parents or legal guardian of the child retain legal custody but have entered into a placement agreement with the local department or the public agency designated by the community policy and management team.

Whenever a licensed child-placing agency accepts legal custody of a child, the agency shall comply with §§ 16.1-281 and 16.1-282.

A child-caring institution licensed as a temporary emergency shelter may accept a child for placement provided that verbal agreement for placement is obtained from the parents, guardians, relatives or other persons having legal custody thereof, within eight hours of the child's arrival at the facility and provided that a written placement agreement is completed and signed by the legal guardian and the facility representative within twenty-four hours of the child's arrival or by the end of the next business day after the child's arrival.

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

C. A child may be placed for adoption by a licensed child-placing agency or a local board of public welfare or social services, in accordance with the provisions of § 63.1-220.2.

For the purposes of this section, a parent who is less than eighteen years of age shall be deemed fully competent and shall have legal capacity to execute a valid entrustment agreement, including an agreement which provides for the termination of all parental rights and responsibilities, and shall be

as fully bound thereby as if such parent had attained the age of eighteen years. An entrustment agreement for the termination of all parental rights and responsibilities with respect to the child shall be valid notwithstanding that it is not signed by the father of a child born out of wedlock if the identity of the father is not reasonably ascertainable, or if such father is given notice of the entrustment by registered or certified mail to his last known address and such father fails to object to the entrustment within twenty-one days of the mailing of such notice. An affidavit of the mother that the identity of the father is not reasonably ascertainable shall be sufficient evidence of this fact, provided there is no other evidence which would refute such an affidavit. The absence of such an affidavit shall not be deemed evidence that the identity of the father is reasonably ascertainable. For purposes of determining whether the identity of the father is reasonably ascertainable, the standard of what is reasonable under the circumstances shall control, taking into account the relative interests of the child, the mother and the father.

An entrustment agreement for the termination of all parental rights and responsibilities with respect to the child shall be valid notwithstanding that it is not signed by the birth father of a child when such father has been convicted of a violation of subsection A of § 18.2-61 or subsection B of § 18.2-366, and the child was conceived as the result of such violation.

§ 63.1-220. 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.

"Birth parent" means the child's biological parent and, for purposes of adoptive placement, means parent(s) by previous adoption.

"Child-placing agency" means any person who places children in foster homes or adoptive homes or a local board of public welfare or social services which places children in foster homes or adoptive homes pursuant to §§ 63.1-56, 63.1-204 and 63.1-220.2.

"Parental placement" means locating or effecting the placement of a child or the placing of a child in a family home by the child's parent or legal guardian for the purpose of foster care or adoption.

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

§ 63.1-220.2. Placement of children for adoption by agency or local board.

A licensed child-placing agency or local board of public welfare or social services may place for adoption, and is empowered to consent to the adoption of, any child who is properly committed or entrusted to its care, in accordance with the provisions of § 63.1-56, § 63.1-204 or this section, when the order of commitment or the entrustment agreement between the ~~parent or parents~~ birth parent(s) and the agency or board provides for the termination of all parental rights and responsibilities with respect to the child for the purpose of placing and consenting to the adoption of such child.

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

A valid entrustment agreement terminating all parental rights and responsibilities to the child shall

be revocable by either of the birth parents until (i) the child has reached the age of twenty-five days and (ii) fifteen days have elapsed from the date of execution of the agreement. Such agreement shall divest the birth parents of all legal rights and obligations with respect to the child, and the child shall be free from all legal obligations of obedience and maintenance with respect to them, provided that such rights and obligations may be restored to the birth parents and the child by court order prior to entry of final order of adoption upon proof of fraud or duress. In addition, a valid entrustment agreement shall be revocable by either of the birth parents if the child has not been placed in the home of adoptive parents at the time of such revocation. *Revocation of an entrustment agreement shall be in writing and signed by the revoking party. The written revocation shall be delivered to the child-placing agency or local board of public welfare or social services to which the child was originally entrusted. Delivery of the written revocation shall be made during the business day of the child-placing agency or local board of public welfare or social services to which the child was originally entrusted, in accordance with the applicable time period set out in this section. If the revocation period expires on a Saturday, Sunday, legal holiday or any day on which the agency or local board is officially closed, the revocation period shall be extended to the next day that is not a Saturday, Sunday, legal holiday or other day on which the agency or local board is officially closed.* Upon revocation of the entrustment agreement, the child shall be returned to the parent revoking the agreement.

An entrustment agreement for the termination of all parental rights and responsibilities with respect to the child shall be valid notwithstanding that it is not signed by the birth father of a child when the birth father has been convicted of a violation of subsection A of § 18.2-61 or subsection B of § 18.2-366, and the child was conceived as a result of such violation.

Prior to the placement of a child for adoption, the licensed child-placing agency or local board having custody of the child shall counsel the birth mother or, if reasonably available, both birth parents, concerning the disposition of their child. In determining the appropriate home in which to place a child for adoption, a married couple or an unmarried individual shall be eligible to receive placement of a child for purposes of adoption. In addition, the agency or board may consider the recommendations of a physician or attorney licensed in the Commonwealth, or a clergyman who is familiar with the situation of the ~~proposed~~ prospective adoptive parents or the child. The physician, attorney or clergyman shall not charge any fee for recommending such a placement to a board or agency and shall not advertise that he is available to make such recommendations.

When a licensed child-placing agency or a local board of public welfare accepts custody of a child for the purpose of placing the child with adoptive parents designated by the birth parents or a person other than a licensed child-placing agency or local board of public welfare, the provisions of § 63.1-220.3 shall apply to such placement.

§ 63.1-220.3. Placement of children for adoption by parent or guardian.

A. The birth parent or legal guardian of a child may place his child for adoption directly with the adoptive parents of his choice ~~only after executing a valid consent to the proposed adoption~~. *Consent to the proposed adoption shall be executed upon compliance with the provisions of this section before a juvenile and domestic relations district court of competent jurisdiction, upon compliance with the provisions of this section or, if the birth parent or legal guardian does not reside in Virginia, before a court having jurisdiction over child custody matters in the jurisdiction where the birth parent or legal guardian resides when requested by a court of this Commonwealth, pursuant to § 20-142. Proceedings under this section shall be advanced on the docket so as to be heard by the court within ten days of filing of the petition, or as soon thereafter as practicable so as to provide the earliest possible disposition.*

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

1. The birth parent(s) are aware of alternatives to adoption, adoption procedures, and opportunities for placement with other adoptive families, and that the birth parents' consent is informed and uncoerced.

2. A licensed or duly authorized child-placing agency has counseled the prospective adoptive parents with regard to alternatives to adoption, adoption procedures, including the need to address the parental rights of birth parents, the procedures for terminating such rights, and opportunities for adoption of other children; that the prospective adoptive parents' decision is informed and uncoerced;

and that they intend to file an adoption petition and proceed toward a final order of adoption.

3. The birth parent(s) and adoptive parents have exchanged identifying information including but not limited to full names, addresses, physical, mental, social and psychological information and any other information necessary to promote the welfare of the child.

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

5. There has been no violation of the provisions of § 63.1-220.4 in connection with the placement; however, if it appears there has been such violation, the court shall not reject consent of the birth parent to the adoption for that reason alone but shall report the alleged violation as required by subsection F G of this section.

6. A licensed or duly authorized child-placing agency has conducted a home study of the prospective adoptive home in accordance with regulations established by the State Board of Social Services and has provided to the court a report of such home study, which shall contain the agency's recommendation regarding the suitability of the placement. A married couple or an unmarried individual shall be eligible to receive placement of a child for adoption. The home study shall make inquiry as to (i) whether the prospective adoptive parents are financially able, morally suitable, and in satisfactory physical and mental health to enable them to care for the child; (ii) the physical and mental condition of the child, if known; (iii) the circumstances under which the child came to live, or will be living, in the home of the prospective adoptive family, as applicable; (iv) what fees have been paid by the prospective adoptive family or in their behalf in the placement and adoption of the child; (v) whether the requirements of subdivisions 1, 2, 3 and 5 of this subsection have been met; and (vi) any other matters specified by the court. In the course of the home study, the agency social worker shall meet at least once with the birth parent(s) and prospective adoptive parents simultaneously. When the child has been placed with prospective adoptive parents who are related to the child as specified in subdivision § 6 of subsection C of this section, this meeting is not required.

7. *The birth parent(s) have been informed of their opportunity to be represented by legal counsel.*

C. When the court is satisfied that all requirements of subsection B of this section have been met *with respect to at least one birth parent* and the adoptive child is at least ten days old, ~~the~~ *that* birth parent or *both birth* parents, *as the case may be*, shall execute consent to the proposed adoption in compliance with the provisions of § 63.1-225 while before the court in person and in the presence of the prospective adoptive parents. *The court shall accept the consent of the birth parent(s) and transfer custody of the child to the prospective adoptive parents, pending notification to any nonconsenting birth parent, as described hereinafter.*

1. ~~Consent shall be revocable for up to fifteen days from its execution for any reason and shall be revocable prior to the final order of adoption (i) upon proof of fraud or duress or (ii) after placement of the child in an adoptive home, upon written, mutual consent of the birth parents and proposed adoptive parents. Such revocation shall be in writing and filed with the court which accepted consent.~~

2. *a.* The execution of consent before the ~~Juvenile and Domestic Relations Court~~ *court* as required *set forth* in subsection A shall not be required of ~~the father of a child born to an unmarried woman a birth father who is not married to the mother of the child at the time of the child's conception or birth~~ if (i) *the birth* father consents under oath and in writing to the adoption; (ii) *the birth* mother swears under oath and in writing that the identity of the *birth* father is not reasonably ascertainable; (iii) the identity of the *birth* father is ascertainable and his whereabouts are known, ~~the father~~ *he* is given notice of the proceedings by registered or certified mail to his last known address and he fails to object to the proceeding within twenty-one days of the mailing of such notice; or (iv) the putative *birth* father named by the *birth* mother denies under oath and in writing paternity of the child. An affidavit of the *birth* mother that the identity of the *birth* father is not reasonably ascertainable shall be sufficient evidence of this fact, provided there is no other evidence before the court which would refute such an affidavit. The absence of such an affidavit shall not be deemed evidence that the identity of the *birth* father is reasonably ascertainable. For purposes of determining whether the identity of the *birth* father is reasonably ascertainable, the standard of what is reasonable under the circumstances shall control, taking into account the relative interests of the child, the *birth* mother and

the birth father.

b. The court may accept the written consent of the *birth father of a child born to an unmarried woman who is not married to the birth mother of the child at the time of the child's conception or birth*, provided that the identifying information required in subsection B 3 is filed in writing with the court of jurisdiction. *Such consent shall be executed after the birth of the child, shall advise the birth father of his opportunity for legal representation, and shall be presented to the court for acceptance. The consent may waive further notice of the adoption proceedings and shall contain the name, address and telephone number of the birth father's legal counsel or an acknowledgment that he was informed of his opportunity to be represented by legal counsel and declined such representation.*

c. In the event that the birth mother's consent is not executed in court in accordance with subsection A, the consent of the *birth father of a child born to an unmarried woman must who is not married to the birth mother of the child* shall be executed in court.

d. *A child born to a married birth mother shall be presumed to be the child of her husband and his consent under subsection A shall be required. This presumption may be rebutted by sufficient evidence, satisfactory to the court, which would establish by a preponderance of the evidence the paternity of another man or the impossibility or improbability of cohabitation of the birth mother and her husband for a period of at least 300 days preceding the birth of the child, in which case the husband's consent shall not be required.*

2. *A birth parent whose consent is required as set forth in § 63.1-225, whose identity is known and who neither consents before the court as described above, nor executes a written consent to the adoption or a denial of paternity out of court as provided above, shall be given notice of the proceedings pending before the court and be given the opportunity to appear before the court. Such hearing may occur subsequent to the proceeding wherein the consenting birth parent appeared but may not be held until twenty-one days after personal service of notice on the nonconsenting birth parent, or if personal service is unobtainable, ten days after the completion of the execution of an order of publication against such birth parent. The court may appoint counsel for the birth parent(s). If the court finds that consent is withheld contrary to the best interests of the child, as set forth in § 63.1-225.1, or is unobtainable, it may grant the petition without such consent and enter an order waiving the requirement of consent of the nonconsenting birth parent and transferring custody of the child to the prospective adoptive parents, which order shall become effective fifteen days thereafter. If the court denies the petition, the court shall order that any consent given for the purpose of such placement shall be void and, if necessary, the court shall determine custody of the child as between the birth parents.*

3. *If the court finds that the valid consent of any person whose consent is required is withheld contrary to the best interests of the child or is unobtainable, the court may accept consent of the other parent and transfer custody of the child to the prospective adoptive parents:*

a. *Twenty-one days after personal service of notice on the party or parties whose consent is required by this section; or*

b. *If personal service is unobtainable, ten days after the completion of the execution of an order of publication against the party or parties whose consent is required by this section; or*

c. *If the judge certifies on the record that the identity of any person whose consent is hereinabove required is not reasonably ascertainable.*

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

4. *If the child was placed by the birth parent(s) with the prospective adoptive parents and if both birth parents have failed, without good cause, to appear at a hearing to execute consent under this section for which they were given proper notice pursuant to § 16.1-264, the court may grant the petition without the consent of either birth parent and enter an order waiving consent and transferring custody of the child to the prospective adoptive parents, which order shall become effective fifteen days thereafter. Prior to the entry of such an order, the court may appoint legal counsel for the birth parents and shall find by clear and convincing evidence (i) that the birth parents were given proper notice of the hearing(s) to execute consent and of the hearing to proceed without their consent, (ii) that the birth parents failed to show good cause for their failure to appear at such*

hearing(s) and (iii) that pursuant to § 63.1-225.1 the consent of the birth parents is withheld contrary to the best interests of the child or is unobtainable.

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

~~5.~~ 6. When a child has been placed by the birth parent(s) with prospective adoptive parents who are the child's grandparents, adult brother or sister, or adult uncle or aunt or adult great uncle or great aunt, consent does not have to be executed in court in the presence of the prospective adoptive parents. The court may accept written consent that has been signed and acknowledged before an officer authorized by law to take ~~acknowledgements~~ acknowledgments. No hearing shall be required for the court's acceptance of such consent.

When such child has resided in the home of the prospective adoptive parent(s) continuously for three or more years, this section shall not apply, and consent shall be executed in accordance with subsection ~~D~~ E of § 63.1-225.

7. No consent shall be required from the birth father of a child placed pursuant to this section when such father is convicted of a violation of subsection A of § 18.2-61 or subsection B of § 18.2-366, and the child was conceived as a result of such violation, nor shall the birth father be entitled to notice of any of the proceedings under this section.

~~6.~~ 8. ~~After accepting the consent, the court shall~~ Upon a finding by the court that all of the requirements of this section have been met, and upon entry of such orders as may be appropriate, including the transfer of custody of the child to the prospective adoptive parents, ~~to be responsible for the care of the child until such time as the court order is modified. Any such order shall include specific findings with respect to the applicable consent and notice provisions of subdivisions 2 through 5 of subsection C. The court shall review such orders at least annually until such time as the final order of adoption is entered.~~

~~7.~~ Upon execution of consent and transfer of custody, the prospective adoptive family parent(s) may file a petition for adoption of the child pursuant to § 63.1-221. The court shall review each order entered under this section at least annually until such time as the final order of adoption is entered.

D. Consent shall be revocable as follows:

1. By either consenting birth parent for any reason for up to fifteen days from its execution.

a. Such revocation shall be in writing, signed by the revoking party or counsel of record for the revoking party and shall be filed with the clerk of the court in which the petition was filed during the business day of the court, within the time period specified in this section. If the revocation period expires on a Saturday, Sunday, legal holiday or any day on which the clerk's office is closed as authorized by statute, the revocation period shall be extended to the next day that is not a Saturday, Sunday, legal holiday or other day on which the clerk's office is closed as authorized by statute.

b. Upon the filing of a valid revocation within the time period set out in this section, the court shall order that any consent given for the purpose of such placement is void and, if necessary, the court shall determine custody of the child as between the birth parents.

2. By any party prior to the final order of adoption (i) upon proof of fraud or duress or (ii) after placement of the child in an adoptive home, upon written, mutual consent of the birth parents and prospective adoptive parents.

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

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

~~F.~~ G. If the court or any participating licensed or duly authorized child-placing agency suspects that there has been a violation of § 63.1-220.4 in connection with the placement, it shall report such findings to the Commissioner of Social Services for investigation and appropriate action. If the

Commissioner suspects that a person has violated § 63.1-220.4, he shall report his findings to the appropriate attorney for the Commonwealth. If the Commissioner believes that such violation has occurred in the course of the practice of a profession or occupation licensed or regulated pursuant to Title 54.1, he shall also report such findings to the appropriate regulatory authority for investigation and appropriate disciplinary action.

~~G. H.~~ The Department of Social Services shall develop and disseminate information to the public regarding the provisions of this law, including the desirability of initiating the procedures required by subsection B of this section as early in the placement and adoption process as possible to ensure that birth parents are aware of the provisions of this law and begin required procedures in a timely manner.

§ 63.1-220.3. (Delayed effective date) Placement of children for adoption by parent or guardian.

A. The birth parent or legal guardian of a child may place his child for adoption directly with the adoptive parents of his choice ~~only after executing a valid consent to the proposed adoption . Consent to the proposed adoption shall be executed upon compliance with the provisions of this section before a family court of competent jurisdiction, upon compliance with the provisions of this section or, if the birth parent or legal guardian does not reside in Virginia, before a court having jurisdiction over child custody matters in the jurisdiction where the birth parent or legal guardian resides when requested by a court of this Commonwealth, pursuant to § 20-142. Proceedings under this section shall be advanced on the docket so as to be heard by the court within ten days of filing of the petition, or as soon thereafter as practicable so as to provide the earliest possible disposition.~~

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

1. The birth parent(s) are aware of alternatives to adoption, adoption procedures, and opportunities for placement with other adoptive families, and that the birth parents' consent is informed and uncoerced.

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

3. The birth parent(s) and adoptive parents have exchanged identifying information including but not limited to full names, addresses, physical, mental, social and psychological information and any other information necessary to promote the welfare of the child.

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

5. There has been no violation of the provisions of § 63.1-220.4 in connection with the placement; however, if it appears there has been such violation, the court shall not reject consent of the birth parent to the adoption for that reason alone but shall report the alleged violation as required by subsection ~~F~~ G of this section.

6. A licensed or duly authorized child-placing agency has conducted a home study of the prospective adoptive home in accordance with regulations established by the State Board of Social Services and has provided to the court a report of such home study, which shall contain the agency's recommendation regarding the suitability of the placement. A married couple or an unmarried individual shall be eligible to receive placement of a child for adoption. The home study shall make inquiry as to (i) whether the prospective adoptive parents are financially able, morally suitable, and in satisfactory physical and mental health to enable them to care for the child; (ii) the physical and mental condition of the child, if known; (iii) the circumstances under which the child came to live, or will be living, in the home of the prospective adoptive family, as applicable; (iv) what fees have been paid by the prospective adoptive family or in their behalf in the placement and adoption of the child; (v) whether the requirements of subdivisions 1, 2, 3 and 5 of this subsection have been met; and (vi) any other matters specified by the court. In the course of the home study, the agency social worker shall meet at least once with the birth parent(s) and prospective adoptive parents simultaneously. When the child has been placed with prospective adoptive parents who are related to the child as

specified in subdivision 5 6 of subsection C of this section, this meeting is not required.

7. *The birth parent(s) have been informed of their opportunity to be represented by legal counsel.*

C. When the court is satisfied that all requirements of subsection B of this section have been met with respect to at least one birth parent and the adoptive child is at least ten days old, ~~the~~ that birth parent or both birth parents, as the case may be, shall execute consent to the proposed adoption in compliance with the provisions of § 63.1-225 while before the court in person and in the presence of the prospective adoptive parents. *The court shall accept the consent of the birth parent(s) and transfer custody of the child to the prospective adoptive parents, pending notification to any nonconsenting birth parent, as described hereinafter.*

1. Consent shall be revocable for up to fifteen days from its execution for any reason and shall be revocable prior to the final order of adoption (i) upon proof of fraud or duress, or (ii) after placement of the child in an adoptive home, upon written, mutual consent of the birth parents and proposed adoptive parents. Such revocation shall be in writing and filed with the court which accepted consent.

2. a. The execution of consent before the Juvenile and Domestic Relations Court ~~court~~ as required set forth in subsection A shall not be required of the father of a child born to an unmarried woman a birth father who is not married to the mother of the child at the time of the child's conception or birth if (i) the birth father consents under oath and in writing to the adoption; (ii) the birth mother swears under oath and in writing that the identity of the birth father is not reasonably ascertainable; (iii) the identity of the birth father is ascertainable and his whereabouts are known, the father he is given notice of the proceedings by registered or certified mail to his last known address and he fails to object to the proceeding within twenty-one days of the mailing of such notice; or (iv) the putative birth father named by the birth mother denies under oath and in writing paternity of the child. An affidavit of the birth mother that the identity of the birth father is not reasonably ascertainable shall be sufficient evidence of this fact, provided there is no other evidence before the court which would refute such an affidavit. The absence of such an affidavit shall not be deemed evidence that the identity of the birth father is reasonably ascertainable. For purposes of determining whether the identity of the birth father is reasonably ascertainable, the standard of what is reasonable under the circumstances shall control, taking into account the relative interests of the child, the birth mother and the birth father.

b. The court may accept the written consent of the birth father of a child born to an unmarried woman who is not married to the birth mother of the child at the time of the child's conception or birth, provided that the identifying information required in subsection B 3 is filed in writing with the court of jurisdiction. Such consent shall be executed after the birth of the child, shall advise the birth father of his opportunity for legal representation, and shall be presented to the court for acceptance. The consent may waive further notice of the adoption proceedings and shall contain the name, address and telephone number of the birth father's legal counsel or an acknowledgment that he was informed of his opportunity to be represented by legal counsel and declined such representation.

c. In the event that the birth mother's consent is not executed in court in accordance with subsection A, the consent of the birth father of a child born to an unmarried woman must who is not married to the birth mother of the child shall be executed in court.

d. A child born to a married birth mother shall be presumed to be the child of her husband and his consent under subsection A shall be required. This presumption may be rebutted by sufficient evidence, satisfactory to the court, which would establish by a preponderance of the evidence the paternity of another man or the impossibility or improbability of cohabitation of the birth mother and her husband for a period of at least 300 days preceding the birth of the child, in which case the husband's consent shall not be required.

2. A birth parent whose consent is required as set forth in § 63.1-225, whose identity is known and who neither consents before the court as described above, nor executes a written consent to the adoption or a denial of paternity out of court as provided above, shall be given notice of the proceedings pending before the court and be given the opportunity to appear before the court. Such hearing may occur subsequent to the proceeding wherein the consenting birth parent appeared but may not be held until twenty-one days after personal service of notice on the nonconsenting birth parent, or if personal service is unobtainable, ten days after the completion of the execution of an order of publication against such birth parent. The court may appoint counsel for the birth parent(s).

If the court finds that consent is withheld contrary to the best interests of the child, as set forth in § 63.1-225.1, or is unobtainable, it may grant the petition without such consent and enter an order waiving the requirement of consent of the nonconsenting birth parent and transferring custody of the child to the prospective adoptive parents, which order shall become effective fifteen days thereafter. If the court denies the petition, the court shall order that any consent given for the purpose of such placement shall be void and, if necessary, the court shall determine custody of the child as between the birth parents.

3. If the court finds that the valid consent of any person whose consent is required is withheld contrary to the best interests of the child or is unobtainable, the court may accept consent of the other parent and transfer custody of the child to the prospective adoptive parents:

a. Twenty-one days after personal service of notice on the party or parties whose consent is required by this section; or

b. If personal service is unobtainable, ten days after the completion of the execution of an order of publication against the party or parties whose consent is required by this section; or

c. If the judge certifies on the record that the identity of any person whose consent is hereinabove required is not reasonably ascertainable.

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

4. *If the child was placed by the birth parent(s) with the prospective adoptive parents and if both birth parents have failed, without good cause, to appear at a hearing to execute consent under this section for which they were given proper notice pursuant to § 16.1-264, the court may grant the petition without the consent of either birth parent and enter an order waiving consent and transferring custody of the child to the prospective adoptive parents, which order shall become effective fifteen days thereafter. Prior to the entry of such an order, the court may appoint legal counsel for the birth parents and shall find by clear and convincing evidence (i) that the birth parents were given proper notice of the hearing(s) to execute consent and of the hearing to proceed without their consent, (ii) that the birth parents failed to show good cause for their failure to appear at such hearing(s) and (iii) that pursuant to § 63.1-225.1 the consent of the birth parents is withheld contrary to the best interests of the child or is unobtainable.*

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

~~5-~~ 6. When a child has been placed by the birth parent(s) with prospective adoptive parents who are the child's grandparents, adult brother or sister, or adult uncle or aunt or adult great uncle or great aunt, consent does not have to be executed in court in the presence of the prospective adoptive parents. The court may accept written consent that has been signed and acknowledged before an officer authorized by law to take acknowledgements. *No hearing shall be required for the court's acceptance of such consent.*

When such child has resided in the home of the prospective adoptive parent(s) continuously for three or more years, this section shall not apply, and consent shall be executed in accordance with subsection ~~D~~ E of § 63.1-225.

7. *No consent shall be required from the birth father of a child placed pursuant to this section when such father is convicted of a violation of subsection A of § 18.2-61 or subsection B of § 18.2-366, and the child was conceived as a result of such violation, nor shall the birth father be entitled to notice of any of the proceedings under this section.*

~~6-~~ 8. *After accepting the consent, the court shall Upon a finding by the court that all of the requirements of this section have been met, and upon entry of such orders as may be appropriate, including the transfer of custody of the child to the prospective adoptive parents, to be responsible for the care of the child until such time as the court order is modified. Any such order shall include specific findings with respect to the applicable consent and notice provisions of subdivisions 2 through 5 of subsection C. The court shall review such orders at least annually until such time as the final order of adoption is entered.*

7. Upon execution of consent and transfer of custody, the prospective adoptive family parents may file a petition for adoption of the child pursuant to § 63.1-221. *The court shall review each order*

entered under this section at least annually until such time as the final order of adoption is entered.

D. Consent shall be revocable as follows:

1. By either consenting birth parent for any reason for up to fifteen days from its execution.

a. Such revocation shall be in writing, signed by the revoking party or counsel of record for the revoking party and shall be filed with the clerk of the court in which the petition was filed during the business day of the court, within the time period specified in this section. If the revocation period expires on a Saturday, Sunday, legal holiday or any day on which the clerk's office is closed as authorized by statute, the revocation period shall be extended to the next day that is not a Saturday, Sunday, legal holiday or other day on which the clerk's office is closed as authorized by statute.

b. Upon the filing of a valid revocation within the time period set out in this section, the court shall order that any consent given for the purpose of such placement is void and, if necessary, the court shall determine custody of the child as between the birth parents.

2. By any party prior to the final order of adoption (i) upon proof of fraud or duress, or (ii) after placement of the child in an adoptive home, upon written, mutual consent of the birth parents and prospective adoptive parents.

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

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

G. If the court or any participating licensed or duly authorized child-placing agency suspects that there has been a violation of § 63.1-220.4 in connection with the placement, it shall report such findings to the Commissioner of Social Services for investigation and appropriate action. If the Commissioner suspects that a person has violated § 63.1-220.4, he shall report his findings to the appropriate attorney for the Commonwealth. If the Commissioner believes that such violation has occurred in the course of the practice of a profession or occupation licensed or regulated pursuant to Title 54.1, he shall also report such findings to the appropriate regulatory authority for investigation and appropriate disciplinary action.

H. The Department of Social Services shall develop and disseminate information to the public regarding the provisions of this law, including the desirability of initiating the procedures required by subsection B of this section as early in the placement and adoption process as possible to ensure that birth parents are aware of the provisions of this law and begin required procedures in a timely manner.

§ 63.1-220.4. Certain exchange of property prohibited; penalty.

No person or child-placing agency shall charge, pay, give, or agree to give or accept any money, property, service or other thing of value in connection with a placement or adoption or any act undertaken pursuant to this chapter except (i) reasonable and customary services provided by a licensed or duly authorized child-placing agency and fees paid for such services; (ii) payment or reimbursement for medical expenses, *and insurance premiums which are directly related to the birth mother's pregnancy and hospitalization for the birth of the child who is the subject of the adoption proceedings, for mental health counseling received by the birth mother or birth father related to the adoption,* and for expenses incurred for medical care for the child; (iii) payment or reimbursement for reasonable and necessary expenses for food, clothing, and shelter when, upon the written advice of her physician, the birth mother is unable to work or otherwise support herself due to medical reasons or complications associated with the pregnancy or birth of the child; (iv) payment or reimbursement for ~~transportation necessary to execute consent~~ *reasonable expenses incurred incident to any court appearance pursuant to § 63.1-220.3 including, but not limited to transportation, food and lodging;* (v) usual and customary fees for legal services in adoption proceedings; and (vi) payment or reimbursement of reasonable expenses incurred for transportation in *connection with any*

of the services specified in this section or intercountry placements as defined in § 63.1-195 and as necessary for compliance with state and federal law in such placements. No person shall advertise or solicit to perform any activity prohibited by this section. Any person or agency violating the provisions of this section shall be guilty of a Class 6 felony. The Commissioner is authorized to investigate cases in which fees paid for legal services appear to be in excess of usual and customary fees in order to determine if there has been compliance with the provisions of this section.

§ 63.1-220.5. Removal of child from adoptive home.

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

When a child has been placed in an adoptive home directly by the birth parents or legal guardian of the child, the adoptive parents have been appointed guardians granted custody of the child pursuant to § 63.1-220.3, and it becomes necessary to remove that the child from the home of the adoptive parents, the court entering such an order shall commit the child to the care and custody of the local board of public welfare or social services with the authority to place that child for adoption order that any consent given for the purposes of such placement shall be void and shall determine the custody of the child.

§ 63.1-220.5. (Delayed effective date) Removal of child from adoptive home.

When a child is placed in an adoptive home pursuant to an adoptive home placement agreement by a local board of public welfare or social services or by a licensed child-placing agency pursuant to § 63.1-220.2, or by the birth parent or legal guardian of the child pursuant to § 63.1-220.3, and a court of competent jurisdiction has not entered an interlocutory order of adoption, such child shall not be removed from the physical custody of the adoptive parents, except (i) with the consent of the adoptive parents, (ii) upon order of the family court of competent jurisdiction, (iii) pursuant to § 63.1-211, which removal shall be subject to review by the family court upon petition of the adoptive parents, or (iv) upon order of the court which accepted consent when consent has been revoked as authorized by § 63.1-220.3 or § 63.1-225.

When a child has been placed in an adoptive home directly by the birth parents or legal guardian of the child, the adoptive parents have been appointed guardians granted custody of the child pursuant to § 63.1-220.3, and it becomes necessary to remove that the child from the home of the adoptive parents, the court entering such an order shall commit the child to the care and custody of the local board of public welfare or social services with the authority to place that child for adoption. order that any consent given for the purposes of such placement shall be void and shall determine the custody of the child.

§ 63.1-220.6. Provision of false information; penalty.

Any person who knowingly and intentionally provides false information in writing and under oath, which is material to an adoptive placement shall be guilty of a Class 6 felony. The Commissioner is authorized to investigate such cases and may refer the case to the attorney for the Commonwealth for prosecution.

§ 63.1-220.7. Parental presumption after revocation period expires.

If, after the expiration of the appropriate revocation period provided for in § 63.1-220.2 or § 63.1-220.3, a birth parent or an alleged birth parent attempts to obtain or regain custody of or attempts to exercise parental rights to a child who has been placed for adoption, there shall be no parental presumption in favor of any party. Upon the motion of any such birth parent or alleged birth parent, or upon the motion of any person or agency with whom the child has been placed, the court shall determine (i) whether the birth parent or alleged birth parent is a person whose consent to the adoption is required and if so, then (ii) pursuant to § 63.1-225.1, whether, in the best interest

of the child, the consent of the person whose consent is required is being withheld contrary to the best interest of the child or is unobtainable.

§ 63.1-221. Jurisdiction and proceedings.

Proceedings for the adoption of a minor child and for a change of name of such child shall be instituted only by petition to a court of record having chancery jurisdiction in the county or city in which the petitioner resides or in the city or county in which is located the child-placing agency which placed the child. Such petition may be filed by any natural person who resides in the Commonwealth or who has custody of a child placed by a child-placing agency of the Commonwealth, for leave to adopt a minor child not legally his by birth and, if it is so desired by the petitioner, also to change the name of such child. In the case of married persons, the petition shall be the joint petition of the husband and wife but, in the event the child to be adopted is legally the child by birth or adoption of one of the petitioners, such petitioner shall unite in the petition for the purpose of indicating his or her consent to the prayer thereof only. The petition shall contain a full disclosure of the circumstances under which the child came to live and is living, in the home of the petitioner. Each petition for adoption shall be signed by the petitioner as well as by counsel of record, if any. In any case in which the petition seeks the entry of an adoption order without referral for investigation, the petition shall be under oath.

When the birth parent has placed the child directly with the petitioners pursuant to the provisions of § 63.1-220.3, the petition shall state that the findings required by that section have been made and shall be accompanied by appropriate documentation supporting such statement, to include copies of documents executing consent and transferring custody of the child to the prospective adoptive parents, and a copy of the report required by subdivision B 6 of § 63.1-220.3. The court shall not waive any of the requirements of this paragraph nor any of the requirements of § 63.1-220.3.

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

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

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

§ 63.1-221. (Delayed effective date) Jurisdiction and proceedings.

Proceedings for the adoption of a minor child and for a change of name of such child shall be instituted only by petition to a family court in the county or city in which the petitioner resides or in the city or county in which is located the child-placing agency which placed the child. Such petition may be filed by any natural person who resides in the Commonwealth or who has custody of a child placed by a child-placing agency of the Commonwealth, for leave to adopt a minor child not legally his by birth and, if it is so desired by the petitioner, also to change the name of such child. In the case of married persons, the petition shall be the joint petition of the husband and wife but, in the event the child to be adopted is legally the child by birth or adoption of one of the petitioners, such

petitioner shall unite in the petition for the purpose of indicating his or her consent to the prayer thereof only. The petition shall contain a full disclosure of the circumstances under which the child came to live and is living, in the home of the petitioner. Each petition for adoption shall be signed by the petitioner as well as by counsel of record, if any. In any case in which the petition seeks the entry of an adoption order without referral for investigation, the petition shall be under oath.

When the birth parent has placed the child directly with the petitioners pursuant to the provisions of § 63.1-220.3, the petition shall state that the findings required by that section have been made and shall be accompanied by appropriate documentation supporting such statement, to include copies of documents executing consent and transferring custody of the child to the prospective adoptive parents, and a copy of the report required by subdivision B 6 of § 63.1-220.3. The court shall not waive any of the requirements of this paragraph nor any of the requirements of § 63.1-220.3.

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

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

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

§ 63.1-222. Adoption of certain persons eighteen years of age or over.

A petition may be filed by any natural person, resident of this Commonwealth: (i) for the adoption of a stepchild eighteen years of age or over to whom he has stood in loco parentis for a period of at least three months; or (ii) for the adoption of a niece or nephew over eighteen years of age who has no living parents and who has lived in the home of the petitioner for at least three months; or (iii) for the adoption of any person eighteen years of age or over who is the ~~natural~~ birth child of the petitioner or who had resided in the home of the petitioner for a period of at least three months prior to becoming eighteen years of age; or (iv) for the adoption of any person eighteen years of age or older, for good cause shown, provided that the person to be adopted is at least fifteen years younger than the petitioner and the petitioner and the person to be adopted have known each other for at least five years prior to the filing of the petition for adoption, and provided further that both the petitioner and the person to be adopted have been residents of the Commonwealth during the five-year period when they knew each other. Proceedings in any such case shall conform as near as may be to proceedings for the adoption of a minor child under this chapter except that:

- (1) No consent of either parent shall be required;
- (2) The consent of the person to be adopted shall be required in all cases;
- (3) The investigations and visitations provided for in §§ 63.1-223 and 63.1-228 shall not be made unless the court in its discretion so requires. However, if a petition is filed for the adoption of any person eighteen years of age or older under (iv) above, the court shall require an investigation and report to be made pursuant to § 63.1-223.

Any interlocutory or final order issued in any case under this section shall have the same effect as other orders issued under this chapter; and in any such case the word "child" in any other section of this chapter shall be construed to refer to the person whose adoption is petitioned for under this section. The entry of a final order of adoption pursuant to this section which incorporates a change of name shall be deemed to meet the requirements of § 8.01-217.

The provisions of this section shall apply to any person who would have been eligible for adoption hereunder prior to July 1, 1972.

§ 63.1-222. (Delayed effective date) Adoption of certain persons eighteen years of age or over.

A petition may be filed in the family court by any natural person, resident of this Commonwealth: (i) for the adoption of a stepchild eighteen years of age or over to whom he has stood in loco parentis for a period of at least three months; or (ii) for the adoption of a niece or nephew over eighteen years of age who has no living parents and who has lived in the home of the petitioner for at least three months; or (iii) for the adoption of any person eighteen years of age or over who is the ~~natural~~ birth child of the petitioner or who had resided in the home of the petitioner for a period of at least three months prior to becoming eighteen years of age; or (iv) for the adoption of any person eighteen years of age or older, for good cause shown, provided that the person to be adopted is at least fifteen years younger than the petitioner and the petitioner and the person to be adopted have known each other for at least five years prior to the filing of the petition for adoption, and provided further that both the petitioner and the person to be adopted have been residents of the Commonwealth during the five-year period when they knew each other. Proceedings in any such case shall conform as near as may be to proceedings for the adoption of a minor child under this chapter except that:

- (1) No consent of either parent shall be required;
- (2) The consent of the person to be adopted shall be required in all cases;
- (3) The investigations and visitations provided for in §§ 63.1-223 and 63.1-228 shall not be made unless the court in its discretion so requires. However, if a petition is filed for the adoption of any person eighteen years of age or older under (iv) above, the court shall require an investigation and report to be made pursuant to § 63.1-223.

Any interlocutory or final order issued in any case under this section shall have the same effect as other orders issued under this chapter; and in any such case the word "child" in any other section of this chapter shall be construed to refer to the person whose adoption is petitioned for under this section. The entry of a final order of adoption pursuant to this section which incorporates a change of name shall be deemed to meet the requirements of § 8.01-217.

The provisions of this section shall apply to any person who would have been eligible for adoption hereunder prior to July 1, 1972.

§ 63.1-223. Preliminary investigations; report to court.

A. Upon the filing of the petition, the court wherein the petition is filed, or the clerk thereof upon order of the court, shall forward a copy of the petition and all exhibits thereto to the Commissioner and to the agency which placed the child. In cases where the child was placed by an agency in another state, or by an agency, court, or other entity in another country, the petition and all exhibits shall be forwarded to the local director of social services or superintendent of public welfare or licensed child-placing agency, whichever agency completed the home study or provided supervision. If no Virginia agency provided such services, the petition and all exhibits shall be forwarded to the local director of social services or superintendent of public welfare. If the child was not placed by an agency, the petition and all exhibits shall be forwarded to the director of social services or superintendent of public welfare of the locality where the petitioners reside or resided at the time of filing the petition, or had legal residence at the time of the filing of the petition. However, in cases where a licensed child-placing agency has completed a home study in accordance with § 63.1-220.3 B 6, the petition and all exhibits shall be forwarded to the licensed child-placing agency. Except as provided in subsection E, the applicable agency shall make a thorough investigation of the matter and report thereon in writing, in such form as the Commissioner may prescribe, to the court within ninety days after the copy of the petition and all exhibits thereto are forwarded. A copy of the report to the court shall be served on the Commissioner by delivering or mailing a copy to him on or before the day of filing the report with the court. On the report to the court there shall be appended either

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

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

C. The investigation requested by the court shall include, in addition to other inquiries which the court may require the child-placing agency or local director of social services or superintendent of public welfare to make, inquiries as to (i) whether the petitioner is financially able, except as provided in Chapter 11.1 (§ 63.1-238.1 et seq.) of this title, morally suitable, in satisfactory physical and mental health and a proper person to care for and to train the child; (ii) what the physical and mental condition of the child is; (iii) why the parents, if living, desire to be relieved of the responsibility for the custody, care and maintenance of the child, and what their attitude is toward the proposed adoption; (iv) whether the parents have abandoned the child or are morally unfit to have custody over him; (v) the circumstances under which the child came to live, and is living, in the same home of the petitioner; (vi) whether the child is a suitable child for adoption by the petitioner; and (vii) what fees have been paid by the petitioners or in their behalf to persons or agencies which have assisted them in obtaining the child. Any report made to the court shall include a recommendation as to the action to be taken by the court on the petition. A copy of any report made to the court shall be furnished counsel of record representing the adopting parent or parents. When the investigation reveals that there may have been a violation of § 63.1-220.1 or § 63.1-220.4, the local director or superintendent or child-placing agency shall so inform the court and shall make such violation known to the Commissioner.

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

E. When a placement is a parental placement and consent has been executed in accordance with the provisions of § 63.1-220.3 or subsection ~~D~~ E of § 63.1-225, the court may proceed without the investigations and report required by this section.

§ 63.1-225. Parental, etc., consent.

A. No petition for adoption shall be granted, except as hereinafter provided in this section, unless written consent to the proposed adoption is filed with the petition. Such consent shall be signed and acknowledged before an officer authorized by law to take acknowledgments. The consent of a *birth* parent for the adoption of his child placed directly by the *birth* parent shall be executed as provided in § 63.1-220.3, and the court may accept a certified copy of an order entered pursuant to § 63.1-220.3 in satisfaction of all requirements of this section, provided the order clearly evidences compliance with the applicable notice and consent requirements of § 63.1-220.3.

B. *No consent shall be required of the birth father of a child when the birth father is convicted of a violation of subsection A of § 18.2-61 or subsection B of § 18.2-366, and the child was conceived as a result of such violation.*

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

~~C~~ D. Consent shall be executed:

1. By the parents or surviving parent of a child born in wedlock; ~~however~~. *A child born to a married birth mother shall be presumed to be the child of her husband and his consent shall be required. This presumption may be rebutted by sufficient evidence, satisfactory to the court, which would establish by a preponderance of the evidence the paternity of another man, or the impossibility or improbability of cohabitation of the birth mother and her husband for a period of at least 300 days preceding the birth of the child, in such case his consent shall not be required.* If the parents are

divorced and the residual parental rights and responsibilities as defined in § 16.1-228 of one parent have been terminated by terms of the divorce, or other order of a court having jurisdiction, the petition may be granted without the consent of such parent; or

2. By the parents or surviving parent of a child born ~~out of wedlock~~ *to parents who were not married to each other at the time of the child's conception or birth*. The consent of the *birth* father of a child born ~~to an unmarried woman~~ *to parents who were not married to each other at the time of the child's conception or birth* shall not be required (i) if the identity of the *birth* father is not reasonably ascertainable; or (ii) if the identity of such *birth* father is ascertainable and his whereabouts are known, such *birth* father is given notice of the adoption proceeding by registered or certified mail to his last known address and such *birth* father fails to object to the adoption proceeding within twenty-one days of the mailing of such notice; or

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

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

~~D.~~ *E.* When a child has been placed by the birth parent(s) with the prospective adoptive parent(s) who is the child's grandparent, adult brother or sister, ~~or~~ adult uncle or aunt, ~~and the child has resided in the home of the prospective adoptive parent continuously for three or more years or adult great uncle or great aunt~~, the court may accept the written and signed consent of the birth parent which has been acknowledged by an officer authorized by law to take such ~~acknowledgements~~ *acknowledgments*.

~~E.~~ *F.* If after ~~hearing~~ *consideration of the evidence*, the court finds that the valid consent of any person or agency whose consent is hereinabove required is withheld contrary to the best interests of the child *as set forth in § 63.1-225.1*, or is unobtainable, the court may grant the petition without such consent:

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

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

3. If the judge certifies on the record that the identity of any person whose consent is hereinabove required is not reasonably ascertainable.

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

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

~~G.~~ *H.* Parental consent to an adoption executed pursuant to this section shall be revocable prior to the final order of adoption (i) upon proof of fraud or duress, or (ii) after placement of the child in an adoptive home, upon written, mutual consent of the birth parents and ~~proposed~~ *prospective* adoptive parents.

§ 63.1-225.1 Best interests of the child; standards for determining.

In determining whether the valid consent of any person whose consent is required is withheld contrary to the best interests of the child, or is unobtainable, the court shall consider whether the failure to grant the petition for adoption would be detrimental to the child. In determining whether the failure to grant the petition would be detrimental to the child, the court shall consider all relevant

factors, including the birth parent(s)' efforts to obtain or maintain legal and physical custody of the child, whether the birth parent(s)' efforts to assert parental rights were thwarted by other people, the birth parent(s)' ability to care for the child, the age of the child, the quality of any previous relationship between the birth parent(s) and the child and between the birth parent(s) and any other minor children, the duration and suitability of the child's present custodial environment and the effect of a change of physical custody on the child.

§ 63.1-227. Revocation of interlocutory order.

The court may, by order entered of record, revoke its interlocutory order of adoption at any time prior to the entry of the final order, for good cause shown, on its own motion, or on the motion of the ~~natural~~ birth parents of the child, or of the petitioner, or of the child himself by his next friend, or of the child-placing agency, which placed the child with the petitioners or of the Commissioner; but no such order of revocation shall be entered, except on motion of the petitioner, unless the petitioner is given ten days' notice of such motion in writing and an opportunity to be heard or has removed from the Commonwealth. The clerk of the court shall forward an attested copy of every such order to the Commissioner, and to the child-placing agency which placed the child.

When an interlocutory order has been entered and subsequently is revoked, the court may proceed in the same manner as set forth in § 63.1-226 to enter an order concerning the subsequent custody or guardianship of the child.

§ 63.1-229. Omission of probationary period and interlocutory order.

A. If the child is legally the child by birth or adoption of one of the petitioners ~~or if the child has been placed in the home of the petitioner by a child-placing agency and the placing or supervising agency certifies to the court that the child has lived in the home of the petitioner continuously for a period of at least six months next preceding the filing of the petition, and has been visited by a representative of such agency at least three times within such six-month period, provided there are not less than ninety days between the first visit and the last visit, and if the court is of the opinion that the entry of an interlocutory order would otherwise be proper, the court, after receipt of the report, as provided for in § 63.1-223, may omit the probationary period provided for in § 63.1-228 and the interlocutory order, and enter a final order of adoption. The court may, for good cause shown, in cases of placement by a child-placing agency, omit the requirement of this section that the visitations be made in the six months immediately preceding the filing of the petition, provided that such visits be made in some six-month period preceding such filing.~~

B. *If the child has been placed in the home of the petitioner by a child-placing agency and (i) the placing or supervising agency certifies to the court that the child has lived in the home of the petitioner continuously for a period of at least six months immediately preceding the filing of the petition and has been visited by a representative of such agency at least three times within a six-month period, provided there are not less than ninety days between the first visit and the last visit, and (ii) the court is of the opinion that the entry of an interlocutory order would otherwise be proper, the court, after receipt of the report as provided for in § 63.1-223, may omit the probationary period provided for in § 63.1-228 and the interlocutory order, and enter a final order of adoption. The court may, for good cause shown, in cases of placement by a child-placing agency, omit the requirement that the visits be made in the six months immediately preceding the filing of the petition, provided that such visits were made in some six-month period preceding the filing.*

C. If the child has resided in the home of the petitioner continuously for ~~as much as~~ at least three years immediately prior to the filing of the petition for adoption, and if the court is of the opinion that the entry of an interlocutory order would otherwise be proper, the court, after receipt of the report, as provided for in § 63.1-223, may omit the probationary period and the interlocutory order, and enter a final order of adoption.

~~C. D.~~ D. When a child has been placed by the birth parent with the prospective adoptive parent who is the child's grandparent, adult brother or sister, ~~or adult uncle or aunt, and the child has resided in the home of the prospective adoptive parent continuously for three or more years, or adult great uncle or great aunt~~ and the court has accepted the written consent of the birth parent in accordance with § 63.1-225, and, if the court is of the opinion that the entry of an interlocutory order would otherwise be proper, the court may omit the probationary period and interlocutory order, and enter a final order of adoption.

If the court determines the need for an investigation prior to the final order of adoption, it shall refer the matter to the local director of social services, superintendent of public welfare or a licensed child placing agency as provided in § 63.1-223 for an investigation and report *which shall be completed* within such time as the court designates.

~~D. E.~~ If the child has been legally adopted according to the laws of a foreign country with which the United States has diplomatic relations and if the court is of the opinion that the entry of an interlocutory order would otherwise be proper, the court, after receipt of the report, as provided for in § 63.1-223, may omit the probationary period and the interlocutory order and enter the final order of adoption if the child (i) has resided in the home of the petitioners for a ~~period of~~ at least one year immediately prior to the filing of the petition or (ii) has resided in the home of the petitioners for a ~~period of~~ at least six months immediately prior to the filing of the petition ~~and~~, has been visited by a representative of a child-placing agency or of the local ~~board of~~ department of social services or public welfare three times within such six-month period with no fewer than ninety days between the first and last visits *and the three visits have occurred within eight months immediately prior to the filing of the petition.*

~~E. F.~~ If the child was placed into Virginia from a foreign country in accordance with § 63.1-207, and if the child has resided in the home of the petitioner for a ~~period of~~ at least six months immediately prior to the filing of the petition and has been visited by a representative of a licensed child-placing agency or of the local ~~board of~~ department of social services or public welfare three times within the six-month period with no fewer than ninety days between the first and last visits, *and the three visits have occurred within eight months immediately prior to the filing of the petition,* and if the court is of the opinion that the entry of the interlocutory order would otherwise be proper, the court, after receipt of the report provided for in § 63.1-223, may omit the probationary period provided for in § 63.1-228 and the interlocutory order and enter a final order of adoption.

§ 63.1-231. Adoption of infant by new spouse of ~~natural~~ birth or adoptive parent.

A. When the spouse of a ~~natural~~ birth parent of a legitimate infant or the spouse of a parent by adoption of an infant has died, and the surviving ~~natural~~ birth parent or parent by adoption marries again and the new spouse desires to adopt the infant, on a petition filed by the surviving ~~natural~~ birth parent or parent by adoption and new spouse for the adoption and change of name of the infant, the court may proceed to order the proposed adoption or change of name without referring the matter to the local director of social services or superintendent of public welfare. ~~If the court feels that there should be some investigation before a final order of adoption is entered, it shall thereupon refer the matter to the local director of social services or superintendent of public welfare as provided in § 63.1-223 for an investigation and report within such time as the court designates.~~

B. When a ~~natural~~ birth parent of a legitimate infant or a parent by adoption of an infant is divorced and marries again and the ~~natural~~ birth parent or parent by adoption desires the new spouse to adopt the infant, on a petition filed by the ~~natural~~ birth parent or parent by adoption and the new spouse for the adoption and change of name of the infant, the court may proceed to order the proposed adoption or change of name without referring the matter to the local director of social services or superintendent of public welfare if the other ~~natural~~ birth parent or parent by adoption consents in writing to the adoption or change of name or if the other ~~natural~~ birth parent or parent by adoption is deceased. ~~If the court feels that there should be some investigation before a final order of adoption is entered, it shall thereupon refer the matter to the local director of social services or superintendent of public welfare pursuant to § 63.1-223 for an investigation and report within such time as the court designates.~~

C. When the custodial ~~natural~~ birth parent of an infant ~~born out of wedlock to parents who were not married to each other at the time of the child's conception or birth~~ marries and the new spouse of such custodial ~~natural~~ birth parent desires to adopt such child, on a petition filed by the custodial ~~natural~~ birth parent and spouse for the adoption and change of name of the infant, the court may proceed to order the proposed adoption and change of name without referring the matter to the local director of social services or superintendent of public welfare if (i) the noncustodial ~~natural~~ birth parent of the infant consents, under oath, in writing to the adoption, or (ii) the mother swears, under oath, in writing, that the identity of the father is not reasonably ascertainable, or (iii) the putative father named by the mother denies paternity of the child, or (iv) such infant is fourteen years of age

or older and has lived in the home of the person desiring to adopt the infant for at least five years, or (v) the noncustodial ~~natural~~ birth parent of the infant is deceased. ~~If the court feels that there should be some investigation before a final order of adoption is entered, it shall thereupon refer the matter to the local director of social services or superintendent of public welfare pursuant to §- 63.1-223 for an investigation and report within such time as the court designates.~~

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

~~If the court feels there should be some investigation before a final order of adoption is entered, it shall thereupon refer the matter to the local director of social services or superintendent of public welfare pursuant to §- 63.1-223 for an investigation and report within such time as the court designates.~~

E. For adoptions under this section, the investigation and report provided for in § 63.1-223 shall be undertaken only if the court in its discretion determines that there should be an investigation before a final order of adoption is entered. If the court makes such a determination, it shall refer the matter to the local director of social services or superintendent of public welfare as provided in § 63.1-223 for an investigation and report to be completed within such time as the court designates.

§ 63.1-233. Legal effects of adoption.

The ~~natural~~ birth parents, and the parents by previous adoption, if any, other than any such parent who is the husband or wife of one of the petitioners, shall, by such final order of adoption, be divested of all legal rights and obligations in respect to the child, and the child shall be free from all legal obligations of obedience and maintenance in respect to them. Any child adopted under the provisions of this chapter shall, from and after the entry of the interlocutory order or from and after the entry of the final order where no such interlocutory order is entered, be, to all intents and purposes, the child of the person or persons so adopting him, and, unless and until such interlocutory order or final order is subsequently revoked, shall be entitled to all the rights and privileges, and subject to all the obligations, of a child of such person or persons born in lawful wedlock.

§ 63.1-236. Disposition of reports; disclosure of information as to identity of biological family.

Upon the entry of a final order of adoption or other final disposition of the matter, the clerk of the court in which it was entered shall forthwith transmit to the Commissioner all reports made in connection with the case, and the Commissioner shall preserve such reports and all other collateral reports, information and recommendations in a separate file. Except as provided in subsections C, D and E of § 63.1-236.01, nonidentifying information from such adoption file shall not be open to inspection, or be copied, by anyone other than the adopted person, if eighteen years of age or over, or licensed or authorized child-placing agencies providing services to the child or the adoptive parents, except upon the order of a circuit court entered upon good cause shown. However, if the adoptive parents, or either of them, is living, the adopted person shall not be permitted to inspect the home study of the adoptive parents unless the Commissioner first obtains written permission to do so from such adoptive parent or parents.

No identifying information from such adoption file shall be disclosed, open to inspection or made available to be copied except as provided in subsections A, B and E of § 63.1-236.01 or upon application of the adopted person, if eighteen years of age or over, to the Commissioner, who shall designate the person or agency which made the investigation required by §§ 63.1-220.3, 63.1-223 or § 63.1-228 to attempt to locate and advise the biological family of the application. The designated person or agency shall report the results of the attempt to locate and advise the biological family to the Commissioner, including the relative effects that disclosure of the identifying information may have on the adopted person, the adoptive parents, and the biological family. The adopted person and the biological family may submit to the Commissioner, and the Commissioner shall consider, written comments stating the anticipated effect that the disclosure of identifying information may have upon any party. Upon a showing of good cause, the Commissioner shall disclose the identifying information. If the Commissioner fails to designate a person or agency to attempt to locate the biological family within thirty days of receipt of the application, or if the Commissioner denies disclosure of the identifying information after receiving the designated person's or agency's report,

the adopted person may apply to the circuit court for an order to disclose such information. Such order shall be entered only upon good cause shown after notice to and opportunity for hearing by the applicant for such order and the person or agency which made the investigation required by §§ 63.1-220.3, 63.1-223 or § 63.1-228. "Good cause" when used in this section shall mean a showing of a compelling and necessitous need for the identifying information.

An eligible adoptee who is a resident of Virginia may apply for the court order provided for herein to (i) the circuit court of the county or city where the adoptee resides or (ii) the circuit court of the county or city where the central office of the State Department of Social Services is located. An eligible adoptee who is not a resident of Virginia shall apply for such a court order to the circuit court of the county or city where the central office of the State Department of Social Services is located.

If the identity and whereabouts of the adoptive parents and the ~~biological~~ *birth* parents are known to the person or agency, the court may require the person or agency to advise the adoptive parents and the ~~biological~~ *birth* parents of the pendency of the application for such order. In determining good cause for the disclosure of such information, the court shall consider the relative effects of such action upon the adopted person, the adoptive parents and the ~~biological~~ *birth* parents. The adopted person and the biological family may submit to the court, and the court shall consider, written comments stating the anticipated effect that the disclosure of identifying information may have upon any party.

When consent of the ~~biological~~ *birth* parents is not obtainable, due to the death of the ~~biological~~ *birth* parents or mental incapacity of the ~~biological~~ *birth* parents, the court may release identifying information to the adult adopted person. In making this decision, the court shall consider the needs and concerns of the adopted person and the biological family if such information is available, the actions the agency took to locate the biological family, the information in the agency's report and the recommendation of the agency.

The Commissioner, person or agency may charge a reasonable fee to cover the costs of processing requests for nonidentifying information.

Upon entry of a final order of adoption or other final disposition of a matter involving the placement of a child by a licensed child-placing agency or a local board of public welfare or social services or an investigation by the local director or superintendent of a placement for adoption of a child, the agency or local board shall transmit to the Commissioner all reports and collateral information in connection with the case which shall be preserved by the Commissioner in accordance with this section.

§ 63.1-236. (Delayed effective date) Disposition of reports; disclosure of information as to identity of biological family.

Upon the entry of a final order of adoption or other final disposition of the matter, the clerk of the court in which it was entered shall forthwith transmit to the Commissioner all reports made in connection with the case, and the Commissioner shall preserve such reports and all other collateral reports, information and recommendations in a separate file. Except as provided in subsections C, D and E of § 63.1-236.01, nonidentifying information from such adoption file shall not be open to inspection, or be copied, by anyone other than the adopted person, if eighteen years of age or over, or licensed or authorized child-placing agencies providing services to the child or the adoptive parents, except upon the order of a family court entered upon good cause shown. However, if the adoptive parents, or either of them, is living, the adopted person shall not be permitted to inspect the home study of the adoptive parents unless the Commissioner first obtains written permission to do so from such adoptive parent or parents.

No identifying information from such adoption file shall be disclosed, open to inspection or made available to be copied except as provided in subsections A, B and E of § 63.1-236.01 or upon application of the adopted person, if eighteen years of age or over, to the Commissioner, who shall designate the person or agency which made the investigation required by §§ 63.1-220.3, 63.1-223 or § 63.1-228 to attempt to locate and advise the biological family of the application. The designated person or agency shall report the results of the attempt to locate and advise the biological family to the Commissioner, including the relative effects that disclosure of the identifying information may have on the adopted person, the adoptive parents, and the biological family. The adopted person and

the biological family may submit to the Commissioner, and the Commissioner shall consider, written comments stating the anticipated effect that the disclosure of identifying information may have upon any party. Upon a showing of good cause, the Commissioner shall disclose the identifying information. If the Commissioner fails to designate a person or agency to attempt to locate the biological family within thirty days of receipt of the application, or if the Commissioner denies disclosure of the identifying information after receiving the designated person's or agency's report, the adopted person may apply to the family court for an order to disclose such information. Such order shall be entered only upon good cause shown after notice to and opportunity for hearing by the applicant for such order and the person or agency which made the investigation required by §§ 63.1-220.3, 63.1-223 or § 63.1-228. "Good cause" when used in this section shall mean a showing of a compelling and necessitous need for the identifying information.

An eligible adoptee who is a resident of Virginia may apply for the court order provided for herein to (i) the family court of the county or city where the adoptee resides or (ii) the family court of the county or city where the central office of the State Department of Social Services is located. An eligible adoptee who is not a resident of Virginia shall apply for such a court order to the family court of the county or city where the central office of the State Department of Social Services is located.

If the identity and whereabouts of the adoptive parents and the ~~biological~~ *birth* parents are known to the person or agency, the court may require the person or agency to advise the adoptive parents and the ~~biological~~ *birth* parents of the pendency of the application for such order. In determining good cause for the disclosure of such information, the court shall consider the relative effects of such action upon the adopted person, the adoptive parents and the ~~biological~~ *birth* parents. The adopted person and the biological family may submit to the court, and the court shall consider, written comments stating the anticipated effect that the disclosure of identifying information may have upon any party.

When consent of the ~~biological~~ *birth* parents is not obtainable, due to the death of the ~~biological~~ *birth* parents or mental incapacity of the ~~biological~~ *birth* parents, the court may release identifying information to the adult adopted person. In making this decision, the court shall consider the needs and concerns of the adopted person and the biological family if such information is available, the actions the agency took to locate the biological family, the information in the agency's report and the recommendation of the agency.

The Commissioner, person or agency may charge a reasonable fee to cover the costs of processing requests for nonidentifying information.

Upon entry of a final order of adoption or other final disposition of a matter involving the placement of a child by a licensed child-placing agency or a local board of public welfare or social services or an investigation by the local director or superintendent of a placement for adoption of a child, the agency or local board shall transmit to the Commissioner all reports and collateral information in connection with the case which shall be preserved by the Commissioner in accordance with this section.

§ 63.1-236.01. Disclosure to biological family; adoptive parents; medical, etc., information; exchange of information; open records in parental placement adoptions.

A. Where the adoption is finalized on or after July 1, 1994, and the adopted person is twenty-one years of age or over, the adopted person's ~~biological~~ *birth* parents and adult biological siblings may apply to the Commissioner for the disclosure of identifying information from the adoption file. The Commissioner shall designate the person or agency which made the investigation required by §§ 63.1-220.3, 63.1-223 or § 63.1-228 to attempt to locate and advise the adopted person of the application. The designated person or agency shall report the results of the attempt to locate and advise the adopted person to the Commissioner, including the relative effects that disclosure of the identifying information may have on the adopted person, the adoptive parents, and the biological family. The adopted person and the biological family may submit to the Commissioner, and the Commissioner shall consider, written comments stating the anticipated effect that the disclosure of identifying information may have upon any party. Upon a showing of good cause, the Commissioner shall disclose the identifying information. If the Commissioner fails to designate a person or agency to attempt to locate the adopted person within thirty days of receipt of the application, or if the

Commissioner denies disclosure of the identifying information after receiving the designated person's or agency's report, the ~~biological~~ *birth* parents or adult biological siblings, whoever applied, may apply to the circuit court for an order to disclose such information. Such order shall be entered only upon good cause shown after notice to and opportunity for hearing by the applicant for such order and the person or agency which made the investigation required by §§ 63.1-220.3, 63.1-223 or § 63.1-228. "Good cause" when used in this section shall mean a showing of a compelling and necessitous need for the identifying information.

A ~~biological~~ *birth* parent or adult biological sibling who is a resident of Virginia may apply for the court order provided for herein to (i) the circuit court of the county or city where the ~~biological~~ *birth* parent or adult biological sibling resides or (ii) the circuit court of the county or city where the central office of the State Department of Social Services is located. A ~~biological~~ *birth* parent or adult biological sibling who is not a resident of Virginia shall apply for such a court order to the circuit court of the county or city where the central office of the State Department of Social Services is located.

If the identity and whereabouts of the adopted person and adoptive parents are known to the person or agency, the court may require the person or agency to advise the adopted person and adoptive parents of the pendency of the application for such order. In determining good cause for the disclosure of such information, the court shall consider the relative effects of such action upon the adopted person, the adoptive parents and the biological family. The adopted person and the biological family may submit to the court, and the court shall consider, written comments stating the anticipated effect that the disclosure of identifying information may have upon any party.

When consent of the adopted person is not obtainable, due to the death or mental incapacity of the adopted person, the court may release identifying information to the ~~biological~~ *birth* parents or adult biological siblings. In making this decision, the court shall consider the needs and concerns of the ~~biological~~ *birth* parents or adult biological siblings and the adoptive family if such information is available, the actions the agency took to locate the adopted person, the information in the agency's report and the recommendation of the agency.

B. Where the adoption is finalized on or after July 1, 1994, and the adopted person is under eighteen years of age, the adoptive parents or other legal custodian of the child may apply to the Commissioner for the disclosure of identifying information about the biological family. The Commissioner shall designate the person or agency which made the investigation required by §§ 63.1-220.3, 63.1-223 or § 63.1-228 to attempt to locate and advise the biological family of the application. The designated person or agency shall report the results of the attempt to locate and advise the biological family to the Commissioner, including the relative effects that disclosure of the identifying information may have on the adopted person, the adoptive parents or other legal custodian, and the biological family. The adoptive parents, legal custodian and biological family may submit to the Commissioner, and the Commissioner shall consider, written comments stating the anticipated effect that the disclosure of identifying information may have upon any party. Upon a showing of good cause, the Commissioner shall disclose the identifying information. If the Commissioner fails to designate a person or agency to attempt to locate the biological family within thirty days of receipt of the application, or if the Commissioner denies disclosure of the identifying information after receiving the designated person's or agency's report, the adoptive parents or legal custodian, whoever applied, may apply to the circuit court for an order to disclose such information. Such order shall be entered only upon good cause shown after notice to and opportunity for hearing by the applicant for such order and the person or agency which made the investigation required by §§ 63.1-220.3, 63.1-223 or § 63.1-228. "Good cause" when used in this section shall mean a showing of a compelling and necessitous need for the identifying information.

An adoptive parent or legal custodian who is a resident of Virginia may apply for the court order provided for herein to (i) the circuit court of the county or city where the adoptive parent or legal custodian resides or (ii) the circuit court of the county or city where the central office of the State Department of Social Services is located. An adoptive parent or legal custodian who is not a resident of Virginia shall apply for such a court order to the circuit court of the county or city where the central office of the State Department of Social Services is located.

If the identity and whereabouts of the ~~biological~~ *birth* parents are known to the person or agency,

the court may require the person or agency to advise the ~~biological~~ *birth* parents of the pendency of the application for such order. In determining good cause for the disclosure of such information, the court shall consider the relative effects of such action upon the adopted person, the adoptive parents or legal custodian and the ~~biological~~ *birth* parents. The biological family may submit to the court, and the court shall consider, written comments stating the anticipated effect that the disclosure of identifying information may have upon any party.

When consent of the biological family is not obtainable, due to the death of the ~~biological~~ *birth* parents or mental incapacity of the ~~biological~~ *birth* parents, the court may release identifying information to the adoptive parents or legal custodian. In making this decision, the court shall consider the needs and concerns of the adoptive parents or legal custodian and the ~~biological~~ *biological* family if such information is available, the actions the agency took to locate the biological family, the information in the agency's report and the recommendation of the agency.

C. In any case where a physician or licensed mental health provider submits a written statement, in response to a request from the adult adoptee, adoptive parent, ~~biological~~ *birth* parent or adult biological siblings, indicating that it is critical that medical, psychological or genetic information be conveyed, and states clearly the reasons why this is necessary, the agency which made the investigation pursuant to §§ 63.1-220.3, 63.1-223, or § 63.1-228, shall make an attempt to inform the adult adoptee, adoptive parents, ~~biological~~ *birth* parents or adult biological siblings, whichever is applicable, of the information. The Commissioner shall provide information from the adoption record to the searching agency if necessary to facilitate the search. Confidentiality of all parties shall be maintained by the agency.

D. In cases where at least one of the adoptive parents and one of the ~~biological~~ *birth* parents agree in writing to allow the agency involved in the adoption to exchange nonidentifying information and pictures, the agency may exchange this information with such adoptive parents and ~~biological~~ *birth* parents when the whereabouts of the adoptive parents and ~~biological~~ *birth* parents is known or readily accessible. Such agreement may be entered into or withdrawn by either party at any time or may be withdrawn by the adult adoptee.

E. In parental placement adoptions, where the consent to the adoption was executed on or after July 1, 1994, the entire adoption record shall be open to the adoptive parents, the adoptee who is eighteen years of age or older, and a ~~biological~~ *birth* parent who executed a written consent to the adoption.

§ 63.1-236.1. Fees for adoption services.

Notwithstanding the provisions of § 14.1-112, the court with jurisdiction over any adoption matter, or the person, agency, or child-placing agency which attempts to locate the biological family pursuant to § 63.1-236 or subsection B of § 63.1-236.01, or which attempts to locate the adult adoptee pursuant to subsection A of § 63.1-236.01, shall assess a fee against the petitioner, or applicant and, in the case of local departments of social services, shall assess such fee in accordance with regulations and fee schedules established by the State Board, for home studies, investigations, visits and reports provided by the appropriate department of social services, person, or agency pursuant to §§ 20-160, 63.1-220.3, 63.1-223, 63.1-228 or § 63.1-236. The State Board shall establish regulations and fee schedules, which shall include (i) standards for determining the petitioner's or applicant's ability to pay and (ii) a scale of fees based on the petitioner's or applicant's income and family size and the actual cost of the services provided. The fee charged shall not exceed the actual cost of the service. The fee shall be paid to the appropriate department of social services, person, or agency and a receipt therefor shall be provided to the court, or to the Commissioner if pursuant to § 63.1-236 or § 63.1-236.01, prior to the acceptance of parental consent, entry of any final order, or release of identifying information by the Commissioner, and no court shall accept parental consent or enter any final order and the Commissioner shall not release any identifying information until proof of payment of such fees has been received.

§ 63.1-237. Final order not subject to attack after six months.

After the expiration of six months from the date of entry of any final order of adoption from which no appeal has been taken to the Court of Appeals, the validity thereof shall not be subject to attack in any proceedings, collateral or direct, *for any reason, including but not limited to fraud, duress, failure to give any required notice, failure of any procedural requirement, or lack of*

jurisdiction over any person, and such order shall be final for all purposes.

2. That the provisions of this act may result in a net increase in periods of imprisonment in state correctional facilities. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$ 0.00.