

**SJR 331**  
**Study of Virginia's Adoption Laws and Policies**  
*<http://dls.state.va.us/adoption.htm>*

**Tuesday, May 24, 2005, 2:00 PM**

**Review of adoption laws, studies and legislation**  
**Virginia Division of Legislative Services**

## **I. Introduction**

Adoption is the placement of children who have been permanently and legally separated from their birth parents with a new family. It is a social and legal process which gives new parents the same rights and obligations as biological parents.

Adoption procedures in Virginia are governed by Chapter 12 (§ 63.2-1200 et seq.) of Title 63.2 of the Code of Virginia. There are two types of adoptive placements that are allowed by Virginia law: agency placements and non-agency placements.

## **II. Types of Adoption in Virginia**

### **A. Agency Placements**

Agency placements occur when the child is in the custody of a local department of social services or licensed child-placing agency. In an agency placement, all parental rights are terminated, custody with authority to place for adoption is granted to the agency, and the agency consents to the child's adoption. These provisions are set forth in §§ 63.2-1221 through 63.1-1229.

### **B. Non-agency Adoptions**

A non-agency placement occurs when the child is not in the custody of an agency. In a non-agency placement, the birth parents or legal guardians consent to the adoption, and parental rights are terminated by entry of the final order of adoption.

Except for licensed or duly authorized child-placing agencies, only birth parents and legal guardians are allowed to place a child for adoption in Virginia. Although anyone may provide assistance to birth parents in locating a prospective adoptive family and to

adoptive parents in locating a child, only birth parents and legal guardians may actually place the child for adoption.

There are basically three different types of non-agency adoptions.

- **Parental Placement Adoptions:** Parental placements for the purpose of adoption are governed by the provisions in Code §§ 63.2-1230 through 63.2-1240. In a parental placement, the approved child placing agency completes a home study report and a petition is filed in the juvenile and domestic relations court for execution of consent and awarding of custody to the prospective adoptive parents. The juvenile and domestic relations court reviews the home study report and collateral material to determine whether the requirements of law have been met, accepts parental consent, and transfers custody to the adoptive parents. An adoption petition may then be filed in circuit court.

The overall steps in a parental placement adoption are as follows:

- (i) the agency receives a request for a home study;
- (ii) a home study is completed;
- (iii) a report of the home study is submitted to the juvenile and domestic relations district court;
- (iv) adoptive parents file a petition for execution of consent in juvenile and domestic relations district court;
- (v) court accepts consent and awards custody to the prospective adoptive parents;
- (vi) a petition for adoption is filed in the circuit court;
- (vii) the circuit court enters an interlocutory order of adoption if everything has been done in compliance with law; and
- (viii) after a six month supervisory period, the circuit court enters a final order of adoption.

- **Stepparent adoptions:** In a stepparent adoption, the petitioner has married someone who already has children and wishes to adopt the child(ren) of his or her spouse. If the noncustodial parent is deceased, consents to the adoption, or is not known, the court may order the adoption without referring the matter to the Department of Social Services for investigation. If the noncustodial birth parent refuses to consent to the adoption, the court has the authority to grant a final order

of adoption if it finds that the consent is being withheld contrary to the best interests of the child. These provision are set forth in §§ 63.2-1241 and 63.2-1242.

- **Adult Adoptions:** An adult adoption is the adoption of any person who is 18 years of age or older at the time that the adoption petition is filed. Adult adoptions are governed by the provisions of §§ 63.2-1243 and 63.2-1244 of the Code of Virginia. In an adult adoption, the agency first becomes involved when the adoption petition is filed in circuit court.

### **C. Interstate and International Adoptions**

Interstate and international adoptions are subject to all relevant Virginia statutes governing either parental placement of agency placement adoptions. These placements also require compliance with the child-placement and adoption laws of the sending and receiving states and foreign countries, including the Interstate Compact on the Placement of Children (Chapter 10 of Title 63.2 of the Code of Virginia), with regard to interstate placements.

### **D. Adoption Type Percentages**

According to the 1999 Youth Commission study (based on 1998 data):

Step Parent Adoptions: 49%

Public Agency Placements: 17%

Private Agency Placements: 11%

Parental Placements: 23%

(This does not include data specific to international adoptions)

## **III. Legislative and executive branch studies**

### **A. 1977 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. (**§ 63.2-1200**)

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.

**B. 1989 Joint Subcommittee Studying Direct Adoption Placement and Unauthorized Placement Activity.**  
**(HJR 86, 1988) (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,
- both the birth and adoptive parents make informed decisions regarding the adoption, including a simultaneous meeting of the birth parents and the adoptive parents (**§§ 63.2-1231 and 63.2-1232**); and
- prohibited placement and adoption activities be clearly defined and that laws addressing these activities be effectively enforced. (**§§ 63.2-1218 and 63.2-1219**)

**C. 1994 Joint Subcommittee Studying the Commonwealth's Adoption Laws**  
**(HJR 100, 1994) (House Document No. 65 1995)**

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 proposed a number of changes to Virginia's adoption laws, most of which were designed to make the adoption process run more smoothly. Subcommittee recommendations that were implemented by the General Assembly:

- docket preference for the consent hearing (**§§ 16.1-241(U) and 63.2-1230**);
- made it a Class 6 felony for provision of false information in writing and under oath (**§63.2-1217**); and
- strengthened an existing Code section related to final orders of adoption.

**D. 1998 Department of Social Services Study of the Barriers to Adoption**  
**(HJR 264, 1998) House Document 35, 1999**

The 1998 Study addressed three issues related to adoption of children in Virginia:

1. The need to help children in foster care achieve the goal of adoption more quickly so that they are not further traumatized by not having a permanent attachment to a family;
2. The need to ensure that children with special need receive the financial assistance they need in order to obtain a stable, permanent home through adoption; and
3. The need to educate unwed, pregnant women and their families to get them to view adoption as a viable option in their choices of dealing with pregnancy resolution.

As a result of the study, the Department's recommendations included:

- Increasing staffing in local agencies by adding 172 workers and 20 supervisors in foster care and adoption; and

- Continue to support families adopting children with special needs through adequate funding of the adoption assistance program.

The 1999 General Assembly approved \$432,231 in General Funds and \$6.5 million in federal (TANF) funds for local departments to hire 172 social workers and 29 supervisors for foster care and adoption casework. The General Assembly also funded the Adoption Assistance Program to the full amount requested by the Department of Social Services (\$19.9 million).

Various other recommendations from the study have not yet been implemented.

**E. 1999 Youth Commission Study of the Desirability of Reorganizing the Commonwealth's Adoption Laws (SJR 366, 1999) (Senate Document No. 15, 2000).**

The Youth Commission was directed to study the desirability of reorganizing the Commonwealth's adoption laws. The Youth Commission found that there was consensus among the adoption community that the statutory framework of Virginia's adoption laws was lengthy, complex and confusing. Chapter 11 of Title 63.1 was repealed in its entirety and a new chapter was enacted. A work group was formed and the laws were rewritten and introduced as **SB 685** (Senator Reynolds) during the 2000 General Assembly Session. The new chapter consisted of:

- a general provisions article and a separate article for each type of adoption (parental placement, agency placement, stepparent and adult adoption). Some other clarification and procedural improvements were made. Additional changes were made regarding Virginia's Adoption Assistance Program.

Year	Study/Activity	Changes to Adoption Statutes
1978	Joint Subcommittee on the Placement of Children for Adoption	<ul style="list-style-type: none"> <li>• Placement for adoption limited to parents/guardians, local departments of social services, or licensed child-placing agencies.</li> <li>• Required parental consent to adoption in J&amp; DR Court.</li> <li>• Required counseling be provided to birth parents.</li> </ul>
1989	Joint Subcommittee Studying Direct Adoption Placement	<ul style="list-style-type: none"> <li>• Required adoptive home study early in adoption process.</li> <li>• Required counseling for both birth and adoptive parents.</li> <li>• Required disclosure of financial arrangements.</li> </ul>
1995	Joint Subcommittee Studying the Commonwealth's Adoption	<ul style="list-style-type: none"> <li>• Required timely appearance by birth parent for consent hearing.</li> <li>• Allowed the Court to grant the</li> </ul>

	Laws	<p>adoption petition without consent of birth parent if the Court finds consent is being withheld contrary to best interest of the child.</p> <ul style="list-style-type: none"> <li>• Required docket preference for consent hearing.</li> <li>• Added specific requirements for revocation of consent.</li> <li>• Provided penalty for provision of false information.</li> <li>• Broadened and clarified what expenses may be paid for adoption on behalf of birth parents. Reduced penalty for violation from Class 5 to Class 6 felony.</li> <li>• Clarified that in step parent adoptions, home study is required only if the Court determines one is necessary.</li> <li>• Strengthened final order of adoption.</li> </ul>
1999	Department of Social Services Study of Barriers to Adoption	<ul style="list-style-type: none"> <li>• Added \$6.9 million for 172 social workers and 29 supervisors for local foster care and adoption casework.</li> <li>• Approved \$19.9 million for Adoption Assistance.</li> </ul>
1999	Supreme Court of Virginia Court Improvement Program - Foster Care and Adoption	<ul style="list-style-type: none"> <li>• Required permanency planning hearings be held 11 months after child's dispositional hearing.</li> <li>• Expedited filing for termination of parental rights.</li> <li>• Expanded list of situations in which reasonable efforts to reunify families are not required.</li> <li>• Required filing of Adoption Progress Report every six months after termination of parental rights until final order of adoption.</li> </ul>

Source: Virginia Commission on Youth Graphic/Analysis of the Code of Virginia, 1999

#### IV. Recent legislative activity

##### **Bills that passed:**

**2003**

### **HB 1514 (Delegate Albo)**

*Summary as passed:*

**Parental placement adoptions.** Provides that when a licensed child-placing agency or a local board of social services accepts custody of a child for the purpose of placing the child with adoptive parents designated by the birth parent, such agency or local board may give consideration for placement of the child to the designated adoptive parents if the agency or local board finds the placement in the best interest of the child. (§ 63.2-1225)

### **HB 2009 (Delegate Bell)**

*Summary as passed:*

**Adoption; birth parent physical and mental history.** Requires the child-placing agency or local director of social services to document in the court report all efforts made to encourage birth parents to share information related to their physical and mental history in all adoption proceedings. (§ 63.2-1208(D))

### **HB 2233 (Delegate Cline)**

*Summary as passed:*

**Recognition of foreign adoption decrees.** Provides that adoptive parents who are residents of the Commonwealth may petition the circuit court in the city or county where they reside for a report of adoption when the adoptive parents are seeking a Virginia certificate of birth for a child adopted in a foreign country that has post-adoption reporting requirements and with whom the United States has diplomatic relations. The adoptive parents must provide the circuit court with evidence, such as an admission stamp in the child's passport, that the child was admitted to the United States with an immediate relative immigrant visa (IR-3), a report of adoption on a form furnished by the State Registrar of Vital Records, completed post-adoption reports, and a signed affidavit stating that any outstanding post-adoption requirements shall be met as required by the foreign country. The affidavit shall also include the name by which the child is to be known. The circuit court will review all documents provided by the adoptive parents. If the circuit court finds that all requirements have been met, the circuit court may issue the report of adoption to the State Registrar for issuance of a Virginia certificate of birth. Adoptive parents seeking to have a child from a foreign country adopted or who choose to readopt a child from a foreign country in Virginia must comply with all statutory adoption requirements in order to get a Virginia certificate of birth. (§ 63.2-1220)

## **2004**

### **SB 62 (Senator Edwards)**

*Summary as passed:*

**Adoption; child-placing agencies outside the Commonwealth.** Requires any child-placing agency outside the Commonwealth, or its agent, that executes an entrustment agreement in the Commonwealth with a birth parent for the termination of all parental rights and responsibilities with respect to a child to comply with the Commonwealth's laws

regarding entrustment agreements, revocations of entrustment agreements and birth parent counseling. Any entrustment agreement that fails to follow such requirements shall be void. The bill adds the requirement that an entrustment agreement for the termination of all parental rights and responsibilities shall be executed in writing and notarized.

## **2005**

### **HB 2744 (Delegate Alexander)**

*Summary passed:*

**Foster care plans and home studies.** Requires parent and child involvement in the development of foster care plans. The bill also requires home studies prior to any foster home placement, and requires the Board of Social Services to adopt regulations allowing for dual approval of homes as both foster and adoptive homes.

### **SB 854 (Senator Cuccinelli)**

*Summary as passed:*

**Adoption and custody.** Provides that a birth father's consent to adoption is not necessary if the birth father is convicted in another state, the United States, or any foreign jurisdiction of (i) rape, (ii) carnal knowledge of a child between 13 and 15 years of age, or (iii) adultery or fornication with his mother, daughter or granddaughter. Any person convicted of such crimes in another state, the United States, or any foreign jurisdiction also is excluded from the definition of persons having a legitimate interest in matters involving custody, support, control, visitation or disposition of a child conceived as a result of the violation. Current law addresses these issues only for convictions for offenses committed in Virginia.

## **Bills that did not pass:**

## **2004**

### **SB 108 (Senator Williams)**

*Summary as introduced:*

**Parental placement adoption; how consent executed.** Eliminates the requirement that the birth parent or parents execute consent to a parental placement adoption before the juvenile and domestic relations district court in person and in the presence of the prospective adoptive parents. Instead, the consent of the birth parents shall be in writing that has been signed and acknowledged before an officer authorized by law to take acknowledgement. The juvenile and domestic relations district court shall accept the consent of the birth parents at a hearing in the presence of the prospective adoptive parents and transfer custody of the child to the prospective adoptive parents, pending notification to any nonconsenting birth parent.



### **SB 979 (Senator O'Brien)**

*Summary as introduced:*

**Designated agency adoptions.** Provides that when a licensed child-placing agency or a local board of social services (agency) 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 an agency, either the parental placement adoption provisions or the agency adoption provisions will apply to the placement at the election of the birth parent. Current law requires agencies to use parental placement adoption law when birth parents designate adoptive parents. Current parental placement adoption law requires the simultaneous meeting of the birth and adoptive parents during the home study and the presence of both parties at the consent hearing in juvenile and domestic relations court. This bill will provide a designated adoption through an agency that is either disclosed or nondisclosed. The agency or local board shall provide information to the birth parents regarding the parental placement adoption and the agency adoption provisions in order to give the birth parents the opportunity to make an informed choice. Any compensation to any party in connection with the adoption is prohibited except as provided in current law.

### **2005**

### **HB 1919 (Delegate Cole)**

*Summary as introduced:*

**Consent to adoption; exceptions.** Provides that a birth father's consent to adoption is not required where he is incarcerated upon a felony with more than 12 months remaining on his sentence and he was not married to the birth mother at the time of the child's conception or birth.

### **HB 2921 (Delegate Black)**

*Summary as passed House:*

**Adoptions; investigation by circuit court.** Requires the circuit court's investigation of a petitioner for adoption to include an inquiry into whether the petitioner is known to engage in current voluntary homosexual activity or is unmarried and cohabiting with another adult to whom he is not related by blood or marriage.

### **SB 616 (Senator O'Brien)**

*Summary as introduced:*

**Parental placement adoptions.** Provides that when a licensed child-placing agency or a local board of social services 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, either the parental placement adoption provisions or the agency adoption provisions will apply to the placement at the election of the birth parent. The agency or local board shall provide information to the birth parents regarding the parental placement adoption and the agency adoption provisions in order to give the birth parents the opportunity to make an informed choice. Current parental

placement adoption law requires the simultaneous meeting of the birth and adoptive parents during the home study and the presence of both parties at the consent hearing in juvenile and domestic relations court. This bill will provide for nondisclosed agency adoptions where the birth parent or a person other than a licensed child-placing agency or local board designates the adoptive parents.