

Frequently Asked Questions About Adoption In Virginia

MOTHER OF THE BABY: BIRTH MOTHER RELATED

1. When can the mother of the baby start the adoption process?

A mother can investigate all options upon learning of her pregnancy. She can begin procedures after the baby's birth.

2. Can the birth mother choose the adoptive parents?

Yes, except for when her parental rights are terminated involuntarily due to abandonment or child abuse or neglect.

3. Can the birth mother see and hold the baby after the birth?

Yes, the mother has all legal rights until the adoptive placement occurs.

4. What expenses can the adoptive parents pay to or on behalf of the birth mother and child?

- ? Medical expenses and insurance premiums that are directly related to the birth mother's pregnancy and hospitalization.
- ? Mental health counseling.
- ? Reasonable and necessary expenses for food, clothing, shelter and transportation, upon written advice from her physician, the birthmother is unable to work or otherwise support herself due to medical reasons or complications associated with the pregnancy or birth of the child
- ? Expenses incurred incident to any court appearance.
- ? Fees for legal services. (§ 63.2-1218)

5. Can a minor mother independently sign legal documents placing the child for adoption (consent to the adoption)?

Yes, a mother less than 18 years of age can consent to an adoption without the concurrence of her parents.

6. When does the birth mother actually sign the legal documents required for the adoption?

In an agency adoption, the birth mother may sign the legal documents anytime after the birth of her baby. Appearing in court is not necessary unless the birth father is not locatable or is contesting the adoption.

In a Parental Placement (private adoption) the consent can be signed anytime after the child reaches ten days of age. It must be signed before court, a notary public or other person authorized to take acknowledgments or an agent of the division of family and children, a county office of family and children or a licensed child placing agency.

6. Can the birth mother change her mind before signing the legal consents to the adoption?

Yes. She cannot be forced to consent to the adoption.

7. Can the birth mother change her mind after signing the legal consents to the adoption?

The birthmother has 25 days from the birth of the baby to revoke her Entrustment or if the child is over 25 days old the birthmother has 15 days to revoke her Entrustment.

In a Parental Placement adoption (private adoption) Voluntary termination of parental rights cannot occur until the child is ten days old. After this the birth parents have a fifteen-day period in which they can change their mind and revoke the entrustment which must be done in writing. They can also revoke the entrustment any time before placement of the child with an adoptive family. Once the fifteen days have passed after the execution of the entrustment agreement the birth parents can have their parental rights restored only upon a showing the agreement was obtained by fraud or duress. This must be done in the circuit court before a final order of adoption is entered.

8. Can the birth mother communicate with the adoptive parents and child after the adoption?

Yes. If it is a Parental Placement adoption, the birthparents and adoptive parents may communicate directly with each other. In a confidential adoption, the child placing agency can be the intermediary.

9. Can a birth mother anonymously surrender a newborn child?

Yes. A mother can surrender within 14 days of the child's birth to a hospital that provides 24 hour medical services or a rescue squad that employs medical personnel. (§§ 18.2-371.1; 40.1-103)

10. What happens if the birth parents do not agree that adoption should be the plan?

The child cannot be placed for adoption without the consent of both parents.

12. Can a child born to illegal/undocumented alien parents be placed for adoption?

Any infant born in Virginia can be placed for adoption as long as the birth parents consent.

13. What rights do birth grandparents have in their child's decision to place a child for adoption?

Grand parents do not have the right to make the decision on behalf of their child.

FATHER OF THE BABY: BIRTH FATHER RELATED

1. Does the father of the baby have to be notified of the birth and the mother's adoption plan?

Yes, unless the child was conceived in violation of state law (subsection A of § 18.2-61, § 18.2-63 or subsection B of § 18.2-366) and the father has been convicted.

2. How is the father of the baby notified of the mother's adoption plan?

The birth father is given notice of the entrustment by registered or certified mail to his last known address and fails to object to the entrustment within 21 days of the mailing of such notice. Such objection shall be in writing, signed by the objecting party or counsel of record for the objecting party and shall be filed with the agency that mailed the notice of entrustment within the time period specified in § 63.2-1223.

3. Can the father of the baby choose the adoptive parents?

He is encouraged to participate. Unless he is the custodial parent, the birth mother must be involved.

4. What happens if the biological father of the baby is not the baby's legal father?

The birth father is given notice of the entrustment by registered or certified mail to his last known address and fails to object to the entrustment within 21 days of the mailing of such notice. Such objection shall be in writing, signed by the objecting party or counsel of record for the objecting party and shall be filed with the agency that mailed the notice of entrustment within the time period specified in § 63.2-1223.

5. What happens if the husband (legal father) is not the biological father?

He must give consent unless it can be determined that there was no contact with the birth mother during the time of conception. An example might be that he was in jail during the time of conception.

6. What happens if the mother does not know who the biological father is?

An affidavit from 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 before the court which would refute such an affidavit. § 16.1-277.01.

7. What happens if the mother refuses to give the name of the biological father?

The agency would need to terminate the unknown birth father's rights in court. Virginia does not have a state registry for putative fathers.

8. Can the biological father of the baby give notice that he intends to plan for the baby before the baby is born?

He can give notice but procedures cannot begin until the birth of the baby.

9. Can the birth father change his mind before signing the legal consents to the adoption?

In an agency adoption, the termination of the birth father's rights is the same as the birthmother's if he signs a voluntary Entrustment. He can revoke within 25 days after the baby's birth or within 15 days if the child is more than 25 days old.

If the putative father is not willing to sign an Entrustment, he can be notified of the adoption proceedings by registered or certified mail. He will then have 21 days to object to adoption proceedings from mailing of the notice of such proceedings. §§ 63.2-1202; 63.2-1222

10. Can a minor father independently sign legal documents placing the child for adoption (consent to the adoption)?

Yes, a father less than 18 years of age can consent to an adoption without the concurrence of his parents or guardian UNLESS the court determines that it would be in the best interests of the child to require the concurrence.

In an agency adoption, it is not necessary to go to court so the birthfather's Entrustment would be sufficient.

11. Can the birth father change his mind after signing the legal consents to the adoption?

? In a Parental Placement Adoption, voluntary termination of parental rights cannot occur until the child is ten days old. After this, the birth parents have a fifteen-day

period in which they can change their mind and revoke the entrustment which must be done in writing. They can also revoke the entrustment any time before placement of the child with an adoptive family. Once the fifteen days have passed after the execution of the entrustment agreement the birth parents can have their parental rights restored only upon a showing the agreement was obtained by fraud or duress. This must be done in the circuit court before a final order of adoption is entered.

- ? In a Child Placing Agency Adoption, the birth father has the same revocation period as the birth mother. He can sign the voluntary Entrustment anytime after the birth of the baby.

12. Can a child born to illegal/undocumented alien parents be placed for adoption?

Yes, any child born in Virginia can be placed for adoption as long as the parents consent.

13. What rights do birth grandparents have in their child's decision to place a child for adoption?

Birth grandparents have no legal rights in their child's decision to place her child for adoption.

ADOPTIVE PARENT RELATED

1. Who can be an adoptive parent and who selects them?

Any person over the age of 18 years can adopt who has a favorably recommended home study. Adoptive parents, in infant adoptions in general, are selected by the birth parents unless they choose not to select them. In that case, the adoptive parents are selected by the child placing agency.

2. What information about the birth parents and the child must be provided to the adoptive parents?

In parental placement adoption, Virginia Code §63.1- 220.3B(3) requires that the birth parent(s) and adoptive parents exchange identifying information, including full names and addresses. The exchange of identifying information normally occurs during the joint counseling session which must take place prior to acceptance of a birth parent's consent by the Juvenile and Domestic Relations District Court. Therefore, the law in Virginia mandates that no anonymity may exist in a parental placement adoption.

In an agency adoption, birth parents and adoptive parents may choose to maintain anonymity. In many instances, this condition will be based on the policy of the agency placing the child. However, all non-identifying information pertaining to the child's health and background must be shared.

3. What procedures are followed to ensure that adoptive parents are fit to adopt a child?

- ? In a Parental Placement adoption, Virginia law does not technically require a pre-placement home study before the adoptive parents take physical custody of the child, the birth parents cannot sign the adoption consent and the adoptive parents cannot obtain a legal custody order until the home study finished. Consequently, there is a strong incentive for Virginia adoptive parents to complete a home study either before or immediately after the child's birth.
- ? For Agency adoptions, child placing regulations require an adoption home study to be completed and approved before placement.

4. Can the potential adoptive parents have the child placed with them prior to the actual court procedures?

Yes, but only in a Parental Placement Adoption

5. Can the adoptive parents prevent the birth parents from communicating with the child after the adoption?

Yes. Adoption begins with the termination of the parent's rights which severs any legal ties with the child. The law allows the parties to determine between themselves how "open" or "closed" the placement will be. Even with a Parental Placement adoption, the adoptive parents still have the option of not continuing contact if they so choose. Agreements are not legally binding in Virginia.

Most Agency adoptions allow for communication between the adoptive parents and the birth parents. The agency acts as an intermediary for the exchange of letters and pictures. Visitation is an option. After finalization, the parties may open the adoption if both choose to do so. The adoptive parents always have the option of not continuing contact. Once the child reaches 18, the child can choose to initiate a search without the consent of the adoptive parents

6. Under what circumstances can an adopted child communicate with the birth parents?

When contact is part of the postadoption contact agreement (agreements are not legally binding it would be up to the adoptive parents) or when the child attains the age of majority.

7. What information must the adoptive parents provide to the birth parents?

In a Parental Placement Adoption, the adoptive parents are required to exchange identifying information including medical and background information.

In an agency adoption it is not required. However, most agencies provide non identifying profiles of adoptive families for the birth parents to select from.

8. Who supervises the adoptive placement and for how long?

The period of supervision is totally within the discretion of the court. Supervision is provided by a licensed child placing agency or the county office of family and children.

The period of supervision is for 6 months after the placement date. Supervision is provided by the child placing agency or the Department of Social Services

8. When is the adoption final?

The adoptive parents may petition the court to finalize the adoption after the 6 month period of supervision. Once the petition is entered the agency has 90 days to complete the court report. After the report is submitted to the court, the Commissioner has 21 days to comment. After the 21 days, the final order of adoption is entered.

COURT SPECIFIC PROCEDURES

1. Who initiates the adoption process?

Anyone can initiate the adoption process.

2. When are the legal adoption papers filed with the court?

The local board or licensed child-placing agency to which authority is given to place the child for adoption and consent thereto after an order terminating parental rights is entered pursuant to this section shall file a written Adoption Progress Report with the juvenile court on the progress being made to place the child in an adoptive home. The report shall be filed with the court every six months from the date of the final order terminating parental rights until a final order of adoption is entered on behalf of the child in the circuit court. At the conclusion of the hearing at which termination of parental rights is ordered and authority is given to the local board or licensed child-placing agency to place the child for adoption, the juvenile court shall schedule a date by which the board or agency shall file the first Adoption Progress Report required by this section. A copy of the Adoption Progress Report shall be sent by the court to the guardian ad litem for the child. The court may schedule a hearing on the report with or without the request of a party. (VC 16.1-277.02)

- ? The adoptive parents may petition the court to finalize the adoption after the 6 month period of supervision, upon the consent of the agency. Once the petition is entered the agency has 90 days to complete the court report. After the report is submitted to the court, the Commissioner has 21 days to comment. After the 21 days, the final order of adoption is entered.

3. When do the birth parents actually sign the legal documents for adoption?

In a Parental Placement adoption the birth parents sign the legal documents 10 days after the birth of the child. Parental rights are then terminated after 15 days.

In an agency adoption, the legal documents can be signed any time after birth. Upon signing the Entrustment, parental rights are terminated 25 days after the child's birth or 15 days if the child is more than 25 days old

4. What happens if the birth parents do not agree on the adoption plan?

Both biological parents must consent to the adoption. If the birth father is not locatable, his parental rights are terminated in court.

5. Can the baby be placed for adoption without the consent of the birth mother and/or birth father?

No. Both parents must consent to the adoption. If the birth father is not locatable his parental rights are terminated in court.

SPECIAL ISSUES

1. Can a Native American child be placed for adoption without the approval of the Tribe?

NO. The state adheres to the Indian Child Welfare Act.

2. Can children be placed for adoption with parents of a different race, color or national origin?

Agencies may not restrict placement of a child on the basis of race according to the Multi Ethnic Placement Act.. Therefore, children can be placed with parents of a different race.

3. Can a child born with birth anomalies or organic impairments be placed for adoption?

Yes, any child can be placed for adoption.

CHILD WELFARE/SPECIAL NEEDS

1. Can a child born to illegal/undocumented alien parents be placed for adoption?

Yes.

2. What rights do birth grandparents have in their child's decision to place a child for adoption?

Grandparents have no rights to the adoption of a minor being placed for adoption.

3. Who can engage in the practice of adoption?

- ? A licensed child-placing agency
- ? A local board of social services
- ? The child's parent or legal guardian
- ? An out-of-state agency that is licensed by that State, but any entrustment agreement must comply with Virginia law to be valid (VC§ 63.2-1200)

CHILD PROTECTION LAW

1. Under what conditions must a health care professional refer a case of a pregnant child to the State's child protective services agency?

When in their professional capacity they suspect abuse and neglect or in the case of newborn children who are exposed to substance abuse. (VC § 16.1-241.3)

Upon the filing of a petition, within twenty-one days of a child's birth, alleging that an investigation has been commenced in response to a report of suspected abuse or neglect of the child based upon a factor specified in subsection B of § [63.2-1509](#), the court may enter any order authorized pursuant to this chapter which the court deems necessary to protect the health and welfare of the child pending final disposition of the investigation pursuant to Chapter 15 (§ [63.2-1500](#) et seq.) of Title 63.2 or other proceedings brought pursuant to this chapter. Such orders may include, but shall not be limited to, an emergency removal order pursuant to § [16.1-251](#), a preliminary protective order pursuant to § [16.1-253](#) or an order authorized pursuant to subdivisions 1 through 4 of subsection A of § [16.1-278.2](#). The fact that an order was entered pursuant to this section shall not be admissible as evidence in any criminal, civil or administrative proceeding other than a proceeding to enforce the order.

The order shall be effective for a limited duration not to exceed the period of time necessary to conclude the investigation and any proceedings initiated pursuant to Chapter 15 (§ [63.2-1500](#) et seq.) of Title 63.2, but shall be a final order subject to appeal.

MINOR CONSENT LAWS

1. What medical procedures may a pregnant minor consent to without parental, legal guardian, or court approval?

A minor shall be deemed an adult for the purpose of consenting to:

1. Medical or health services needed to determine the presence of or to treat venereal disease or any infectious or contagious disease that the State Board of Health requires to be reported;
2. Medical or health services required in case of birth control, pregnancy or family planning except for the purposes of sexual sterilization;
3. Medical or health services needed in the case of outpatient care, treatment or rehabilitation for substance abuse as defined in § 37.1-203;

4. Medical or health services needed in the case of outpatient care, treatment or rehabilitation for mental illness or emotional disturbance; or
 5. The release of medical records related to subdivisions 1 and 2.
- F. Except for the purposes of sexual sterilization, any minor who is or has been married shall be deemed an adult for the purpose of giving consent to surgical and medical treatment.
- G. A minor shall be deemed an adult for the sole purpose of giving consent for herself and her child to surgical and medical treatment relating to the delivery of her child when such surgical or medical treatment is provided during the delivery of the child or the duration of the hospital admission for such delivery; thereafter, the minor mother of such child shall also be deemed an adult for the purpose of giving consent to surgical and medical treatment for her child.
- H. Any minor seventeen years of age may, with the consent of a parent or legal guardian, consent to donate blood and may donate blood if such minor meets donor eligibility requirements. However, parental consent to donate blood by any minor seventeen years of age shall not be required if such minor receives no consideration for his blood donation and the procurer of the blood is a nonprofit, voluntary organization.
- I. Any judge, local director of social services, Director of the Department of Corrections, Director of the Department of Juvenile Justice, or principal executive officer of any state or other institution or agency who consents to surgical or medical treatment of a minor in accordance with this section shall make a reasonable effort to notify the minor's parent or guardian of such action as soon as practicable.
- J. Nothing in subsection G shall be construed to permit a minor to consent to an abortion without complying with § 16.1-241.
- K. Nothing in subdivision 3 of subsection E shall prevent a parent, legal guardian or person standing in loco parentis from obtaining the results of a minor's nondiagnostic drug test when the minor is not receiving care, treatment or rehabilitation for substance abuse as defined in § 37.1-203.

(Code 1950, § 32-137; 1968, c. 71; 1970, c. 232, § 54-325.2; 1971, Ex. Sess., c. 183; 1972, cc. 323, 823; 1973, c. 337; 1974, cc. 44, 45, 639; 1977, cc. 523, 525; 1978, cc. 10, 401; 1979, c. 720; 1981, cc. 22, 454, 573; 1984, c. 72; 1988, c. 765; 1989, c. 733; 1999, c. 1001; 2000, c. 798; 2002, cc. 315, 747.)

2. What medical procedures require parental, legal guardian, or court approval, permission or agreement?

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

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

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

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

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

An expedited confidential appeal to the circuit court shall be available to any minor for whom the court denies an order authorizing an abortion without consent or without notice. Any such appeal shall be heard and decided no later than five days after the appeal is filed. The time periods required by this subsection shall be subject to § [1-13.3:1](#). An order authorizing an abortion without consent or without notice shall not be subject to appeal.

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

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

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

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

3. Can a minor consent to medical treatment for her/his child?

? A minor in Virginia may consent to medical care for their child.

COMPETENCY LAWS

1. Who determines if a patient/client, minor or adult, is competent to consent to medical treatment and decision-making?

§ 8.01-396.1. Competency of witness.

? No child shall be deemed incompetent to testify solely because of age

2. What is the process for making a competency determination?

? The court determines the competency of a witness.

NOTIFICATION/REPORTING LAWS REGARDING ADULTS

1. What events involving adults require the health care professional to report to law enforcement or an administrative agency?
 - ? Persons licensed to practice medicine or any of the healing arts; hospital residents or interns; persons employed in the nursing profession; other professional staff persons employed by hospitals, institutions, or facilities to which children have been committed or placed for care and treatment; duly accredited Christian Science practitioners. They are required to report when in their professional or official capacity, they have reason to suspect that a child is an abused or neglected child.

(Va. Code Ann. § 63.2-1507)