

## 1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact §§ 20-49.1, 20-49.2, and 64.2-102 of the Code of Virginia, relating to*  
 3 *proceedings to establish paternity.*

4 [H 224]

5 Approved

6 **Be it enacted by the General Assembly of Virginia:**

7 **1. That §§ 20-49.1, 20-49.2, and 64.2-102 of the Code of Virginia are amended and reenacted as follows:**  
 8 **§ 20-49.1. How parent and child relationship established.**

9 A. The parent and child relationship between a child and a woman may be established prima facie by  
 10 proof of her having given birth to the child, or as otherwise provided in this chapter.

11 B. The parent and child relationship between a child and a man may be established by:

12 1. Scientifically reliable genetic tests, including blood tests, which affirm at least a ninety-eight percent  
 13 probability of paternity. Such genetic test results shall have the same legal effect as a judgment entered  
 14 pursuant to § 20-49.8.

15 2. A voluntary written statement of the father and mother made under oath acknowledging paternity and  
 16 confirming that prior to signing the acknowledgment, the parties were provided with a written and oral  
 17 description of the rights and responsibilities of acknowledging paternity and the consequences arising from a  
 18 signed acknowledgment, including the right to rescind. The acknowledgement may be rescinded by either  
 19 party within sixty days from the date on which it was signed unless an administrative or judicial order  
 20 relating to the child in an action to which the party seeking rescission was a party is entered prior to the  
 21 rescission. A written statement shall have the same legal effect as a judgment entered pursuant to § 20-49.8  
 22 and shall be binding and conclusive unless, in a subsequent judicial proceeding, the person challenging the  
 23 statement establishes that the statement resulted from fraud, duress or a material mistake of fact. In any  
 24 subsequent proceeding in which a statement acknowledging paternity is subject to challenge, the legal  
 25 responsibilities of any person signing it shall not be suspended during the pendency of the proceeding, except  
 26 for good cause shown. Written acknowledgments of paternity made under oath by the father and mother prior  
 27 to July 1, 1990, shall have the same legal effect as a judgment entered pursuant to § 20-49.8.

28 3. In the absence of such acknowledgment or if the probability of paternity is less than ninety-eight  
 29 percent, such relationship may be established as otherwise provided in this chapter.

30 C. The parent and child relationship between a child and an adoptive parent may be established by proof  
 31 of lawful adoption.

32 D. No parent and child relationship shall be established when a biological parent has been convicted of a  
 33 violation of subsection A of § 18.2-61, § 18.2-63, subsection B of § 18.2-366, or an equivalent offense of  
 34 another state, the United States, or any foreign jurisdiction, or has been found by clear and convincing  
 35 evidence to have engaged in the conduct prohibited by subsection A of § 18.2-61, § 18.2-63, or subsection B  
 36 of § 18.2-366, whether or not the biological parent has been charged with or convicted of the alleged  
 37 violation, and the child was conceived of such violation or conduct.

38 The provisions of this subsection shall not prevent the establishment of a parent and child relationship if  
 39 (i) after the date of such violation or prohibited conduct, the biological parents cohabit and establish a  
 40 mutual custodial environment for the child or (ii) the biological parent who would otherwise rely on this  
 41 section to prevent the establishment of a parent and child relationship between the child and the biological  
 42 parent who was convicted of such violation or engaged in such prohibited conduct allows such other parent to  
 43 establish a parent and child relationship with such child.

44 *E. The parent and child relationship may be established by a proceeding in accordance with § 63.2-1913.*

45 *F. The parent and child relationship may be established by a voluntary acknowledgement of paternity*  
 46 *signed by the mother and father, under oath, pursuant to § 63.2-1914.*

47 **§ 20-49.2. Commencement of action; parties; jurisdiction.**

48 Proceedings under this chapter may be instituted upon petition, verified by oath or affirmation, filed by a  
 49 child, a parent, a person claiming parentage, a person standing in loco parentis to the child or having legal  
 50 custody of the child or a representative of the Department of Social Services or the Department of Juvenile  
 51 Justice.

52 The child may be made a party to the action, and if he is a minor and is made a party, he shall be  
 53 represented by a guardian ad litem appointed by the court in accordance with the procedures specified in  
 54 § 16.1-266 or § 8.01-9. The child's mother or father may not represent the child as guardian or otherwise. The  
 55 determination of the court under the provisions of this chapter shall not be binding on any person who is not a  
 56 party.

57 The circuit courts shall have concurrent original jurisdiction of cases arising under this chapter with the  
58 juvenile and domestic relations district courts when the parentage of a child is at issue in any matter  
59 otherwise before the circuit court. The determination of parentage, when raised in any proceeding, *under this*  
60 *chapter*, shall be governed by this chapter.

61 **§ 64.2-102. Meaning of child and related terms.**

62 If, for purposes of this title or for determining rights in and to property pursuant to any deed, will, trust, or  
63 other instrument, a relationship of parent and child must be established to determine succession or a taking  
64 by, through, or from a person, *the following shall apply*:

65 1. An adopted person is the child of an adopting parent and not of the biological parents, except that  
66 adoption of a child by the spouse of a biological parent has no effect on the relationship between the child  
67 and either biological parent.

68 2. The parentage of a child ~~resulting from assisted conception~~ *is has been* determined as provided in  
69 *Chapter 3.1 (§ 20-49.1 et seq.) or Chapter 9 (§ 20-156 et seq.) of Title 20 or § 63.2-1913 or 63.2-1914.*

70 3. Except as otherwise provided by subdivision 1 or 2, a person born out of wedlock is a child of the  
71 mother. That person is also a child of the father, if:

72 a. The biological parents participated in a marriage ceremony before or after the birth of the child, even  
73 though the attempted marriage was prohibited by law, deemed null or void, or dissolved by a court; or

74 b. Paternity is established by clear and convincing evidence, including scientifically reliable genetic  
75 testing, as set forth in § 64.2-103; however, paternity established pursuant to this subdivision is ineffective to  
76 qualify the father or his kindred to inherit from or through the child unless the father has openly treated the  
77 child as his and has not refused to support the child.

78 4. No claim of succession based upon the relationship between a child born out of wedlock and a deceased  
79 parent of such child shall be recognized unless, within one year of the date of the death of such parent (i) an  
80 affidavit by such child or by someone acting for such child alleging such parenthood has been filed in the  
81 clerk's office of the circuit court of the jurisdiction wherein the property affected by such claim is located and  
82 (ii) an action seeking adjudication of parenthood is filed in an appropriate circuit court. The one-year  
83 limitation period runs notwithstanding the minority of such child; however, it does not apply in those cases  
84 where the relationship between the child born out of wedlock and the parent in question is established by (a) a  
85 birth record prepared upon information given by or at the request of such parent; (b) admission by such  
86 parent of parenthood before any court or in writing under oath; or (c) a previously entered judgment  
87 establishing such parent's paternity by a court having jurisdiction to determine his paternity.

88 5. Unless otherwise specifically provided therein, an order terminating residual parental rights under  
89 § 16.1-283 terminates the rights of the parent to take from or through the child in question but the order does  
90 not otherwise affect the rights of the child, the child's kindred, or the parent's kindred to take from or through  
91 the parent or the rights of the parent's kindred to take from or through the child.