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**HOUSE BILL NO. 386**

Offered January 14, 2004

Prefiled January 12, 2004

*A BILL to amend and reenact §§ 20-91, 20-103, 20-124.2 and 20-124.3 of the Code of Virginia, relating to divorce, custody and visitation.*

Patrons—Lingamfelter and Petersen

Referred to Committee for Courts of Justice

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

**1. That §§ 20-91, 20-103, 20-124.2 and 20-124.3 of the Code of Virginia are amended and reenacted as follows:**

§ 20-91. Grounds for divorce from bond of matrimony; contents of decree.

A. A divorce from the bond of matrimony may be decreed:

(1) For adultery; or for sodomy or buggery committed outside the marriage;

(2) [Repealed.]

(3) Where either of the parties subsequent to the marriage has been convicted of a felony, sentenced to confinement for more than one year and confined for such felony subsequent to such conviction, and cohabitation has not been resumed after knowledge of such confinement (in which case no pardon granted to the party so sentenced shall restore such party to his or her conjugal rights);

(4), (5) [Repealed.]

(6) Where either party has been guilty of cruelty, caused reasonable apprehension of bodily hurt, or willfully deserted or abandoned the other party or where either party has been guilty of cruelty to or caused reasonable apprehension of bodily hurt in the parties' children, such divorce may be decreed to the innocent party after a period of one year from the date of such act; ~~or~~

(6a) Where there is substantial evidence that either party has abused alcohol or drugs, including prescription drugs; or

(7), (8) [Repealed.]

(9) (a) On the application of either party if and when the husband and wife have lived separate and apart without any cohabitation and without interruption for one year. In any case where the parties have entered into a separation agreement and there are no minor children either born of the parties, born of either party and adopted by the other or adopted by both parties, a divorce may be decreed on application if and when the husband and wife have lived separately and apart without cohabitation and without interruption for six months. A plea of res adjudicata or of recrimination with respect to any other provision of this section shall not be a bar to either party obtaining a divorce on this ground; nor shall it be a bar that either party has been adjudged insane, either before or after such separation has commenced, but at the expiration of one year or six months, whichever is applicable, from the commencement of such separation, the grounds for divorce shall be deemed to be complete, and the committee of the insane defendant, if there be one, shall be made a party to the cause, or if there be no committee, then the court shall appoint a guardian ad litem to represent the insane defendant.

(b) This subdivision (9) shall apply whether the separation commenced prior to its enactment or shall commence thereafter. Where otherwise valid, any decree of divorce hereinbefore entered by any court having equity jurisdiction pursuant to this subdivision (9), not appealed to the Supreme Court of Virginia, is hereby declared valid according to the terms of said decree notwithstanding the insanity of a party thereto.

(c) A decree of divorce granted pursuant to this subdivision (9) shall in no way lessen any obligation any party may otherwise have to support the spouse unless such party shall prove that there exists in the favor of such party some other ground of divorce under this section or § 20-95.

B. A decree of divorce shall include each party's social security number, or other control number issued by the Department of Motor Vehicles pursuant to § 46.2-342.

§ 20-103. Court may make orders pending suit for divorce, custody or visitation, etc.

A. In suits for divorce, annulment and separate maintenance, and in proceedings arising under subdivision A 3 or subsection L of § 16.1-241, the court having jurisdiction of the matter may, at any time pending a suit pursuant to this chapter, in the discretion of such court, make any order that may be proper (i) to compel a spouse to pay any sums necessary for the maintenance and support of the petitioning spouse, including an order that the other spouse provide health care coverage for the petitioning spouse, unless it is shown that such coverage cannot be obtained, (ii) to enable such spouse to carry on the suit, (iii) to prevent either spouse from imposing any restraint on the personal liberty of

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59 the other spouse, (iv) to provide for the custody and maintenance of the minor children of the parties,  
60 including an order that either party provide health care coverage for the children, (v) to provide support,  
61 calculated in accordance with § 20-108.2, for any child of the parties to whom a duty of support is  
62 owed and to continue to support any child over the age of 18 who meets the requirements set forth in  
63 subsection C of § 20-124.2, (vi) for the exclusive use and possession of the family residence during the  
64 pendency of the suit, (vii) to preserve the estate of either spouse, so that it be forthcoming to meet any  
65 decree which may be made in the suit, or (viii) to compel either spouse to give security to abide such  
66 decree. The parties to any petition where a child whose custody, visitation, or support is at issue for an  
67 original decision, whether contested or by agreement, shall show proof that they have attended within  
68 the 12 months prior to their court appearance or that they shall attend within 45 days thereafter an  
69 educational seminar or other like program conducted by a qualified person or organization approved by  
70 the court. The seminar or other program shall be a minimum of four hours in length and shall address  
71 the effects of separation or divorce on children, parenting responsibilities, options for conflict resolution  
72 and financial responsibilities. Once a party has completed one educational seminar or other like program,  
73 the required completion of additional programs shall be at the court's discretion. Parties under this  
74 section shall include natural or adoptive parents of the child, or any person with a legitimate interest as  
75 defined in § 20-124.1. The fee charged a party for participation in such program shall be based on the  
76 party's ability to pay; however, no fee in excess of \$50 may be charged. Whenever possible, before  
77 participating in mediation or alternative dispute resolution to address custody, visitation or support, each  
78 party shall have attended the educational seminar or other like program. The court may grant an  
79 exemption from attendance of such program for good cause shown or if there is no program reasonably  
80 available. Other than statements or admissions by a party admitting criminal activity or child abuse, no  
81 statement or admission by a party in such seminar or program shall be admissible into evidence in any  
82 subsequent proceeding.

83 B. In addition to the terms provided in subsection A, upon a showing by a party of reasonable  
84 apprehension of physical harm to that party by such party's family or household member as that term is  
85 defined in § 16.1-228, and consistent with rules of the Supreme Court of Virginia, the court may enter  
86 an order excluding that party's family or household member from the jointly owned or jointly rented  
87 family dwelling. In any case where an order is entered under this ~~paragraph~~ subsection, pursuant to an  
88 ex parte hearing, the order shall not exclude a family or household member from the family dwelling for  
89 a period in excess of 15 days from the date the order is served, in person, upon the person so excluded.  
90 The order may provide for an extension of time beyond the 15 days, to become effective automatically.  
91 The person served may at any time file a written motion in the clerk's office requesting a hearing to  
92 dissolve or modify the order. Nothing in this section shall be construed to prohibit the court from  
93 extending an order entered under this subsection for such longer period of time as is deemed  
94 appropriate, after a hearing on notice to the parties.

95 C. 1. In cases other than those for divorce in which a custody or visitation arrangement for a minor  
96 child is sought, the court may enter an order providing for custody, visitation or maintenance pending  
97 the suit as provided in subsection A. The order shall be directed to either parent or any person with a  
98 legitimate interest who is a party to the suit.

99 2. *If a party has not committed actions under subdivisions A (1), A (3), A (6), or A (6a) of § 20-91,*  
100 *and seeks joint or sole custody, he shall be awarded no fewer than 120 overnights in any calendar year,*  
101 *and joint or sole custody unless both parties agree in writing to a parenting plan that addresses custody*  
102 *or the court makes a written finding that such arrangement is not in the best interest of the child. In*  
103 *such case, the court shall specifically state the factors that support that finding.*

104 D. Orders entered pursuant to this section which provide for custody or visitation arrangements  
105 pending the suit shall be made in accordance with the standards set out in Chapter 6.1 (§ 20-124.1 et  
106 seq.) of Title 20. Orders entered pursuant to subsection B shall be certified by the clerk and forwarded  
107 as soon as possible to the local police department or sheriff's office which shall, on the date of receipt,  
108 enter the name of the person subject to the order and other appropriate information required by the  
109 Department of State Police into the Virginia crime information network system established and  
110 maintained by the Department of State Police pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52. If the  
111 order is later dissolved or modified, a copy of the dissolution or modification shall also be certified,  
112 forwarded and entered in the system as described above.

113 E. An order entered pursuant to this section shall have no presumptive effect and shall not be  
114 determinative when adjudicating the underlying cause.

115 § 20-124.2. Court-ordered custody and visitation arrangements.

116 A. In any case in which custody or visitation of minor children is at issue, whether in a circuit or  
117 district court, the court shall provide prompt adjudication, upon due consideration of all the facts, of  
118 custody and visitation arrangements, including support and maintenance for the children, prior to other  
119 considerations arising in the matter. The court may enter an order pending the suit as provided in  
120 § 20-103. The procedures for determining custody and visitation arrangements shall insofar as practical,

and consistent with the ends of justice, preserve the dignity and resources of family members. Mediation shall be used as an alternative to litigation where appropriate. When mediation is used in custody and visitation matters, the goals may include development of a proposal addressing the child's residential schedule and care arrangements, and how disputes between the parents will be handled in the future.

B. *If a party has not committed actions under subdivisions A (1), A (3), A (6), or A (6a) of § 20-91, he shall be awarded no fewer than 120 overnights in any calendar year, and joint or sole custody unless both parties agree in writing to a parenting plan that addresses custody or the court makes a written finding that such arrangement is not in the best interest of the child. In such case, the court shall specifically state the factors that support that finding.* In determining custody, the court shall give primary consideration to the best interests of the child. The court shall assure minor children of frequent and continuing contact with both parents, when appropriate, and encourage parents to share in the responsibilities of rearing their children. As between the parents, there shall be no presumption or inference of law in favor of either. The court shall give due regard to the primacy of the parent-child relationship but may upon a showing by clear and convincing evidence that the best interest of the child would be served thereby award custody or visitation to any other person with a legitimate interest. The court may award joint custody or sole custody.

C. The court may order that support be paid for any child of the parties. The court shall also order that support will continue to be paid for any child over the age of 18 who is (i) a full-time high school student, (ii) not self-supporting, and (iii) living in the home of the party seeking or receiving child support until such child reaches the age of 19 or graduates from high school, whichever first occurs. The court may also order the continuation of support for any child over the age of 18 who is (i) severely and permanently mentally or physically disabled, (ii) unable to live independently and support himself, and (iii) resides in the home of the parent seeking or receiving child support. In addition, the court may confirm a stipulation or agreement of the parties which extends a support obligation beyond when it would otherwise terminate as provided by law. The court shall have no authority to decree support of children payable by the estate of a deceased party. The court may make such further decree as it shall deem expedient concerning support of the minor children, including an order that any party provide health care coverage.

D. In any case in which custody or visitation of minor children is at issue, whether in a circuit or district court, the court may order an independent mental health or psychological evaluation to assist the court in its determination of the best interests of the child. The court may enter such order as it deems appropriate for the payment of the costs of the evaluation by the parties.

E. The court shall have the continuing authority and jurisdiction to make any additional orders necessary to effectuate and enforce any order entered pursuant to this section or § 20-103 including the authority to punish as contempt of court any willful failure of a party to comply with the provisions of the order.

§ 20-124.3. Best interests of the child; visitation.

*It shall be presumed that it is in the best interests of the child to spend a minimum of 120 overnights in every calendar year with each party in visitation arrangements, including pendente lite orders, pursuant to subdivision C 2 of § 20-103 and subsection B of § 20-124.2.*

In determining best interests of a child for purposes of determining custody or visitation arrangements including any pendente lite orders pursuant to § 20-103, the court *also* shall consider the following:

1. The age and physical and mental condition of the child, giving due consideration to the child's changing developmental needs;

2. The age and physical and mental condition of each parent;

3. The relationship existing between each parent and each child, giving due consideration to the positive involvement with the child's life, the ability to accurately assess and meet the emotional, intellectual and physical needs of the child;

4. The needs of the child, giving due consideration to other important relationships of the child, including but not limited to siblings, peers and extended family members;

5. The role which each parent has played and will play in the future, in the upbringing and care of the child;

6. The propensity of each parent to actively support the child's contact and relationship with the other parent, including whether a parent has unreasonably denied the other parent access to or visitation with the child;

7. The relative willingness and demonstrated ability of each parent to maintain a close and continuing relationship with the child, and the ability of each parent to cooperate in and resolve disputes regarding matters affecting the child;

8. The reasonable preference of the child, if the court deems the child to be of reasonable intelligence, understanding, age and experience to express such a preference;

- 182** 9. Any history of family abuse as that term is defined in § 16.1-228; and  
**183** 10. Such other factors as the court deems necessary and proper to the determination.  
**184** The judge shall communicate to the parties the basis of the decision either orally or in writing.