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HOUSE BILL NO. 1565

Offered January 20, 2006

A *BILL to amend and reenact §§ 20-108.1, 63.2-1952, and 63.2-1960 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 19.2-298.02, relating to child support obligations of incarcerated individuals.*

Patron—Jones, D.C.

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 20-108.1, 63.2-1952, and 63.2-1960 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 19.2-298.02 as follows:

§ 19.2-298.02. Child support review upon sentence of incarceration; court notification.

When a court sentences a person to a term of active incarceration of 12 months or more, the court shall advise the accused that if the accused is subject to a court-ordered child support obligation, he may initiate a review of the amount of support ordered by notice of his sentence of incarceration to the court that ordered the support.

The failure by the court to follow the provisions of this section or the failure to follow the provisions of this section in the prescribed manner shall neither be reviewable on appeal nor the basis of any other postconviction relief.

§ 20-108.1. Determination of child or spousal support.

A. In any proceeding on the issue of determining spousal support, the court shall consider all evidence presented relevant to any issues joined in that proceeding. The court's decision shall be rendered based upon the evidence relevant to each individual case.

B. In any proceeding on the issue of determining child support under this title or Title 16.1 or Title 63.2, the court shall consider all evidence presented relevant to any issues joined in that proceeding. The court's decision in any such proceeding shall be rendered upon the evidence relevant to each individual case. However, there shall be a rebuttable presumption in any judicial or administrative proceeding for child support, including cases involving split custody or shared custody, that the amount of the award which would result from the application of the guidelines set out in § 20-108.2 is the correct amount of child support to be awarded. Liability for support shall be determined retroactively for the period measured from the date that the proceeding was commenced by the filing of an action with any court provided the complainant exercised due diligence in the service of the respondent or, if earlier, the date an order of the Department of Social Services entered pursuant to Title 63.2 and directing payment of support was delivered to the sheriff or process server for service on the obligor.

In order to rebut the presumption, the court shall make written findings in the order, which findings may be incorporated by reference, that the application of such guidelines would be unjust or inappropriate in a particular case. The finding that rebuts the guidelines shall state the amount of support that would have been required under the guidelines, shall give a justification of why the order varies from the guidelines, and shall be determined by relevant evidence pertaining to the following factors affecting the obligation, the ability of each party to provide child support, and the best interests of the child:

1. Actual monetary support for other family members or former family members;
2. Arrangements regarding custody of the children;
3. Imputed income to a party who is voluntarily unemployed or voluntarily under-employed; provided that income may not be imputed to the custodial parent when a child is not in school, child care services are not available and the cost of such child care services are not included in the computation;
4. Debts of either party arising during the marriage for the benefit of the child;
5. Debts incurred for production of income;
6. Direct payments ordered by the court for health care coverage, maintaining life insurance coverage pursuant to subsection D, education expenses, or other court-ordered direct payments for the benefit of the child and costs related to the provision of health care coverage pursuant to subdivision 7 of § 20-60.3;
7. Extraordinary capital gains such as capital gains resulting from the sale of the marital abode;
8. Age, physical and mental condition of the child or children, including unreimbursed medical or dental expenses, and child-care expenses;
9. Independent financial resources, if any, of the child or children;

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- 59 10. Standard of living for the family established during the marriage;
60 11. Earning capacity, obligations and needs, and financial resources of each parent;
61 12. Education and training of the parties and the ability and opportunity of the parties to secure such
62 education and training;
63 13. Contributions, monetary and nonmonetary, of each party to the well-being of the family;
64 14. Provisions made with regard to the marital property under § 20-107.3;
65 15. Tax consequences to the parties regarding claims for dependent children and child care expenses;
66 16. A written agreement between the parties which includes the amount of child support;
67 17. A pendente lite decree, which includes the amount of child support, agreed to by both parties or
68 by counsel for the parties; and
69 18. Such other factors, including tax consequences to each party, as are necessary to consider the
70 equities for the parents and children.

71 C. In any proceeding under this title or Title 16.1 or Title 63.2 on the issue of determining child
72 support, the court shall have the authority to order a party to provide health care coverage, as defined in
73 § 63.2-1900, for dependent children if reasonable under all the circumstances and health care coverage
74 for a spouse or former spouse.

75 D. In any proceeding under this title, Title 16.1 or Title 63.2 on the issue of determining child
76 support, the court shall have the authority to order a party to (i) maintain any existing life insurance
77 policy on the life of either party provided the party so ordered has the right to designate a beneficiary
78 and (ii) designate a child or children of the parties as the beneficiary of all or a portion of such life
79 insurance for so long as the party so ordered has a statutory obligation to pay child support for the child
80 or children.

81 E. Except when the parties have otherwise agreed, in any proceeding under this title, Title 16.1 or
82 Title 63.2 on the issue of determining child support, the court shall have the authority to and may, in its
83 discretion, order one party to execute all appropriate tax forms or waivers to grant to the other party the
84 right to take the income tax dependency exemption for any tax year or future years, for any child or
85 children of the parties for federal and state income tax purposes.

86 F. *In any proceeding under this title, Title 16.1, or Title 63.2 on the issue of determining a child*
87 *support obligation, the court shall, upon receiving notice pursuant to § 19.2-298.02 or otherwise, advise*
88 *any party who is sentenced to an active term of incarceration of 12 months or more that is to be served*
89 *while he is under a duty to pay child support, that he is entitled to have the amount of award*
90 *recalculated in order to reflect the amount payable by an incarcerated person pursuant to the guidelines*
91 *set out in § 20-108.2.*

92 G. *In any proceeding under this title, Title 16.1, or Title 63.2 on the issue of determining child*
93 *support, a party shall not be found to be voluntarily unemployed based solely on his incarceration.*

94 § 63.2-1952. Interest on debts due.

95 Interest at the judgment interest rate as established by § 6.1-330.54 on any arrearage pursuant to an
96 order being enforced by the Department pursuant to this chapter shall be collected by the Commissioner
97 except in the case of a minor obligor during the period of his minority *and a prisoner during the period*
98 *of his incarceration.* The Commissioner shall maintain interest balance due accounts.

99 § 63.2-1960. Recovery of certain fees and costs.

100 The Department shall have the authority to assess and recover from the noncustodial parent, *except in*
101 *the case of a prisoner during the period of his incarceration,* in proceedings to enforce child support
102 obligations against the noncustodial parent, reasonable attorneys' fees. All such fees recovered in
103 proceedings to collect child support arrearages shall be retained by the Department in a special fund for
104 the support of the Division of Support Enforcement. The Department shall also have the authority to
105 assess and recover costs in such cases. However, the Department shall not be entitled to recover
106 attorneys' fees or costs in any case in which the noncustodial parent prevails.

107 The Department shall have the authority to assess and recover the actual costs of genetic testing
108 against the noncustodial parent, *except in the case of a prisoner during the period of his incarceration,*
109 if paternity is established. Where an original test is contested and additional testing is requested, the
110 Department may require advance payment by the contestant. The genetic testing costs shall be set at the
111 rate charged the Department by the provider of genetic testing services.

112 The Department shall have the authority to assess and recover the actual costs of intercept programs
113 from the noncustodial parent. The intercept programs' costs shall be set at the rate actually charged the
114 Department.

115 The Department shall have the authority to assess and recover the actual costs of fees for service of
116 process, and seizure and sale pursuant to a levy on a judgment in enforcement actions from the
117 noncustodial parent.

118 The fees and costs that may be recovered pursuant to this section may be collected using any
119 mechanism provided by this chapter.