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HOUSE BILL NO. 2056

Offered January 10, 2007

Prefiled January 8, 2007

A BILL to amend and reenact §§ 16.1-278.15, 20-103, 20-124.1, 20-124.2, and 20-124.3 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 20-124.2:2, relating to child support and custody; parenting plans.

Patron—McQuigg

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-278.15, 20-103, 20-124.1, 20-124.2, and 20-124.3 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 20-124.2:2 as follows:

§ 16.1-278.15. Custody or visitation, child or spousal support generally.

A. In cases involving the custody, visitation or support of a child pursuant to subdivision A 3 of § 16.1-241, the court may make any order of disposition to protect the welfare of the child and family as may be made by the circuit court. The parties to any petition where a child whose custody, visitation, or support is contested shall show proof that they have attended within the 12 months prior to their court appearance or that they shall attend within 45 days thereafter an educational seminar or other like program conducted by a qualified person or organization approved by the court. The court may require the parties to attend such seminar or program in uncontested cases only if the court finds good cause. The seminar or other program shall be a minimum of four hours in length and shall address the effects of separation or divorce on children, parenting responsibilities, *the creation, implementation, and enforcement of parenting plans*, options for conflict resolution, and financial responsibilities. Once a party has completed one educational seminar or other like program, the required completion of additional programs shall be at the court's discretion. Parties under this section shall include natural or adoptive parents of the child, or any person with a legitimate interest as defined in § 20-124.1. The fee charged a party for participation in such program shall be based on the party's ability to pay; however, no fee in excess of \$50 may be charged. Whenever possible, before participating in mediation or alternative dispute resolution to address custody, visitation or support, each party shall have attended the educational seminar or other like program. The court may grant an exemption from attendance of such program for good cause shown or if there is no program reasonably available. Other than statements or admissions by a party admitting criminal activity or child abuse or neglect, no statement or admission by a party in such seminar or program shall be admissible into evidence in any subsequent proceeding. If support is ordered for a child, the order shall also provide that support will continue to be paid for a 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 parent seeking or receiving child support, until the child reaches the age of 19 or graduates from high school, whichever occurs first. The court may also order the continuation of support for any child over the age of 18 who is (a) severely and permanently mentally or physically disabled, (b) unable to live independently and support himself, and (c) resides in the home of the parent seeking or receiving child support.

B. In any case involving the custody or visitation of a child, the court may award custody upon petition to any party with a legitimate interest therein, including, but not limited to, grandparents, stepparents, former stepparents, blood relatives and family members. The term "legitimate interest" shall be broadly construed to accommodate the best interest of the child. The authority of the juvenile court to consider a petition involving the custody of a child shall not be proscribed or limited where the custody of the child has previously been awarded to a local board of social services.

C. In any determination of support obligation under this section, the support obligation as it becomes due and unpaid creates a judgment by operation of law. Such judgment becomes a lien against real estate only when docketed in the county or city where such real estate is located. Nothing herein shall be construed to alter or amend the process of attachment of any lien on personal property.

D. In cases involving charges for desertion, abandonment or failure to provide support by any person in violation of law, disposition shall be made in accordance with Chapter 5 (§ 20-61 et seq.) of Title 20.

E. In cases involving a spouse who seeks spousal support after having separated from his spouse, the court may enter any appropriate order to protect the welfare of the spouse seeking support.

F. In any case or proceeding involving the custody or visitation of a child, the court shall consider the best interest of the child, including the considerations for determining custody and visitation set forth

INTRODUCED

HB2056

59 in Chapter 6.1 (§ 20-124.1 et seq.) of Title 20.

60 G. In any proceeding before the court for custody or visitation of a child, the court may order a
61 custody or a psychological evaluation of any parent, guardian, legal custodian or person standing in loco
62 parentis to the child, if the court finds such evaluation would assist it in its determination. The court
63 may enter such orders as it deems appropriate for the payment of the costs of the evaluation by the
64 parties.

65 H. When deemed appropriate by the court in any custody or visitation matter, the court may order
66 drug testing of any parent, guardian, legal custodian or person standing in loco parentis to the child. The
67 court may enter such orders as it deems appropriate for the payment of the costs of the testing by the
68 parties.

69 § 20-103. Court may make orders pending suit for divorce, custody or visitation, etc.

70 A. In suits for divorce, annulment and separate maintenance, and in proceedings arising under
71 subdivision A 3 or subsection L of § 16.1-241, the court having jurisdiction of the matter may, at any
72 time pending a suit pursuant to this chapter, in the discretion of such court, make any order that may be
73 proper (i) to compel a spouse to pay any sums necessary for the maintenance and support of the
74 petitioning spouse, including an order that the other spouse provide health care coverage for the
75 petitioning spouse, unless it is shown that such coverage cannot be obtained, (ii) to enable such spouse
76 to carry on the suit, (iii) to prevent either spouse from imposing any restraint on the personal liberty of
77 the other spouse, (iv) to provide for the custody and maintenance of the minor children of the parties,
78 including an order that either party provide health care coverage for the children, (v) to provide support,
79 calculated in accordance with § 20-108.2, for any child of the parties to whom a duty of support is
80 owed and to continue to support any child over the age of 18 who meets the requirements set forth in
81 subsection C of § 20-124.2, (vi) for the exclusive use and possession of the family residence during the
82 pendency of the suit, (vii) to preserve the estate of either spouse, so that it be forthcoming to meet any
83 decree which may be made in the suit, or (viii) to compel either spouse to give security to abide such
84 decree. *In cases involving custody or visitation of a child, if the parties have entered into a parenting*
85 *plan pursuant to § 124.2:2, any order entered under this subsection shall be made in accordance with*
86 *the provisions of the parenting plan if the court determines that its provisions are in the best interests of*
87 *the child. If the parties have not entered into a parenting plan and the court finds that they are unable*
88 *to do so, the court shall enter an order in accordance with subsection D of § 124.2:2.* The parties to
89 any petition where a child whose custody, visitation, or support is contested shall show proof that they
90 have attended within the 12 months prior to their court appearance or that they shall attend within 45
91 days thereafter an educational seminar or other like program conducted by a qualified person or
92 organization approved by the court except that the court may require the parties to attend such seminar
93 or program in uncontested cases only if the court finds good cause. The seminar or other program shall
94 be a minimum of four hours in length and shall address the effects of separation or divorce on children,
95 parenting responsibilities, *the creation, implementation, and enforcement of parenting plans*, options for
96 conflict resolution, and financial responsibilities. Once a party has completed one educational seminar or
97 other like program, the required completion of additional programs shall be at the court's discretion.
98 Parties under this section shall include natural or adoptive parents of the child, or any person with a
99 legitimate interest as defined in § 20-124.1. The fee charged a party for participation in such program
100 shall be based on the party's ability to pay; however, no fee in excess of \$50 may be charged.
101 Whenever possible, before participating in mediation or alternative dispute resolution to address custody,
102 visitation or support, each party shall have attended the educational seminar or other like program. The
103 court may grant an exemption from attendance of such program for good cause shown or if there is no
104 program reasonably available. Other than statements or admissions by a party admitting criminal activity
105 or child abuse, no statement or admission by a party in such seminar or program shall be admissible
106 into evidence in any subsequent proceeding.

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

119 C. In cases other than those for divorce in which a custody or visitation arrangement for a minor
120 child is sought, the court may enter an order providing for custody, visitation or maintenance pending

the suit as provided in subsection A. The order shall be directed to either parent or any person with a legitimate interest who is a party to the suit.

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

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

§ 20-124.1. Definitions.

As used in this chapter:

"Joint custody" means (i) joint legal custody where both parents retain joint responsibility for the care and control of the child and joint authority to make decisions concerning the child even though the child's primary residence may be with only one parent, (ii) joint physical custody where both parents share physical and custodial care of the child, or (iii) any combination of joint legal and joint physical custody which the court deems to be in the best interest of the child.

"Parenting plan" means a written plan made pursuant to § 20-124.2:2 that, temporarily or permanently, allocates parenting responsibilities between the parties, establishes a parenting time schedule that sets forth when the child will be in each parent's physical care, and makes an award of child support consistent with Chapter 6 (§ 20-89.1 et seq.) of this title. If the terms of the plan are (i) contained in a court order endorsed by counsel or the parties or (ii) recorded and transcribed by a court reporter and affirmed by the parties on the record personally, the plan is not required to be in writing.

"Person with a legitimate interest" shall be broadly construed and includes, but is not limited to grandparents, stepparents, former stepparents, blood relatives and family members provided any such party has intervened in the suit or is otherwise properly before the court. The term shall be broadly construed to accommodate the best interest of the child. A party with a legitimate interest shall not include any person (i) whose parental rights have been terminated by court order, either voluntarily or involuntarily, (ii) whose interest in the child derives from or through a person whose parental rights have been terminated, either voluntarily or involuntarily, including but not limited to grandparents, stepparents, former stepparents, blood relatives and family members, if the child subsequently has been legally adopted, except where a final order of adoption is entered pursuant to § 63.2-1241, or (iii) who has been convicted of a violation of subsection A of § 18.2-61, § 18.2-63, subsection B of § 18.2-366, or an equivalent offense of another state, the United States, or any foreign jurisdiction, when the child who is the subject of the petition was conceived as a result of such violation.

"Sole custody" means that one person retains responsibility for the care and control of a child and has primary authority to make decisions concerning the child.

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

A. In any case in which custody or visitation of minor children is at issue, whether in a circuit or district court, the court shall provide prompt adjudication, upon due consideration of all the facts, of custody and visitation arrangements, including support and maintenance for the children, prior to other considerations arising in the matter. The court may enter an order pending the suit as provided in § 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. In determining custody and in reviewing parenting plans, 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

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

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

196 E. The court shall have the continuing authority and jurisdiction to make any additional orders
197 necessary to effectuate and enforce any order entered pursuant to this section or § 20-103 including the
198 authority to punish as contempt of court any willful failure of a party to comply with the provisions of
199 the order. A parent or other person having legal custody of a child may petition the court to enjoin and
200 the court may enter an order to enjoin a parent of the child from filing a petition relating to custody and
201 visitation of that child for any period of time up to 10 years if doing so is in the best interests of the
202 child and such parent has been convicted of an offense under the laws of the Commonwealth or a
203 substantially similar law of another state, the United States, or any foreign jurisdiction which constitutes
204 (i) murder or voluntary manslaughter, or a felony attempt, conspiracy or solicitation to commit any such
205 offense, if the victim of the offense was a child of the parent, a child with whom the parent resided at
206 the time the offense occurred, or the other parent of the child, or (ii) felony assault resulting in serious
207 bodily injury, felony bodily wounding resulting in serious bodily injury, or felony sexual assault, if the
208 victim of the offense was a child of the parent or a child with whom the parent resided at the time of
209 the offense. When such a petition to enjoin the filing of a petition for custody and visitation is filed, the
210 court shall appoint a guardian ad litem for the child pursuant to § 16.1-266.

211 § 20-124.2:2. *Parenting plan.*

212 A. *In order to encourage parents to develop their own plans for providing for a child's best interests*
213 *and to minimize the child's exposure to harmful parental conflict, in any proceeding involving custody*
214 *or visitation of a child, any party requesting joint custody or visitation shall file a proposed parenting*
215 *plan at the time of filing his original petition, at the time of filing his answer or counterclaim, or at the*
216 *time of filing any petition to modify an order involving custody or visitation. However, this section shall*
217 *not apply in the event that the parties return to court for the purpose of entering an agreed or consent*
218 *order modifying the terms of the previous order.*

219 B. *A parenting plan shall include but is not limited to provisions for the following:*

220 1. *The custodial rights of each parent;*

221 2. *The primary physical residence of the child;*

222 3. *A parenting time schedule setting forth when the child will be in each parent's physical care,*
223 *including but not limited to provisions governing holidays, birthdays, school vacation periods, and*
224 *school or extracurricular activities. This schedule should also contain provisions controlling the*
225 *rescheduling of parenting time in the event that either party cannot reasonably comply with the*
226 *schedule;*

227 4. *The responsibility of each parent for the transportation of the child between the parents;*

228 5. *The authority and responsibilities of each parent, including the allocation of decision-making*
229 *authority to one or both parents regarding the child's education, health care, extracurricular activities,*
230 *and religious upbringing. Regardless of the allocation of decision-making authority, either parent may*
231 *make emergency decisions concerning the health and safety of the child;*

232 5. *The responsibility of each parent to keep the other informed of the parent's current address and*
233 *contact information;*

234 6. *The responsibility of each parent to share information with the other concerning but not limited to*
235 *the child's education, health, and school and extracurricular activities;*

236 7. *The effect of the relocation of either parent or the child; and*

237 8. *Methods for resolving disputes arising under the parenting plan including but not limited to*
238 *counseling, mediation, or other alternative dispute resolution process. The parties shall make a good*
239 *faith effort to resolve any dispute arising under the plan using the methods set forth therein; however*
240 *nothing in this subdivision precludes either party from instituting a court action if the dispute cannot be*
241 *resolved under the plan.*

242 C. *A parenting plan does not become effective until it has been approved by the court and found to*
243 *be in the best interests of child. If approved, the parenting plan shall be incorporated into an order of*

the court. In reviewing a parenting plan, the court shall consider the factors set forth in § 20-124.3.

D. If the parties are unable to reach an agreement as to the provisions of the parenting plan prior to the date set for trial, the court shall proceed to determine custody in accordance with the provisions of this title. The court's order shall include all the provisions set forth in subsection B. In making its order, the court may rely on any partial agreement that may have been reached by the parties as to the provisions of a parenting plan. Nothing in this subsection prohibits the court from adopting the parenting plan submitted by either of the parties if the court determines that the plan is in the best interests of the child.

E. If a parent fails to comply with a provision of a parenting plan that has been approved by the court and incorporated into an order, that parent may be held in contempt of court; however a parent's failure to comply with a provision of a parenting plan shall not affect the other parent's obligations under the plan.

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

In determining best interests of a child for purposes of determining custody or visitation arrangements including any pendente lite orders pursuant to § 20-103 and for purposes of reviewing a parenting plan, the court 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 that 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;

9. Any history of family abuse as that term is defined in § 16.1-228. If the court finds such a history, the court may disregard the factors in subdivision 6; and

10. Such other factors as the court deems necessary and proper to the determination.

The judge shall communicate to the parties the basis of the decision either orally or in writing.