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SENATE BILL NO. 1036

Offered January 10, 2007

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A BILL to amend and reenact §§ 16.1-274, 16.1-278.15, 20-124.1, 20-124.2, and 20-124.5 of the Code of Virginia, relating to virtual visitation.

Patron—O'Brien

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-274, 16.1-278.15, 20-124.1, 20-124.2, and 20-124.5 of the Code of Virginia are amended and reenacted as follows:

§ 16.1-274. Time for filing of reports; copies furnished to attorneys; amended reports; fees.

A. Whenever any court directs an investigation pursuant to subsection A of § 16.1-237, § 16.1-273, or § 9.1-153, or an evaluation pursuant to § 16.1-278.5, the probation officer, court-appointed special advocate, or other agency conducting such investigation shall file such report with the clerk of the court directing the investigation. The clerk shall furnish a copy of such report to all attorneys representing parties in the matter before the court no later than seventy-two hours, and in cases of child custody, 15 days, prior to the time set by the court for hearing the matter. If such probation officer or other agency discovers additional information or a change in circumstance after the filing of the report, an amended report shall be filed forthwith and a copy sent to each person who received a copy of the original report. Whenever such a report is not filed or an amended report is filed, the court shall grant such continuance of the proceedings as justice requires. All attorneys receiving such report or amended report shall return such to the clerk upon the conclusion of the hearing and shall not make copies of such report or amended report or any portion thereof. However, the chief judge of each juvenile and domestic relations district court may provide for an alternative means of copying and distributing reports or amended reports filed pursuant to § 9.1-153.

B. Notwithstanding the provisions of §§ 16.1-69.48:2 and 17.1-275, when the court directs the appropriate local department of social services to conduct supervised visitation or directs the appropriate local department of social services or court services unit to conduct an investigation pursuant to § 16.1-273 or to provide mediation services in matters involving a child's custody, visitation, or support, the court shall assess a fee against the petitioner, the respondent, or both, in accordance with fee schedules established by the appropriate local board of social services when the service is provided by a local department of social services and by the State Board of Juvenile Justice when the service is provided by a court services unit. The fee schedules shall include (i) standards for determining the paying party's or parties' ability to pay and (ii) a scale of fees based on the paying party's or parties' income and family size and the actual cost of the services provided. The fee charged shall not exceed the actual cost of the service. The fee shall be assessed as a cost of the case and shall be paid as prescribed by the court to the local department of social services, locally operated court services unit or Department of Juvenile Justice, whichever performed the service, unless payment is waived. The method and medium for payment for such services shall be determined by the local department of social services, Department of Juvenile Justice, or the locally operated court services unit that provided the services.

C. When a local department of social services or any court services unit is requested by another local department or court services unit in the Commonwealth or by a similar department or entity in another state to conduct an investigation involving a child's custody, visitation or support pursuant to § 16.1-273 or, in the case of a request from another state pursuant to a provision corresponding to § 16.1-273, or to provide mediation services, or for a local department of social services to provide supervised visitation, the local department or the court services unit performing the service may require payment of fees prior to conducting the investigation or providing mediation services or supervised visitation, *including providing electronic communication as defined in § 20-124.1.*

§ 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

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59 the parties to attend such seminar or program in uncontested cases only if the court finds good cause.
60 The seminar or other program shall be a minimum of four hours in length and shall address the effects
61 of separation or divorce on children, parenting responsibilities, options for conflict resolution and
62 financial responsibilities. Once a party has completed one educational seminar or other like program, the
63 required completion of additional programs shall be at the court's discretion. Parties under this section
64 shall include natural or adoptive parents of the child, or any person with a legitimate interest as defined
65 in § 20-124.1. The fee charged a party for participation in such program shall be based on the party's
66 ability to pay; however, no fee in excess of \$50 may be charged. Whenever possible, before
67 participating in mediation or alternative dispute resolution to address custody, visitation or support, each
68 party shall have attended the educational seminar or other like program. The court may grant an
69 exemption from attendance of such program for good cause shown or if there is no program reasonably
70 available. Other than statements or admissions by a party admitting criminal activity or child abuse or
71 neglect, no statement or admission by a party in such seminar or program shall be admissible into
72 evidence in any subsequent proceeding. If support is ordered for a child, the order shall also provide
73 that support will continue to be paid for a child over the age of 18 who is (i) a full-time high school
74 student, (ii) not self-supporting, and (iii) living in the home of the parent seeking or receiving child
75 support, until the child reaches the age of 19 or graduates from high school, whichever occurs first. The
76 court may also order the continuation of support for any child over the age of 18 who is (a) severely
77 and permanently mentally or physically disabled, (b) unable to live independently and support himself,
78 and (c) resides in the home of the parent seeking or receiving child support.

79 B. In any case involving the custody or visitation of a child, the court may award custody, *visitation*
80 *rights, or electronic communication as defined in § 20-124.1* upon petition to any party with a legitimate
81 interest therein, including, but not limited to, grandparents, stepparents, former stepparents, blood
82 relatives and family members. The term "legitimate interest" shall be broadly construed to accommodate
83 the best interest of the child. The authority of the juvenile court to consider a petition involving the
84 custody of a child shall not be proscribed or limited where the custody of the child has previously been
85 awarded to a local board of social services.

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

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

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

94 F. In any case or proceeding involving the custody or visitation of a child, the court shall consider
95 the best interest of the child, including the considerations for determining custody and visitation set forth
96 in Chapter 6.1 (§ 20-124.1 et seq.) of Title 20.

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

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

106 § 20-124.1. Definitions.

107 As used in this chapter:

108 "*Electronic communication*" means visitation facilitated by tools such as telephones, electronic mail,
109 instant messaging, video conferencing, the Internet, and other wired or wireless technologies.

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

115 "Person with a legitimate interest" shall be broadly construed and includes, but is not limited to
116 grandparents, stepparents, former stepparents, blood relatives and family members provided any such
117 party has intervened in the suit or is otherwise properly before the court. The term shall be broadly
118 construed to accommodate the best interest of the child. A party with a legitimate interest shall not
119 include any person (i) whose parental rights have been terminated by court order, either voluntarily or
120 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.

"Visitation" means in-person time spent between a child and a parent including any in-person time facilitated by any electronic communication.

§ 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, 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. *The amount of electronic communication ordered shall not be a factor in the calculation of child support.*

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. A parent or other person having legal custody of a child may petition the court to enjoin and the court may enter an order to enjoin a parent of the child from filing a petition relating to custody and visitation of that child for any period of time up to 10 years if doing so is in the best interests of the child and such parent has been convicted of an offense under the laws of the Commonwealth or a substantially similar law of another state, the United States, or any foreign jurisdiction which constitutes (i) murder or voluntary manslaughter, or a felony attempt, conspiracy or solicitation to commit any such offense, if the victim of the offense was a child of the parent, a child with whom the parent resided at the time the offense occurred, or the other parent of the child, or (ii) felony assault resulting in serious bodily injury, felony bodily wounding resulting in serious bodily injury, or felony sexual assault, if the victim of the offense was a child of the parent or a child with whom the parent resided at the time of the offense. When such a petition to enjoin the filing of a petition for custody and visitation is filed, the court shall appoint a guardian ad litem for the child pursuant to § 16.1-266.

F. Upon motion of either parent, the court may grant a reasonable amount of electronic

182 *communication at reasonable hours to a parent when the child is not in that parent's custody. The court*
183 *may order the custodial parent, or the noncustodial parent during his visitation time, to facilitate*
184 *electronic communication with the child if the equipment is reasonably available. If the parties cannot*
185 *agree on whether the equipment is reasonably available, the court shall make this determination.*

186 *G. Any ordered electronic communication with the child may only be used to supplement the periods*
187 *of visitation to which a parent is entitled and may not be used as a substitute for such periods.*

188 *H. Any order for supervised visitation shall include a provision for electronic communication.*

189 § 20-124.5. Notification of relocation.

190 *A. In any proceeding involving custody or visitation, the court shall include as a condition of any*
191 *custody or visitation order a requirement that thirty days' advance written notice be given to the court*
192 *and the other party by any party intending to relocate and of any intended change of address, unless the*
193 *court, for good cause shown, orders otherwise. The court may require that the notice be in such form*
194 *and contain such information as it deems proper and necessary under the circumstances of the case.*

195 *B. The court may not use the availability of electronic communication as a factor in support of or to*
196 *justify a petition by the custodial parent to relocate with the child either within or outside of the*
197 *Commonwealth.*