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HOUSE BILL NO. 84

Offered January 11, 2012

Prefiled December 21, 2011

A *BILL to amend and reenact § 20-124.2 of the Code of Virginia, relating to shared physical custody; no-fault divorce.*

Patrons—Albo, LeMunyon, Lopez and Scott, J.M.

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:**1. That § 20-124.2 of the Code of Virginia is amended and reenacted as follows:**

§ 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. *In any action in which a decree for divorce is entered on the grounds set forth in subdivision A (9) of § 20-91 and in which custody or visitation is at issue, there shall be a rebuttable presumption that it is in the best interests of the child that the parents be awarded joint physical custody and that no parent's share of physical custody shall be for a period of less than two-fifths of the child's time. Such an award shall be made in all cases absent evidence demonstrating that such an award is not in the best interests of the child.*

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 either party or both parties provide health care coverage or cash medical support, or both.

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

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59 (i) murder or voluntary manslaughter, or a felony attempt, conspiracy or solicitation to commit any such
60 offense, if the victim of the offense was a child of the parent, a child with whom the parent resided at
61 the time the offense occurred, or the other parent of the child, or (ii) felony assault resulting in serious
62 bodily injury, felony bodily wounding resulting in serious bodily injury, or felony sexual assault, if the
63 victim of the offense was a child of the parent or a child with whom the parent resided at the time of
64 the offense. When such a petition to enjoin the filing of a petition for custody and visitation is filed, the
65 court shall appoint a guardian ad litem for the child pursuant to § 16.1-266.