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HOUSE BILL NO. 2383

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice
on February 4, 2015)

(Patron Prior to Substitute—Delegate Byron)

A BILL to amend and reenact §§ 16.1-278.15, 20-60.3, 20-103, 20-107.2, and 20-124.2 of the Code of Virginia, relating to child support for a disabled child.

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-278.15, 20-60.3, 20-103, 20-107.2, and 20-124.2 of the Code of Virginia are amended and reenacted 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, 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~~ *be paid or continue to be paid* for any child over the age of 18 who is (a) severely and permanently mentally or physically disabled, *and such disability existed prior to the child reaching the age of 18 or the age of 19 if the child met the requirements of clauses (i), (ii), and (iii);* (b) unable to live independently and support himself; and (c) ~~resides residing~~ 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. Orders entered prior to July 1, 2008, shall not be deemed void or voidable solely because the petition or motion that resulted in the order was completed, signed and filed by a nonattorney employee of the Department of Social Services.

E. 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.

F. 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.

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

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60 H. 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 I. 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 **§ 20-60.3. Contents of support orders.**

70 All orders directing the payment of spousal support where there are minor children whom the parties
71 have a mutual duty to support and all orders directing the payment of child support, including those
72 orders confirming separation agreements, entered on or after October 1, 1985, whether they are original
73 orders or modifications of existing orders, shall contain the following:

74 1. Notice that support payments may be withheld as they become due pursuant to § 20-79.1 or
75 § 20-79.2, from income as defined in § 63.2-1900, without further amendments of this order or having to
76 file an application for services with the Department of Social Services; however, absence of such notice
77 in an order entered prior to July 1, 1988, shall not bar withholding of support payments pursuant to
78 § 20-79.1;

79 2. Notice that support payments may be withheld pursuant to Chapter 19 (§ 63.2-1900 et seq.) of
80 Title 63.2 without further amendments to the order upon application for services with the Department of
81 Social Services; however, absence of such notice in an order entered prior to July 1, 1988, shall not bar
82 withholding of support payments pursuant to Chapter 19 (§ 63.2-1900 et seq.) of Title 63.2;

83 3. The name, date of birth, and last four digits of the social security number of each child to whom a
84 duty of support is then owed by the parent;

85 4. If known, the name, date of birth, and last four digits of the social security number of each parent
86 of the child and, unless otherwise ordered, each parent's residential and, if different, mailing address,
87 residential and employer telephone number, driver's license number, and the name and address of his or
88 her employer; however, when a protective order has been issued or the court otherwise finds reason to
89 believe that a party is at risk of physical or emotional harm from the other party, information other than
90 the name of the party at risk shall not be included in the order;

91 5. Notice that, pursuant to § 20-124.2, support will continue to be paid for any child over the age of
92 18 who is (i) a full-time high school student, (ii) not self-supporting, and (iii) living in the home of the
93 party seeking or receiving child support until such child reaches the age of 19 or graduates from high
94 school, whichever occurs first, and that the court may also order ~~the continuation of support~~ *be paid or*
95 *continue to be paid* for any child over the age of 18 who is (a) severely and permanently mentally or
96 physically disabled, *and such disability existed prior to the child reaching the age of 18 or the age of*
97 *19 if the child met the requirements of clauses (i), (ii), and (iii);* (b) unable to live independently and
98 support himself; and (c) residing in the home of the parent seeking or receiving child support;

99 6. On and after July 1, 1994, notice that a petition may be filed for suspension of any license,
100 certificate, registration or other authorization to engage in a profession, trade, business, occupation, or
101 recreational activity issued by the Commonwealth to a parent as provided in § 63.2-1937 upon a
102 delinquency for a period of 90 days or more or in an amount of \$5,000 or more. The order shall
103 indicate whether either or both parents currently hold such an authorization and, if so, the type of
104 authorization held;

105 7. The monthly amount of support and the effective date of the order. In proceedings on initial
106 petitions, the effective date shall be the date of filing of the petition; in modification proceedings, the
107 effective date may be the date of notice to the responding party. The first monthly payment shall be due
108 on the first day of the month following the hearing date and on the first day of each month thereafter.
109 In addition, an amount shall be assessed for any full and partial months between the effective date of
110 the order and the date that the first monthly payment is due. The assessment for the initial partial month
111 shall be prorated from the effective date through the end of that month, based on the current monthly
112 obligation;

113 8. a. An order for health care coverage, including the health insurance policy information, for
114 dependent children pursuant to §§ 20-108.1 and 20-108.2 if available at reasonable cost as defined in
115 § 63.2-1900, or a written statement that health care coverage is not available at a reasonable cost as
116 defined in such section, and a statement as to whether there is an order for health care coverage for a
117 spouse or former spouse; and

118 b. A statement as to whether cash medical support, as defined in § 63.2-1900, is to be paid by or
119 reimbursed to a party pursuant to subsections D and G of § 20-108.2, and if such expenses are ordered,
120 then the provisions governing how such payment is to be made;

121 9. If support arrearages exist, (i) to whom an arrearage is owed and the amount of the arrearage, (ii)

122 the period of time for which such arrearage is calculated, and (iii) a direction that all payments are to be
123 credited to current support obligations first, with any payment in excess of the current obligation applied
124 to arrearages;

125 10. If child support payments are ordered to be paid through the Department of Social Services or
126 directly to the obligee, and unless the court for good cause shown orders otherwise, the parties shall
127 give each other and the court and, when payments are to be made through the Department, the
128 Department of Social Services at least 30 days' written notice, in advance, of any change of address and
129 any change of telephone number within 30 days after the change;

130 11. If child support payments are ordered to be paid through the Department of Social Services, a
131 provision requiring an obligor to keep the Department of Social Services informed of the name, address
132 and telephone number of his current employer, or if payments are ordered to be paid directly to the
133 obligee, a provision requiring an obligor to keep the court informed of the name, address and telephone
134 number of his current employer;

135 12. If child support payments are ordered to be paid through the Department of Social Services, a
136 provision requiring the party obligated to provide health care coverage to keep the Department of Social
137 Services informed of any changes in the availability of the health care coverage for the minor child or
138 children, or if payments are ordered to be paid directly to the obligee, a provision requiring the party
139 obligated to provide health care coverage to keep the other party informed of any changes in the
140 availability of the health care coverage for the minor child or children;

141 13. The separate amounts due to each person under the order, unless the court specifically orders a
142 unitary award of child and spousal support due or the order affirms a separation agreement containing
143 provision for such unitary award;

144 14. Notice that in determination of a support obligation, the support obligation as it becomes due and
145 unpaid creates a judgment by operation of law. The order shall also provide, pursuant to § 20-78.2, for
146 interest on the arrearage at the judgment rate as established by § 6.2-302 unless the obligee, in a writing
147 submitted to the court, waives the collection of interest;

148 15. Notice that on and after July 1, 1994, the Department of Social Services may, pursuant to
149 Chapter 19 (§ 63.2-1900 et seq.) of Title 63.2 and in accordance with §§ 20-108.2 and 63.2-1921,
150 initiate a review of the amount of support ordered by any court;

151 16. A statement that if any arrearages for child support, including interest or fees, exist at the time
152 the youngest child included in the order emancipates, payments shall continue in the total amount due
153 (current support plus amount applied toward arrearages) at the time of emancipation until all arrearages
154 are paid; and

155 17. Notice that, in cases enforced by the Department of Social Services, the Department of Motor
156 Vehicles may suspend or refuse to renew the driver's license of any person upon receipt of notice from
157 the Department of Social Services that the person (i) is delinquent in the payment of child support by 90
158 days or in an amount of \$5,000 or more or (ii) has failed to comply with a subpoena, summons, or
159 warrant relating to paternity or child support proceedings.

160 The provisions of this section shall not apply to divorce decrees where there are no minor children
161 whom the parties have a mutual duty to support.

162 **§ 20-103. Court may make orders pending suit for divorce, custody or visitation, etc.**

163 A. In suits for divorce, annulment and separate maintenance, and in proceedings arising under
164 subdivision A 3 or subsection L of § 16.1-241, the court having jurisdiction of the matter may, at any
165 time pending a suit pursuant to this chapter, in the discretion of such court, make any order that may be
166 proper (i) to compel a spouse to pay any sums necessary for the maintenance and support of the
167 petitioning spouse, including (a) an order that the other spouse provide health care coverage for the
168 petitioning spouse, unless it is shown that such coverage cannot be obtained, or (b) an order that a party
169 pay secured or unsecured debts incurred jointly or by either party, (ii) to enable such spouse to carry on
170 the suit, (iii) to prevent either spouse from imposing any restraint on the personal liberty of the other
171 spouse, (iv) to provide for the custody and maintenance of the minor children of the parties, including
172 an order that either party or both parties provide health care coverage or cash medical support, or both,
173 for the children, (v) to provide support, calculated in accordance with § 20-108.2, for any child of the
174 parties to whom a duty of support is owed and to ~~continue to pay or~~ *continue to pay* support for any
175 child over the age of 18 who meets the requirements set forth in subsection C of § 20-124.2, (vi) for the
176 exclusive use and possession of the family residence during the pendency of the suit, (vii) to preserve
177 the estate of either spouse, so that it be forthcoming to meet any decree which may be made in the suit,
178 (viii) to compel either spouse to give security to abide such decree, or (ix) (a) to compel a party to
179 maintain any existing policy owned by that party insuring the life of either party or to require a party to
180 name as a beneficiary of the policy the other party or an appropriate person for the exclusive use and
181 benefit of the minor children of the parties and (b) to allocate the premium cost of such life insurance
182 between the parties, provided that all premiums are billed to the policyholder. Nothing in clause (ix)

183 shall be construed to create an independent cause of action on the part of any beneficiary against the
184 insurer or to require an insurer to provide information relating to such policy to any person other than
185 the policyholder without the written consent of the policyholder. The parties to any petition where a
186 child whose custody, visitation, or support is contested shall show proof that they have attended within
187 the 12 months prior to their court appearance or that they shall attend within 45 days thereafter an
188 educational seminar or other like program conducted by a qualified person or organization approved by
189 the court except that the court may require the parties to attend such seminar or program in uncontested
190 cases only if the court finds good cause. The seminar or other program shall be a minimum of four
191 hours in length and shall address the effects of separation or divorce on children, parenting
192 responsibilities, options for conflict resolution and financial responsibilities. Once a party has completed
193 one educational seminar or other like program, the required completion of additional programs shall be
194 at the court's discretion. Parties under this section shall include natural or adoptive parents of the child,
195 or any person with a legitimate interest as defined in § 20-124.1. The fee charged a party for
196 participation in such program shall be based on the party's ability to pay; however, no fee in excess of
197 \$50 may be charged. Whenever possible, before participating in mediation or alternative dispute
198 resolution to address custody, visitation or support, each party shall have attended the educational
199 seminar or other like program. The court may grant an exemption from attendance of such program for
200 good cause shown or if there is no program reasonably available. Other than statements or admissions
201 by a party admitting criminal activity or child abuse, no statement or admission by a party in such
202 seminar or program shall be admissible into evidence in any subsequent proceeding.

203 B. In addition to the terms provided in subsection A, upon a showing by a party of reasonable
204 apprehension of physical harm to that party by such party's family or household member as that term is
205 defined in § 16.1-228, and consistent with rules of the Supreme Court of Virginia, the court may enter
206 an order excluding that party's family or household member from the jointly owned or jointly rented
207 family dwelling. In any case where an order is entered under this paragraph, pursuant to an ex parte
208 hearing, the order shall not exclude a family or household member from the family dwelling for a
209 period in excess of 15 days from the date the order is served, in person, upon the person so excluded.
210 The order may provide for an extension of time beyond the 15 days, to become effective automatically.
211 The person served may at any time file a written motion in the clerk's office requesting a hearing to
212 dissolve or modify the order. Nothing in this section shall be construed to prohibit the court from
213 extending an order entered under this subsection for such longer period of time as is deemed
214 appropriate, after a hearing on notice to the parties. If the party subject to the order fails to appear at
215 this hearing, the court may extend the order for a period not to exceed six months.

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

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

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

231 **§ 20-107.2. Court may decree as to custody and support of children.**

232 Upon entry of a decree providing (i) for the dissolution of a marriage, (ii) for a divorce, whether
233 from the bond of matrimony or from bed and board, (iii) that neither party is entitled to a divorce, or
234 (iv) for separate maintenance, the court may make such further decree as it shall deem expedient
235 concerning the (a) custody or visitation and support of the minor children of the parties as provided in
236 Chapter 6.1 (§ 20-124.1 et seq.) of Title 20 or (b) support of a child over the age of 18 who meets the
237 requirements set forth in subsection C of § 20-124.2, including an order that either party or both parties
238 provide health care coverage or cash medical support, or both.

239 **§ 20-124.2. Court-ordered custody and visitation arrangements.**

240 A. In any case in which custody or visitation of minor children is at issue, whether in a circuit or
241 district court, the court shall provide prompt adjudication, upon due consideration of all the facts, of
242 custody and visitation arrangements, including support and maintenance for the children, prior to other
243 considerations arising in the matter. The court may enter an order pending the suit as provided in
244 § 20-103. The procedures for determining custody and visitation arrangements shall insofar as practical,

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

249 B. In determining custody, the court shall give primary consideration to the best interests of the
250 child. The court shall assure minor children of frequent and continuing contact with both parents, when
251 appropriate, and encourage parents to share in the responsibilities of rearing their children. As between
252 the parents, there shall be no presumption or inference of law in favor of either. The court shall give
253 due regard to the primacy of the parent-child relationship but may upon a showing by clear and
254 convincing evidence that the best interest of the child would be served thereby award custody or
255 visitation to any other person with a legitimate interest. The court may award joint custody or sole
256 custody.

257 C. The court may order that support be paid for any child of the parties. The court shall also order
258 that support will continue to be paid for any child over the age of 18 who is (i) a full-time high school
259 student, (ii) not self-supporting, and (iii) living in the home of the party seeking or receiving child
260 support until such child reaches the age of 19 or graduates from high school, whichever first occurs. The
261 court may also order ~~the continuation of support~~ *be paid or continue to be paid* for any child over the
262 age of 18 who is ~~(i)~~ (a) severely and permanently mentally or physically disabled, ~~(ii)~~ and such
263 disability existed prior to the child reaching the age of 18 or the age of 19 if the child met the
264 requirements of clauses (i), (ii), and (iii); (b) unable to live independently and support himself,; and ~~(iii)~~
265 resides (c) residing in the home of the parent seeking or receiving child support. In addition, the court
266 may confirm a stipulation or agreement of the parties which extends a support obligation beyond when
267 it would otherwise terminate as provided by law. The court shall have no authority to decree support of
268 children payable by the estate of a deceased party. The court may make such further decree as it shall
269 deem expedient concerning support of the minor children, including an order that either party or both
270 parties provide health care coverage or cash medical support, or both.

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

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

290 **2. An individual denied support under § 16.1-278.15, 20-60.3, or 20-124.2 prior to July 1, 2015,**
291 **who otherwise meets the requirements for support under this Act, shall be eligible to petition the**
292 **court for support under the provisions of this Act. In such cases, liability shall be determined**
293 **according to subsection B of § 20-108.1, and the date of the new petition shall be the date that the**
294 **proceeding was commenced for purposes of subsection B of § 20-108.1.**