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## SENATE BILL NO. 1505

Offered January 18, 2017

A *BILL to amend and reenact §§ 16.1-263, 16.1-278.15, 16.1-290, 20-60.3, 20-108.1, 63.2-1903, and 63.2-1916 of the Code of Virginia, relating to child support orders; placement in the temporary custody of or commitment to Department of Juvenile Justice.*

Patron—Marsden

Referred to Committee for Courts of Justice

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 16.1-263, 16.1-278.15, 16.1-290, 20-60.3, 20-108.1, 63.2-1903, and 63.2-1916 of the Code of Virginia are amended and reenacted as follows:**

**§ 16.1-263. Summonses.**

A. After a petition has been filed, the court shall direct the issuance of summonses, one directed to the juvenile, if the juvenile is twelve or more years of age, and another to at least one parent, guardian, legal custodian or other person standing in loco parentis, and such other persons as appear to the court to be proper or necessary parties to the proceedings.

After a petition has been filed against an adult pursuant to subsection C or D of § 16.1-259, the court shall direct the issuance of a summons against the adult.

The summons shall require them to appear personally before the court at the time fixed to answer or testify as to the allegations of the petition. Where the custodian is summoned and such person is not a parent of the juvenile in question, a parent shall also be served with a summons. The court may direct that other proper or necessary parties to the proceedings be notified of the pendency of the case, the charge and the time and place for the hearing.

Any such summons shall be deemed a mandate of the court, and willful failure to obey its requirements shall subject any person guilty thereof to liability for punishment for contempt. Upon the failure of any person to appear as ordered in the summons, the court shall immediately issue an order for such person to show cause why he should not be held in contempt.

The parent, guardian, legal custodian, or other person standing in loco parentis shall not be summoned to appear or be punished for failure to appear in cases of adults who are brought before the court pursuant to subsection C or D of § 16.1-259 unless such person is summoned as a witness.

B. The summons shall advise the parties of their right to counsel as provided in § 16.1-266. A copy of the petition shall accompany each summons for the initial proceedings. The summons shall include notice that (i) in the event that the juvenile is committed to the Department or to a secure local facility, at least one parent or other person legally obligated to care for and support the juvenile may be required to pay a reasonable sum for support and treatment of the juvenile pursuant to § 16.1-290 and (ii) if the juvenile is the subject of an existing child support court or administrative order, such an order shall be stayed during the period of the juvenile's commitment and shall resume upon the juvenile's release. Notice of subsequent proceedings shall be provided to all parties in interest. In all cases where a party is represented by counsel and counsel has been provided with a copy of the petition and due notice as to time, date and place of the hearing, such action shall be deemed due notice to such party, unless such counsel has notified the court that he no longer represents such party.

C. The judge may endorse upon the summons an order directing a parent or parents, guardian or other custodian having the custody or control of the juvenile to bring the juvenile to the hearing.

D. A party, other than the juvenile, may waive service of summons by written stipulation or by voluntary appearance at the hearing.

E. No such summons or notification shall be required if the judge shall certify on the record that (i) the identity of a parent or guardian is not reasonably ascertainable or (ii) in cases in which it is alleged that a juvenile has committed a delinquent act, crime, status offense or traffic infraction or is in need of services or supervision, the location, or in the case of a parent or guardian located outside of the Commonwealth the location or mailing address, of a parent or guardian is not reasonably ascertainable. An affidavit of the mother that the identity of the father is not reasonably ascertainable shall be sufficient evidence of this fact, provided there is no other evidence before the court which would refute such an affidavit. In cases referred to in clause (ii), an affidavit of a law-enforcement officer or juvenile probation officer that the location of a parent or guardian is not reasonably ascertainable shall be sufficient evidence of this fact, provided that there is no other evidence before the court which would refute the affidavit.

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

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59 A. In cases involving the custody, visitation or support of a child pursuant to subdivision A 3 of  
60 § 16.1-241, the court may make any order of disposition to protect the welfare of the child and family  
61 as may be made by the circuit court. The parties to any petition where a child whose custody, visitation,  
62 or support is contested shall show proof that they have attended within the 12 months prior to their  
63 court appearance or that they shall attend within 45 days thereafter an educational seminar or other like  
64 program conducted by a qualified person or organization approved by the court. The court may require  
65 the parties to attend such seminar or program in uncontested cases only if the court finds good cause.  
66 The seminar or other program shall be a minimum of four hours in length and shall address the effects  
67 of separation or divorce on children, parenting responsibilities, options for conflict resolution and  
68 financial responsibilities. Once a party has completed one educational seminar or other like program, the  
69 required completion of additional programs shall be at the court's discretion. Parties under this section  
70 shall include natural or adoptive parents of the child, or any person with a legitimate interest as defined  
71 in § 20-124.1. The fee charged a party for participation in such program shall be based on the party's  
72 ability to pay; however, no fee in excess of \$50 may be charged. Whenever possible, before  
73 participating in mediation or alternative dispute resolution to address custody, visitation or support, each  
74 party shall have attended the educational seminar or other like program. The court may grant an  
75 exemption from attendance of such program for good cause shown or if there is no program reasonably  
76 available. Other than statements or admissions by a party admitting criminal activity or child abuse or  
77 neglect, no statement or admission by a party in such seminar or program shall be admissible into  
78 evidence in any subsequent proceeding. If support is ordered for a child, the order shall also provide  
79 that support will continue to be paid for a child over the age of 18 who is (i) a full-time high school  
80 student, (ii) not self-supporting, and (iii) living in the home of the parent seeking or receiving child  
81 support, until the child reaches the age of 19 or graduates from high school, whichever occurs first. The  
82 court may also order that support be paid or continue to be paid for any child over the age of 18 who is  
83 (a) severely and permanently mentally or physically disabled, and such disability existed prior to the  
84 child reaching the age of 18 or the age of 19 if the child met the requirements of clauses (i), (ii), and  
85 (iii); (b) unable to live independently and support himself; and (c) residing in the home of the parent  
86 seeking or receiving child support.

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

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

97 D. Orders entered prior to July 1, 2008, shall not be deemed void or voidable solely because the  
98 petition or motion that resulted in the order was completed, signed and filed by a nonattorney employee  
99 of the Department of Social Services.

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

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

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

107 H. In any proceeding before the court for custody or visitation of a child, the court may order a  
108 custody or a psychological evaluation of any parent, guardian, legal custodian or person standing in loco  
109 parentis to the child, if the court finds such evaluation would assist it in its determination. The court  
110 may enter such orders as it deems appropriate for the payment of the costs of the evaluation by the  
111 parties.

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

116 J. Pursuant to subsection E of § 16.1-290, any child support order entered pursuant to this section  
117 shall be stayed if the child subject to such order is placed in the temporary custody of or committed to  
118 the Department of Juvenile Justice. Such an order shall be stayed as of the date the Department  
119 received the child and shall resume upon the child's release from custody of or commitment to the  
120 Department.

**§ 16.1-290. Support of committed juvenile; support from estate of juvenile.**

A. Whenever (i) legal custody of a juvenile is vested by the court in someone other than his parents or (ii) a juvenile is placed in temporary shelter care regardless of whether or not legal custody is retained by his parents, after due notice in writing to the parents, the court, pursuant to §§ 20-108.1 and 20-108.2, or the Department of Social Services, pursuant to Chapter 19 (§ 63.2-1900 et seq.) of Title 63.2, shall order the parents to pay support to the Department of Social Services. If the parents fail or refuse to pay such support, the court may proceed against them for contempt, or the order may be filed and shall have the effect of a civil judgment.

B. If a juvenile has an estate in the hands of a guardian or trustee, the guardian or trustee may be required to pay for his education and maintenance so long as there may be funds for that purpose.

C. Whenever a juvenile is placed in foster care by the court, the court shall order and decree that the parents shall pay the Department of Social Services pursuant to §§ 20-108.1, 20-108.2, 63.2-909, and 63.2-1910.

D. Whenever a juvenile is placed in temporary custody of the Department pursuant to subdivision A 4a of § 16.1-278.8 or committed to the Department pursuant to subdivision A 14 or A 17 of § 16.1-278.8, the Department shall apply for child support with the Department of Social Services. The parents shall be responsible for child support, pursuant to §§ 20-108.1 and 20-108.2, from the date the Department receives the juvenile. The Department shall notify in writing the parents of their responsibilities to pay child support from the date the Department receives the juvenile.

*E. If the juvenile is the subject of an existing child support court order or administrative order that directs the payment of child support to a parent, such order shall be stayed as of the date the Department receives the juvenile. The Department shall notify the court or administrative agency that issued such an order when the Department receives the juvenile, or as soon as practicable thereafter, that such order shall be stayed. A copy of such notice shall also be sent to the parents of the juvenile.*

*Such child support order shall resume upon the release of the juvenile from the custody of or commitment to the Department. At least 10 days prior to the juvenile's release from the Department, the Department shall notify the Department of Social Services and the court or administrative agency that issued the child support order of such release. A copy of such notice shall also be sent to the parents of the juvenile.*

**§ 20-60.3. Contents of support orders.**

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

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

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

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

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

5. Notice that, pursuant to § 20-124.2, 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 occurs first, and that the court may also order that 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) residing in the home of the parent seeking or receiving child support;

6. On and after July 1, 1994, notice that a petition may be filed for suspension of any license, certificate, registration or other authorization to engage in a profession, trade, business, occupation, or

182 recreational activity issued by the Commonwealth to a parent as provided in § 63.2-1937 upon a  
183 delinquency for a period of 90 days or more or in an amount of \$5,000 or more. The order shall  
184 indicate whether either or both parents currently hold such an authorization and, if so, the type of  
185 authorization held;

186 7. The monthly amount of support and the effective date of the order. In proceedings on initial  
187 petitions, the effective date shall be the date of filing of the petition; in modification proceedings, the  
188 effective date may be the date of notice to the responding party. The first monthly payment shall be due  
189 on the first day of the month following the hearing date and on the first day of each month thereafter.  
190 In addition, an amount shall be assessed for any full and partial months between the effective date of  
191 the order and the date that the first monthly payment is due. The assessment for the initial partial month  
192 shall be prorated from the effective date through the end of that month, based on the current monthly  
193 obligation;

194 8. a. An order for health care coverage, including the health insurance policy information, for  
195 dependent children pursuant to §§ 20-108.1 and 20-108.2 if available at reasonable cost as defined in  
196 § 63.2-1900, or a written statement that health care coverage is not available at a reasonable cost as  
197 defined in such section, and a statement as to whether there is an order for health care coverage for a  
198 spouse or former spouse; and

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

202 9. If support arrearages exist, (i) to whom an arrearage is owed and the amount of the arrearage, (ii)  
203 the period of time for which such arrearage is calculated, and (iii) a direction that all payments are to be  
204 credited to current support obligations first, with any payment in excess of the current obligation applied  
205 to arrearages;

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

211 11. If child support payments are ordered to be paid through the Department of Social Services, a  
212 provision requiring an obligor to keep the Department of Social Services informed of the name, address  
213 and telephone number of his current employer, or if payments are ordered to be paid directly to the  
214 obligee, a provision requiring an obligor to keep the court informed of the name, address and telephone  
215 number of his current employer;

216 12. If child support payments are ordered to be paid through the Department of Social Services, a  
217 provision requiring the party obligated to provide health care coverage to keep the Department of Social  
218 Services informed of any changes in the availability of the health care coverage for the minor child or  
219 children, or if payments are ordered to be paid directly to the obligee, a provision requiring the party  
220 obligated to provide health care coverage to keep the other party informed of any changes in the  
221 availability of the health care coverage for the minor child or children;

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

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

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

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

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

241 18. Notice that, pursuant to subsection E of § 16.1-290, if a child subject to a child support order is  
242 placed in the temporary custody of or committed to the Department of Juvenile Justice, such order shall  
243 be stayed as of the day the Department of Juvenile Justice received the child and such order shall

resume upon such child's release from the custody of or commitment to the Department of Juvenile Justice.

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

**§ 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, 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 that 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, including the cost of visitation travel;
3. Imputed income to a party who is voluntarily unemployed or voluntarily under-employed; provided that income may not be imputed to a 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 and provided further, that any consideration of imputed income based on a change in a party's employment shall be evaluated with consideration of the good faith and reasonableness of employment decisions made by the party, including to attend and complete an educational or vocational program likely to maintain or increase the party's earning potential;
4. Any child care costs incurred on behalf of the child or children due to the attendance of a custodial parent in an educational or vocational program likely to maintain or increase the party's earning potential;
5. Debts of either party arising during the marriage for the benefit of the child;
6. Direct payments ordered by the court for maintaining life insurance coverage pursuant to subsection D, education expenses, or other court-ordered direct payments for the benefit of the child;
7. Extraordinary capital gains such as capital gains resulting from the sale of the marital abode;
8. Any special needs of a child resulting from any physical, emotional, or medical condition;
9. Independent financial resources of the child or children;
10. Standard of living for the child or children established during the marriage;
11. Earning capacity, obligations, financial resources, and special needs of each parent;
12. Provisions made with regard to the marital property under § 20-107.3, where said property earns income or has an income-earning potential;
13. Tax consequences to the parties including claims for exemptions, child tax credit, and child care credit for dependent children;
14. A written agreement, stipulation, consent order, or decree between the parties which includes the amount of child support; and
15. Such other factors as are necessary to consider the equities for the parents and children.

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

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

305 insurance for so long as the party so ordered has a statutory obligation to pay child support for the child  
306 or children.

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

312 F. Notwithstanding any other provision of law, any amendments to this section shall not be  
313 retroactive to a date before the effective date of the amendment, and shall not be the basis for a material  
314 change in circumstances upon which a modification of child support may be based.

315 G. Child support payments, whether current or arrears, received by a parent for the benefit of and  
316 owed to a child in the parent's custody, whether the payments were ordered under this title, Title 16.1,  
317 or Title 63.2, shall not be subject to garnishment. A depository wherein child support payments have  
318 been deposited on behalf of and traceable to an individual shall not be required to determine the portion  
319 of deposits that are subject to garnishment.

320 H. In any proceeding on the issue of determining child or spousal support or an action for separate  
321 maintenance under this title, Title 16.1, or Title 63.2, when the earning capacity, voluntary  
322 unemployment, or voluntary under-employment of a party is in controversy, the court in which the  
323 action is pending, upon the motion of any party and for good cause shown, may order a party to submit  
324 to a vocational evaluation by a vocational expert employed by the moving party, including, but not  
325 limited to, any interviews and testing as requested by the expert. The order may permit the attendance of  
326 the vocational expert at the deposition of the person to be evaluated. The order shall specify the name  
327 and address of the expert, the scope of the evaluation, and shall fix the time for filing the report with  
328 the court and furnishing copies to the parties. The court may award costs or fees for the evaluation and  
329 the services of the expert at any time during the proceedings. The provisions of this section shall not  
330 preclude the applicability of any other rule or law.

331 *I. Pursuant to subsection E of § 16.1-290, if a child subject to a child support order entered*  
332 *pursuant to this title, Title 16.1, or Title 63.2 is placed in the temporary custody of or committed to the*  
333 *Department of Juvenile Justice, the Department of Juvenile Justice shall notify the court or*  
334 *administrative agency that issued such order of such placement or commitment. Such order shall be*  
335 *stayed by the court or administrative agency that issued such order as of the date of the receipt of the*  
336 *child by the Department of Juvenile Justice. Such order shall resume upon the release of the juvenile*  
337 *from the custody of or commitment to the Department of Juvenile Justice.*

338 **§ 63.2-1903. Authority to issue certain orders; civil penalty.**

339 A. In the absence of a court order, the Department shall have the authority to issue orders directing  
340 the payment of child, and child and spousal support and, if available at reasonable cost as defined in  
341 § 63.2-1900, to require a provision for health care coverage, including Department-sponsored health care  
342 coverage, or cash medical support, or both, for dependent children of the parents, which shall include  
343 the requirements specified for employers pursuant to subdivision A 5 of § 20-79.3. The Department shall  
344 have the authority to make available Department-sponsored health care coverage for children receiving  
345 child support services from the Department. If health care coverage is unavailable at a reasonable cost,  
346 as defined in § 63.2-1900, or inaccessible to either parent, the Department shall refer the dependent  
347 children to the Family Access to Medical Insurance Security plan pursuant to § 32.1-351. However,  
348 prior to referring the dependent children to the Family Access to Medical Insurance Security plan, the  
349 Department shall confirm that neither parent has access to health care coverage at a reasonable cost for  
350 the dependent children. If a child is enrolled in Department-sponsored health care coverage, the  
351 Department shall collect the cost of the coverage pursuant to subsection E of § 20-108.2.

352 In ordering the payment of child support, the Department shall set such support at the amount  
353 resulting from computation pursuant to the guideline set out in § 20-108.2, subject to the provisions of  
354 § 63.2-1918.

355 B. When a payee, as defined in § 63.2-1900, no longer has physical custody of a child, the  
356 Department shall have the authority to redirect child support payments to a custodial parent who has  
357 physical custody of the child when an assignment of rights has been made to the Department or an  
358 application for services has been made by such custodial parent with the Division of Child Support  
359 Enforcement.

360 *B1. Pursuant to subsection E of § 16.1-290, if a child subject to a child support order issued by the*  
361 *Department is placed in the temporary custody of or committed to the Department of Juvenile Justice,*  
362 *such order shall be stayed by the Department as of the date of the receipt of the child by the*  
363 *Department of Juvenile Justice. Such a child support order shall resume upon the child's release from*  
364 *the custody of or commitment to the Department of Juvenile Justice.*

365 C. The Department shall have the authority, upon notice from the Department of Medical Assistance  
366 Services, to use any existing enforcement mechanisms provided by this chapter to collect the wages,

salary, or other employment income or to withhold amounts from state tax refunds of any obligor who has not used payments received from a third party to reimburse, as appropriate, either the other parent of such child or the provider of such services, to the extent necessary to reimburse the Department of Medical Assistance Services.

D. The Department may order the obligor and payee to notify each other or the Department upon request of current gross income as defined in § 20-108.2 and any other pertinent information which may affect child support amounts. For good cause shown, the Department may order that such information be provided to the Department and made available to the parties for inspection in lieu of the parties' providing such information directly to each other. The Department shall record the social security number of each party or control number issued to a party by the Department of Motor Vehicles pursuant to § 46.2-342 in the Department's file of the case.

E. The Department shall develop procedures governing the method and timing of periodic review and adjustment of child support orders established or enforced or both pursuant to Title IV-D of the Social Security Act, as amended. If there is an assignment under Title IV-A of the Social Security Act or at the request of either parent subject to the order, the Department shall initiate a review of such order every three years without requiring proof or showing of a change in circumstances, and shall initiate appropriate action to adjust such order in accordance with the provisions of § 20-108.2 and subject to the provisions of § 63.2-1918.

F. In order to provide essential information for whatever establishment or enforcement actions are necessary for the collection of child support, the Commissioner, the Director of the Division of Child Support Enforcement and district managers of Division of Child Support Enforcement offices shall have the right to (i) subpoena financial records of, or other information relating to, the noncustodial parent and obligee from any person, firm, corporation, association, or political subdivision or department of the Commonwealth and (ii) summons the noncustodial parent and obligee to appear in the Division's offices. The Commissioner, Director and district managers may also subpoena copies of state and federal income tax returns. The district managers shall be trained in the correct use of the subpoena process prior to exercising subpoena authority. A civil penalty not to exceed \$1,000 may be assessed by the Commissioner for a failure to respond to a subpoena issued pursuant to this subsection.

G. In the absence of a court order, the Department may establish an administrative support order on an out-of-state obligor pursuant to subdivision A 8 or A 9 of § 8.01-328.1 or 20-88.35. The Department may also take action to enforce an administrative or court order on an out-of-state obligor. Service of such actions shall be in accordance with the provisions of § 8.01-296, 8.01-327 or 8.01-329 or by certified mail, return receipt requested, or electronic means in accordance with § 63.2-1917.

H. If a support order has been issued in another state but the obligor, the obligee, and the child now live in the Commonwealth, the Department may (i) enforce the order without registration, using all enforcement remedies available under this chapter and (ii) register the order in the appropriate tribunal of the Commonwealth for enforcement or modification.

**§ 63.2-1916. Notice of administrative support order; contents; hearing; modification.**

The Commissioner may proceed against a noncustodial parent whose support debt has accrued or is accruing based upon subrogation to, assignment of, or authorization to enforce a support obligation. Such obligation may be created by a court order for support of a child or child and spouse or decree of divorce ordering support of a child or child and spouse. In the absence of such a court order or decree of divorce, the Commissioner may, pursuant to this chapter, proceed against a person whose support debt has accrued or is accruing based upon payment of public assistance or who has a responsibility for the support of any dependent child or children and their custodial parent. The administrative support order shall also provide that support shall 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 parent seeking or receiving child support, until such child reaches the age of 19 or graduates from high school, whichever comes first. The Commissioner shall initiate proceedings by issuing notice containing the administrative support order which shall become effective unless timely contested. The notice shall be served upon the debtor (a) in accordance with the provisions of § 8.01-296, 8.01-327 or 8.01-329 or (b) by certified mail, return receipt requested, or by electronic means, or the debtor may accept service by signing a formal waiver. A copy of the notice shall be provided to the obligee. The notice shall include the following:

1. A statement of the support debt or obligation accrued or accruing and the basis and authority under which the assessment of the debt or obligation was made. The initial administrative support order shall be effective on the date of service and the first monthly payment shall be due on the first of the month following the date of service and the first of each month thereafter. A modified administrative support order shall be effective the date that notice of the review is served on the nonrequesting party, and the first monthly payment shall be due on the first day of the month following the date of such service and on the first day of each month thereafter. In addition, an amount shall be assessed for the

428 partial month between the effective date of the order and the date that the first monthly payment is due.  
429 The assessment for the initial partial month shall be prorated from the effective date through the end of  
430 that month, based on the current monthly obligation. All payments are to be credited to current support  
431 obligations first, with any payment in excess of the current obligation applied to arrearages, if any;

432 2. A statement of the name, date of birth, and last four digits of the social security number of the  
433 child or children for whom support is being sought;

434 3. A statement that support shall continue to be paid for any child over the age of 18 who is (i) a  
435 full-time high school student, (ii) not self-supporting, and (iii) living in the home of the party seeking or  
436 receiving child support, until such child reaches the age of 19 or graduates from high school, whichever  
437 comes first;

438 4. A demand for immediate payment of the support debt or obligation or, in the alternative, a  
439 demand that the debtor file an answer with the Commissioner within 10 days of the date of service of  
440 the notice stating his defenses to liability;

441 5. If known, the full name, date of birth, and last four digits of the social security number of each  
442 parent of the child; however, when a protective order has been issued or the Department otherwise finds  
443 reason to believe that a party is at risk of physical or emotional harm from the other party, only the  
444 name of the party at risk shall be included in the order;

445 6. A statement that if no answer is made on or before 10 days from the date of service of the notice,  
446 the administrative support order shall be final and enforceable, and the support debt shall be assessed  
447 and determined subject to computation, and is subject to collection action;

448 7. A statement that the debtor may be subject to mandatory withholding of income, the interception  
449 of state or federal tax refunds, interception of payments due to the debtor from the Commonwealth,  
450 notification of arrearage information to consumer reporting agencies, passport denial or suspension, or  
451 incarceration and that the debtor's property will be subject to lien and foreclosure, distraint, seizure and  
452 sale, an order to withhold and deliver, or withholding of income;

453 8. A statement that the parents shall keep the Department informed regarding access to health  
454 insurance coverage and health insurance policy information and a statement that health care coverage  
455 shall be required for the parents' dependent children if available at reasonable cost as defined in  
456 § 63.2-1900, or pursuant to subsection A of § 63.2-1903. If a child is enrolled in Department-sponsored  
457 health care coverage, the Department shall collect the cost of the coverage pursuant to subsection E of  
458 § 20-108.2;

459 9. A statement of each party's right to appeal and the procedures applicable to appeals from the  
460 decision of the Commissioner;

461 10. A statement that the obligor's income shall be immediately withheld to comply with this order  
462 unless the obligee, or the Department, if the obligee is receiving public assistance, and obligor agree to  
463 an alternative arrangement;

464 11. A statement that any determination of a support obligation under this section creates a judgment  
465 by operation of law and as such is entitled to full faith and credit in any other state or jurisdiction;

466 12. A statement that each party shall give the Department written notice of any change in his  
467 address, including email address, or phone number, including cell phone number, within 30 days;

468 13. A statement that each party shall keep the Department informed of the name, telephone number  
469 and address of his current employer;

470 14. A statement that if any arrearages for child support, including interest or fees, exist at the time  
471 the youngest child included in the order emancipates, payments shall continue in the total amount due  
472 (current support plus amount applied toward arrearages) at the time of emancipation until all arrearages  
473 are paid;

474 15. A statement that a petition may be filed for suspension of any license, certificate, registration, or  
475 other authorization to engage in a profession, trade, business, occupation, or recreational activity issued  
476 by the Commonwealth to a parent as provided in § 63.2-1937 upon a delinquency for a period of 90  
477 days or more or in amount of \$5,000 or more. The order shall indicate whether either or both parents  
478 currently hold such an authorization and, if so, the type of authorization held;

479 16. A statement that the Department of Motor Vehicles may suspend or refuse to renew the driver's  
480 license of any person upon receipt of notice from the Department of Social Services that the person (i)  
481 is delinquent in the payment of child support by 90 days or in an amount of \$5,000 or more or (ii) has  
482 failed to comply with a subpoena, summons, or warrant relating to paternity or child support  
483 proceedings; and

484 17. A statement that on and after July 1, 1994, the Department of Social Services, as provided in  
485 § 63.2-1921 and in accordance with § 20-108.2, may initiate a review of the amount of support ordered  
486 by any court.

487 If no answer is received by the Commissioner within 10 days of the date of service or acceptance,  
488 the administrative support order shall be effective as provided in the notice. The Commissioner may  
489 initiate collection procedures pursuant to this chapter, Chapter 11 (§ 16.1-226 et seq.) of Title 16.1 or



490 Title 20. The debtor and the obligee have 10 days from the date of receipt of the notice to file an  
491 answer with the Commissioner to exercise the right to an administrative hearing.

492 Any changes in the amount of the administrative order must be made pursuant to this section. In no  
493 event shall an administrative hearing alter or amend the amount or terms of any court order for support  
494 or decree of divorce ordering support. No administrative support order may be retroactively modified,  
495 but may be modified from the date that notice of the review has been served on the nonrequesting party.  
496 Notice of each review shall be served on the nonrequesting party (1) in accordance with the provisions  
497 of § 8.01-296, 8.01-327, or 8.01-329, (2) by certified mail, return receipt requested, (3) by electronic  
498 means, or (4) by the nonrequesting party executing a waiver. The existence of an administrative order  
499 shall not preclude either an obligor or obligee from commencing appropriate proceedings in a juvenile  
500 and domestic relations district court or a circuit court.

501 *18. Notice that, pursuant to subsection E of § 16.1-290, if a child subject to a child support order is*  
502 *placed in the temporary custody of or committed to the Department of Juvenile Justice, such order shall*  
503 *be stayed as of the day the Department of Juvenile Justice received the child and such order shall*  
504 *resume upon such child's release from the custody of or commitment to the Department of Juvenile*  
505 *Justice.*