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SENATE BILL NO. 872

Offered January 8, 2020

Prefiled January 8, 2020

A *BILL to amend and reenact §§ 16.1-267 and 20-124.2 of the Code of Virginia, relating to appointment of a guardian ad litem; court-ordered custody and visitation arrangements; best interests of a child; appointment in circuit or district court.*

Patron—Marsden

Referred to Committee on the Judiciary

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-267 and 20-124.2 of the Code of Virginia are amended and reenacted as follows:

§ 16.1-267. Compensation of appointed counsel.

A. When the court appoints counsel to represent a child pursuant to subsection A of § 16.1-266 and, after an investigation by the court services unit, finds that the parents are financially able to pay for the attorney and refuse to do so, the court shall assess costs against the parents for such legal services in the maximum amount of that awarded the attorney by the court under the circumstances of the case, considering such factors as the ability of the parents to pay and the nature and extent of the counsel's duties in the case. Such amount shall not exceed the maximum amount specified in subdivision 1 of § 19.2-163 if the action is in district court.

When the court appoints counsel to represent a child pursuant to subsection B or C of § 16.1-266 and, after an investigation by the court services unit, finds that the parents are financially able to pay for the attorney in whole or in part and refuse to do so, the court shall assess costs in whole or in part against the parents for such legal services in the amount awarded the attorney by the court. Such amount shall not exceed \$100 if the action is in circuit court or the maximum amount specified in subdivision 1 of § 19.2-163 if the action is in district court. In determining the financial ability of the parents to pay for an attorney to represent the child, the court shall utilize the financial statement required by § 19.2-159.

In all other cases, except as provided in § 16.1-343, counsel appointed to represent a child shall be compensated for his services pursuant to § 19.2-163.

B. When the court appoints counsel to represent a parent, guardian or other adult pursuant to § 16.1-266, such counsel shall be compensated for his services pursuant to § 19.2-163.

C. 1. In any proceeding in which the court appoints a guardian ad litem to represent a child pursuant to § 16.1-266 *or subsection A of § 20-124.2*, the court shall order the parent, or other party with a legitimate interest who has filed a petition in such proceeding, to reimburse the Commonwealth the costs of such services in an amount not to exceed the amount awarded the guardian ad litem by the court. If the court determines that such party is unable to pay, the required reimbursement may be reduced or eliminated. No party whom the court determines to be indigent pursuant to § 19.2-159 shall be required to pay reimbursement except where the court finds good cause to do so. The Executive Secretary of the Supreme Court shall administer the guardian ad litem program and shall report August 1 and January 1 of each year to the Chairmen of the House Appropriations and Senate Finance Committees on the amounts paid for guardian ad litem purposes, amounts reimbursed, savings achieved, and management actions taken to further enhance savings under this program.

2. For good cause shown, or upon the failure by the guardian ad litem to substantially comply with the standards adopted for attorneys appointed as guardians ad litem pursuant to § 16.1-266.1, the court may adjust the cost sought by the guardian ad litem of such services.

3. For the purposes of this subsection, "other party with a legitimate interest" shall not include child welfare agencies or local departments of social services.

§ 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. *In any such case in which such custody or visitation is at issue, whether in a circuit or district court, the court may appoint a discreet and competent attorney-at-law who is qualified pursuant to § 16.1-266.1 as a guardian ad litem to represent the best interests of the child. Such guardian ad litem shall (i) comply with the standards specified by § 16.1-266.1, (ii) be compensated as provided by subdivision C 1 of § 16.1-267, and (iii) be subject to the provisions of subdivisions C 2 and 3 of § 16.1-267.* The court may enter an order pending the suit as provided in

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59 § 20-103. The procedures for determining custody and visitation arrangements shall insofar as practical,
60 and consistent with the ends of justice, preserve the dignity and resources of family members. Mediation
61 shall be used as an alternative to litigation where appropriate. When mediation is used in custody and
62 visitation matters, the goals may include development of a proposal addressing the child's residential
63 schedule and care arrangements, and how disputes between the parents will be handled in the future.

64 B. In determining custody, the court shall give primary consideration to the best interests of the
65 child. The court shall consider and may award joint legal, joint physical, or sole custody, and there shall
66 be no presumption in favor of any form of custody. The court shall assure minor children of frequent
67 and continuing contact with both parents, when appropriate, and encourage parents to share in the
68 responsibilities of rearing their children. As between the parents, there shall be no presumption or
69 inference of law in favor of either. The court shall give due regard to the primacy of the parent-child
70 relationship but may upon a showing by clear and convincing evidence that the best interest of the child
71 would be served thereby award custody or visitation to any other person with a legitimate interest.

72 B1. In any case or proceeding involving the custody or visitation of a child, as to a parent, the court
73 may, in its discretion, use the phrase "parenting time" to be synonymous with the term "visitation."

74 C. The court may order that support be paid for any child of the parties. Upon request of either
75 party, the court may order that such support payments be made to a special needs trust or an ABLE
76 savings trust account as defined in § 23.1-700. The court shall also order that support will continue to be
77 paid for any child over the age of 18 who is (i) a full-time high school student, (ii) not self-supporting,
78 and (iii) living in the home of the party seeking or receiving child support until such child reaches the
79 age of 19 or graduates from high school, whichever first occurs. The court may also order that support
80 be paid or continue to be paid for any child over the age of 18 who is (a) severely and permanently
81 mentally or physically disabled, and such disability existed prior to the child reaching the age of 18 or
82 the age of 19 if the child met the requirements of clauses (i), (ii), and (iii); (b) unable to live
83 independently and support himself; and (c) residing in the home of the parent seeking or receiving child
84 support. In addition, the court may confirm a stipulation or agreement of the parties which extends a
85 support obligation beyond when it would otherwise terminate as provided by law. The court shall have
86 no authority to decree support of children payable by the estate of a deceased party. The court may
87 make such further decree as it shall deem expedient concerning support of the minor children, including
88 an order that either party or both parties provide health care coverage or cash medical support, or both.

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

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

108 F. In any custody or visitation case or proceeding wherein an order prohibiting a party from picking
109 the child up from school is entered pursuant to this section or § 20-103, the court shall order a party to
110 such case or proceeding to provide a copy of such custody or visitation order to the school at which the
111 child is enrolled within three business days of such party's receipt of such custody or visitation order.

112 If a custody determination affects the school enrollment of the child subject to such custody order
113 and prohibits a party from picking the child up from school, the court shall order a party to provide a
114 copy of such custody order to the school at which the child will be enrolled within three business days
115 of such party's receipt of such order. Such order directing a party to provide a copy of such custody or
116 visitation order shall further require such party, upon any subsequent change in the child's school
117 enrollment, to provide a copy of such custody or visitation order to the new school at which the child is
118 subsequently enrolled within three business days of such enrollment.

119 If the court determines that a party is unable to deliver the custody or visitation order to the school,
120 such party shall provide the court with the name of the principal and address of the school, and the

- 121** court shall cause the order to be mailed by first class mail to such school principal.
- 122** Nothing in this section shall be construed to require any school staff to interpret or enforce the terms
- 123** of such custody or visitation order.