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SENATE BILL NO. 113

Offered January 12, 2022

Prefiled January 6, 2022

A BILL to amend and reenact §§ 20-124.2 and 20-124.4 of the Code of Virginia, relating to custody and visitation; grandparents; mediation.

Patron—Morrissey

Referred to Committee on the Judiciary

Be it enacted by the General Assembly of Virginia:**1. That §§ 20-124.2 and 20-124.4 of the Code of Virginia are 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. *Any case in which a grandparent petitions the court for custody or visitation of a minor grandchild shall be referred to mediation pursuant to § 20-124.4.* 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 consider and may award joint legal, joint physical, or sole custody, and there shall be no presumption in favor of any form of custody. 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.

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

B2. In any case or proceeding in which a grandparent has petitioned the court for visitation with a minor grandchild, *no agreement is reached through mediation as required by subsection A*, and a natural or adoptive parent of the minor grandchild is deceased or incapacitated, the grandparent who is related to such deceased or incapacitated parent shall be permitted to introduce evidence of such parent's consent to visitation with the grandparent, in accordance with the rules of evidence. If the parent's consent is proven by a preponderance of the evidence, the court may then determine if grandparent visitation is in the best interest of the minor grandchild. For the purposes of this subsection, "incapacitated parent" has the same meaning ascribed to the term "incapacitated person" in § 64.2-2000.

C. The court may order that support be paid for any child of the parties. Upon request of either party, the court may order that such support payments be made to a special needs trust or an ABLE savings trust account as defined in § 23.1-700. 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 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. 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

59 court in its determination of the best interests of the child. The court may enter such order as it deems
60 appropriate for the payment of the costs of the evaluation by the parties.

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

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

80 If a custody determination affects the school enrollment of the child subject to such custody order
81 and prohibits a party from picking the child up from school, the court shall order a party to provide a
82 copy of such custody order to the school at which the child will be enrolled within three business days
83 of such party's receipt of such order. Such order directing a party to provide a copy of such custody or
84 visitation order shall further require such party, upon any subsequent change in the child's school
85 enrollment, to provide a copy of such custody or visitation order to the new school at which the child is
86 subsequently enrolled within three business days of such enrollment.

87 If the court determines that a party is unable to deliver the custody or visitation order to the school,
88 such party shall provide the court with the name of the principal and address of the school, and the
89 court shall cause the order to be mailed by first class mail to such school principal.

90 Nothing in this section shall be construed to require any school staff to interpret or enforce the terms
91 of such custody or visitation order.

92 **§ 20-124.4. Mediation.**

93 A. In any appropriate case the court shall refer the parents or persons with a legitimate interest to a
94 dispute resolution orientation session to be conducted by a mediator certified pursuant to guidelines
95 promulgated by the Judicial Council at no cost and in accordance with the procedures set out in Chapter
96 20.2 (§ 8.01-576.4 et seq.) of Title 8.01. In assessing the appropriateness of a referral, the court shall
97 ascertain upon motion of a party whether there is a history of family abuse. If an agreement is not
98 reached on any issue through further mediation as agreed to by the parties, prior to the return date set
99 by the court pursuant to § 8.01-576.5, the court shall proceed with a hearing on any unresolved issue,
100 unless a continuance has been granted by the court.

101 B. The fee of the mediator shall be \$100 per appointment mediated and shall be paid by the
102 Commonwealth from the funds appropriated for payment of appointments made pursuant to subsection B
103 of § 16.1-267, *unless the petitioner is a grandparent of the child for which custody or visitation is*
104 *sought, in which case the mediator's fee shall be paid by the petitioner.* Any referral that includes both
105 (i) custody or visitation and (ii) child or spousal support shall be considered two separate appointments.