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SENATE BILL NO. 114

Offered January 12, 2022

Prefiled January 6, 2022

A *BILL to amend and reenact § 20-124.2 of the Code of Virginia, relating to visitation, petition of grandparent.*

Patron—Morrissey

Referred to Committee on the Judiciary

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

A. In any case in which custody or visitation of minor children is at issue, whether in a circuit or district court, the court shall provide prompt adjudication, upon due consideration of all the facts, of custody and visitation arrangements, including support and maintenance for the children, prior to other considerations arising in the matter. The court may enter an order pending the suit as provided in § 20-103. The procedures for determining custody and visitation arrangements shall insofar as practical, and consistent with the ends of justice, preserve the dignity and resources of family members. Mediation shall be used as an alternative to litigation where appropriate. When mediation is used in custody and visitation matters, the goals may include development of a proposal addressing the child's residential schedule and care arrangements, and how disputes between the parents will be handled in the future.

B. In determining custody, the court shall give primary consideration to the best interests of the child. The court shall 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, 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.

B3. *In any case or proceeding in which a grandparent has petitioned the court for visitation of the child, a parent's consent pursuant to subsection B2 is not established, and either (i) the grandparent's child who is the parent of the child for whom visitation is sought is deceased, incarcerated, or incapacitated, or has had his parental rights terminated or (ii) the grandparent has an established relationship with the child and has provided a significant level of care for the child, in addition to any other factors considered by the court, the court shall consider the following:*

- 1. The historical relationship between the grandparent and child;*
- 2. The motivation of the grandparent in seeking visitation;*
- 3. The motivation of the living parent in denying visitation to the grandparent;*
- 4. The quantity of time requested and the effect it will have on the child's daily activities; and*
- 5. The benefits of maintaining a relationship with the extended family of the deceased parent.*

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

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SB114

59 the age of 19 if the child met the requirements of clauses (i), (ii), and (iii); (b) unable to live
60 independently and support himself; and (c) residing in the home of the parent seeking or receiving child
61 support. In addition, the court may confirm a stipulation or agreement of the parties which extends a
62 support obligation beyond when it would otherwise terminate as provided by law. The court shall have
63 no authority to decree support of children payable by the estate of a deceased party. The court may
64 make such further decree as it shall deem expedient concerning support of the minor children, including
65 an order that either party or both parties provide health care coverage or cash medical support, or both.

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

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

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

89 If a custody determination affects the school enrollment of the child subject to such custody order
90 and prohibits a party from picking the child up from school, the court shall order a party to provide a
91 copy of such custody order to the school at which the child will be enrolled within three business days
92 of such party's receipt of such order. Such order directing a party to provide a copy of such custody or
93 visitation order shall further require such party, upon any subsequent change in the child's school
94 enrollment, to provide a copy of such custody or visitation order to the new school at which the child is
95 subsequently enrolled within three business days of such enrollment.

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

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