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SENATE BILL NO. 56

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Rehabilitation and Social Services
on January 14, 2022)

(Patron Prior to Substitute—Senator Favola)

A BILL to amend and reenact § 16.1-278.15 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 13 of Title 63.2 a section numbered 63.2-1307, relating to Foster Care Prevention program.

Be it enacted by the General Assembly of Virginia:

1. That § 16.1-278.15 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Chapter 13 of Title 63.2 a section numbered 63.2-1307 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 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. Upon request of either party, the court may also order that support payments be made to a special needs trust or an ABLE savings trust account as defined in § 23.1-700.

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.

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

63 G1. In any case or proceeding involving the custody or visitation of a child, as to a parent, the court
64 may, in its discretion, use the phrase "parenting time" to be synonymous with the term "visitation."

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

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

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

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

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

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

90 K. *In any custody case or proceeding involving the Foster Care Prevention program set forth in*
91 *§ 63.2-1307 wherein custody of the child is granted to a relative or fictive kin, the court shall establish*
92 *the timelines of the custody order and may, in its discretion, order the local department of social*
93 *services to conduct an assessment to determine (i) eligibility for the Foster Care Prevention program,*
94 *(ii) any need for case management services, or (iii) both eligibility for the Foster Care Prevention*
95 *program and any need for case management services.*

96 **§ 63.2-1307. Foster Care Prevention program.**

97 A. *The Foster Care Prevention program is established to facilitate placements with relatives and*
98 *ensure that such relatives are provided with the resources necessary to provide care for the child.*

99 B. *A child is eligible for the Foster Care Prevention program if the local department determines*
100 *that:*

101 1. *The child is in the custody of a relative pursuant to a court order;*

102 2. *The child's parent or guardian voluntarily placed the child with such relative;*

103 3. *The child demonstrates a strong attachment to the relative, and the relative has a strong*
104 *commitment to caring for the child; and*

105 4. *Had the relative not agreed to take custody of the child, the local department likely would have*
106 *filed a petition with the court to remove the child from the home of his parent or guardian due to an*
107 *imminent threat of child abuse or neglect.*

108 C. *In order to receive payments under the Foster Care Prevention program, the local department*
109 *and the relative who has custody of an eligible child pursuant to subsection B shall enter into a written*
110 *agreement with the Department. Such agreement shall include, in addition to any requirements deemed*
111 *necessary by the Department, provisions regarding the amount of each Foster Care Prevention program*
112 *payment and the manner in which such payments will be provided. Foster Care Prevention program*
113 *payments shall be no more than the foster care maintenance payments that the relative would receive if*
114 *the relative was the child's foster parent, reduced by any monthly payments received through the*
115 *Temporary Assistance for Needy Families program.*

116 D. *For purposes of this section, "relative" means an adult who is (i) related to the child by blood,*
117 *marriage, or adoption or (ii) fictive kin of the child.*

118 **2. That the Board of Social Services (the Board) shall promulgate regulations to implement the**
119 **provisions of this act, which may include provisions governing the manner in which Foster Care**
120 **Prevention program payments are calculated and prioritized based on available funding. The**
121 **Board's initial adoption of regulations necessary to implement the provisions of this act shall be**

122 exempt from the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia), except
123 that the Board shall provide an opportunity for public comment on such regulations prior to
124 adoption.