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SENATE BILL NO. 507

Offered January 26, 1998

A BILL to amend and reenact §§ 20-124.1, 20-124.2 and 20-124.3 of the Code of Virginia, relating to minor children; custody and visitation.

Patron—Quayle (By Request)

Referred to the Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 20-124.1, 20-124.2 and 20-124.3 of the Code of Virginia are amended and reenacted as follows:

§ 20-124.1. Definitions.

As used in this chapter:

"Joint custody" means (i) joint legal custody where both parents retain joint responsibility for the care and control of the child and joint authority to make decisions concerning the child even though the child's primary residence may be with only one parent, (ii) joint physical custody where both parents share physical and custodial care of the child or (iii) any combination of joint legal and joint physical custody which the court deems to be in the best interest of the child.

"Person with a legitimate interest" shall be broadly construed and includes, but is not limited to grandparents, stepparents, former stepparents, blood relatives and family members provided any such party has intervened in the suit or is otherwise properly before the court. The term shall be broadly construed to accommodate the best interest of the child. A party with a legitimate interest shall not include any person (i) whose parental rights have been terminated by court order, either voluntarily or involuntarily, or any other person whose interest in the child derives from or through such person whose parental rights have been so terminated, including but not limited to grandparents, stepparents, former stepparents, blood relatives and family members, if the child subsequently has been legally adopted except where a final order of adoption is entered pursuant to § 63.1-231 or (ii) who has been convicted of a violation of subsection A of § 18.2-61 or subsection B of § 18.2-366 when the child who is the subject of the petition was conceived as a result of such violation.

"Shared parenting" means that both parents retain responsibility for the care and control of the child, authority to make decisions concerning the child, and physical and custodial care of the child for significant periods of time.

"Sole custody parenting" means that one person retains responsibility for the care and control of a child and has primary authority to make decisions concerning the child.

§ 20-124.2. Court-ordered parenting arrangements.

A. In any case in which ~~e custody or visitation~~ the parenting arrangement 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 ~~e custody and visitation~~ the parenting 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 ~~e custody and visitation~~ the parenting 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.

B. In determining ~~e custody parenting arrangements~~, the court shall give primary consideration to the ~~best interests~~ needs of the child. The court shall assure minor children of frequent and continuing contact with both parents, ~~when appropriate, and encourage and shall presume that both parents to shall~~ 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 ~~fundamental right to~~ primacy of the parent-child relationship but may, upon a showing by clear and convincing evidence ~~that the best interest of imminent harm to the child's health or welfare and to assure that the needs of the child would be served thereby,~~ award ~~e custody or visitation~~ primary care and control to any other person with a legitimate interest. ~~The court may award joint custody or sole custody.~~

C. The court may order that support be paid for any child of the parties. The court shall also order that support will continue to be paid for any child over the age of eighteen 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 nineteen or graduates from high school, whichever first occurs. The court may also order the continuation of support for any child over the age of eighteen who is (i) severely and permanently mentally or physically disabled, (ii) unable to live independently and

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60 support himself, and (iii) resides in the home of the parent seeking or receiving child support. In
61 addition, the court may confirm a stipulation or agreement of the parties which extends a support
62 obligation beyond when it would otherwise terminate as provided by law. The court shall have no
63 authority to decree support of children payable by the estate of a deceased party. The court may make
64 such further decree as it shall deem expedient concerning support of the minor children, including an
65 order that any party provide health care coverage.

66 The court shall have the continuing authority and jurisdiction to make any additional orders
67 necessary to effectuate and enforce any order entered pursuant to this section or § 20-103 including the
68 authority to punish as contempt of court any willful failure of a party to comply with the provisions of
69 the order.

70 § 20-124.3. Needs of the child.

71 In determining ~~best interests~~ *the needs* of a child for purposes of determining ~~e custody or visitation~~
72 *parenting* arrangements including any pendente lite orders pursuant to § 20-103, the court shall consider
73 the following:

74 1. The age and physical and mental condition of the child, giving due consideration to the child's
75 changing developmental needs;

76 2. The age and physical and mental condition of each parent;

77 3. The relationship existing between each parent and each child, giving due consideration to the
78 positive involvement with the child's life, the ability to accurately assess and meet the emotional,
79 intellectual and physical needs of the child;

80 4. The needs of the child, giving due consideration to other important relationships of the child,
81 including but not limited to siblings, peers and extended family members;

82 5. The role which each parent has played and will play in the future, in the upbringing and care of
83 the child;

84 6. The propensity of each parent to actively support the child's contact and relationship with the other
85 parent, the relative willingness and demonstrated ability of each parent to maintain a close and
86 continuing relationship with the child, and the ability of each parent to cooperate in matters affecting the
87 child;

88 7. The reasonable preference of the child, if the court deems the child to be of reasonable
89 intelligence, understanding, age and experience to express such a preference;

90 8. Any history of family abuse as that term is defined in § 16.1-228; and

91 9. Such other factors as the court deems necessary and proper to the determination.

92 *The court shall make written detailed findings as to each factor in this section and explain how such*
93 *factors led to its determination of the parenting arrangements. The written findings shall be*
94 *incorporated in the order.*