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HOUSE BILL NO. 590

Offered January 9, 2002

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A BILL to amend and reenact §§ 16.1-228, 20-124.1, 20-124.2, 20-124.3, 20-124.5 and 63.1-250 of the Code of Virginia, relating to minor children; custody and visitation.

Patrons—Reid, Albo, Hargrove and Weatherholtz

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-228, 20-124.1, 20-124.2, 20-124.3, 20-124.5 and 63.1-250 of the Code of Virginia are amended and reenacted as follows:

§ 16.1-228. Definitions.

When used in this chapter, unless the context otherwise requires:

"Abused or neglected child" means any child:

1. Whose parents or other person responsible for his care creates or inflicts, threatens to create or inflict, or allows to be created or inflicted upon such child a physical or mental injury by other than accidental means, or creates a substantial risk of death, disfigurement or impairment of bodily or mental functions;

2. Whose parents or other person responsible for his care neglects or refuses to provide care necessary for his health; however, no child who in good faith is under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination shall for that reason alone be considered to be an abused or neglected child;

3. Whose parents or other person responsible for his care abandons such child;

4. Whose parents or other person responsible for his care commits or allows to be committed any sexual act upon a child in violation of the law; or

5. Who is without parental care or guardianship caused by the unreasonable absence or the mental or physical incapacity of the child's parent, guardian, legal custodian or other person standing in loco parentis.

"Adoptive home" means the place of residence of any natural person in which a child resides as a member of the household and in which he has been placed for the purposes of adoption or in which he has been legally adopted by another member of the household.

"Adult" means a person eighteen years of age or older.

"Ancillary crime" or "ancillary charge" means any delinquent act committed by a juvenile as a part of the same act or transaction as, or which constitutes a part of a common scheme or plan with, a delinquent act which would be a felony if committed by an adult.

"Associate parent" means the parent with responsibility for care and control of the child when the "managing parent" does not, and shall be substituted for "noncustodial parent".

"Boot camp" means a short term secure or nonsecure juvenile residential facility with highly structured components including, but not limited to, military style drill and ceremony, physical labor, education and rigid discipline, and no less than six months of intensive aftercare.

"Child," "juvenile" or "minor" means a person less than eighteen years of age.

"Child welfare agency" means a child-placing agency, child-caring institution or independent foster home as defined in § 63.1-195.

"Child in need of services" means a child whose behavior, conduct or condition presents or results in a serious threat to the well-being and physical safety of the child; however, no child who in good faith is under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination shall for that reason alone be considered to be a child in need of services, nor shall any child who habitually remains away from or habitually deserts or abandons his family as a result of what the court or the local child protective services unit determines to be incidents of physical, emotional or sexual abuse in the home be considered a child in need of services for that reason alone.

However, to find that a child falls within these provisions, (i) the conduct complained of must present a clear and substantial danger to the child's life or health or (ii) the child or his family is in need of treatment, rehabilitation or services not presently being received, and (iii) the intervention of the court is essential to provide the treatment, rehabilitation or services needed by the child or his family.

"Child in need of supervision" means:

1. A child who, while subject to compulsory school attendance, is habitually and without justification

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59 absent from school, and (i) the child has been offered an adequate opportunity to receive the benefit of
60 any and all educational services and programs that are required to be provided by law and which meet
61 the child's particular educational needs, (ii) the school system from which the child is absent or other
62 appropriate agency has made a reasonable effort to effect the child's regular attendance without success,
63 and (iii) the school system has provided documentation that it has complied with the provisions of
64 § 22.1-258; or

65 2. A child who, without reasonable cause and without the consent of his parent, lawful custodian or
66 placement authority, remains away from or deserts or abandons his family or lawful custodian on more
67 than one occasion or escapes or remains away without proper authority from a residential care facility in
68 which he has been placed by the court, and (i) such conduct presents a clear and substantial danger to
69 the child's life or health, (ii) the child or his family is in need of treatment, rehabilitation or services not
70 presently being received, and (iii) the intervention of the court is essential to provide the treatment,
71 rehabilitation or services needed by the child or his family.

72 "The court" or the "juvenile court" or the "juvenile and domestic relations court" means the juvenile
73 and domestic relations district court of each county or city.

74 "Delinquent act" means (i) an act designated a crime under the law of this Commonwealth, or an
75 ordinance of any city, county, town or service district, or under federal law, (ii) a violation of
76 § 18.2-308.7, or (iii) a violation of a court order as provided for in § 16.1-292, but shall not include an
77 act other than a violation of § 18.2-308.7, which is otherwise lawful, but is designated a crime only if
78 committed by a child. For purposes of §§ 16.1-241 and 16.1-278.9, the term shall include a refusal to
79 take a blood or breath test in violation of § 18.2-268.2 or a similar ordinance of any county, city or
80 town.

81 "Delinquent child" means a child who has committed a delinquent act or an adult who has committed
82 a delinquent act prior to his eighteenth birthday, except where the jurisdiction of the juvenile court has
83 been terminated under the provisions of § 16.1-269.6.

84 "Department" means the Department of Juvenile Justice and "Director" means the administrative head
85 in charge thereof or such of his assistants and subordinates as are designated by him to discharge the
86 duties imposed upon him under this law.

87 "Family abuse" means any act involving violence, force, or threat including any forceful detention,
88 which results in physical injury or places one in reasonable apprehension of serious bodily injury and
89 which is committed by a person against such person's family or household member.

90 "Family or household member" means (i) the person's spouse, whether or not he or she resides in the
91 same home with the person, (ii) the person's former spouse, whether or not he or she resides in the same
92 home with the person, (iii) the person's parents, stepparents, children, stepchildren, brothers, sisters,
93 grandparents and grandchildren, regardless of whether such persons reside in the same home with the
94 person, (iv) the person's mother-in-law, father-in-law, sons-in-law, daughters-in-law, brothers-in-law and
95 sisters-in-law who reside in the same home with the person, (v) any individual who has a child in
96 common with the person, whether or not the person and that individual have been married or have
97 resided together at any time, or (vi) any individual who cohabits or who, within the previous twelve
98 months, cohabited with the person, and any children of either of them then residing in the same home
99 with the person.

100 "Foster care services" means the provision of a full range of casework, treatment and community
101 services for a planned period of time to a child who is abused or neglected as defined in § 63.1-248.2 or
102 in need of services as defined in this section and his family when the child (i) has been identified as
103 needing services to prevent or eliminate the need for foster care placement, (ii) has been placed through
104 an agreement between the local board of social services or a public agency designated by the
105 community policy and management team and the parents or guardians where legal custody remains with
106 the parents or guardians, (iii) has been committed or entrusted to a local board of social services or
107 child welfare agency, or (iv) has been placed under the supervisory responsibility of the local board
108 pursuant to § 16.1-293.

109 "Intake officer" means a juvenile probation officer appointed as such pursuant to the authority of this
110 chapter.

111 "Jail" or "other facility designed for the detention of adults" means a local or regional correctional
112 facility as defined in § 53.1-1, except those facilities utilized on a temporary basis as a court holding
113 cell for a child incident to a court hearing or as a temporary lock-up room or ward incident to the
114 transfer of a child to a juvenile facility.

115 "The judge" means the judge or the substitute judge of the juvenile and domestic relations district
116 court of each county or city.

117 "This law" or "the law" means the Juvenile and Domestic Relations District Court Law embraced in
118 this chapter.

119 "Legal custody" means (i) a legal status created by court order which vests in a custodian the right to
120 have physical custody of the child, to determine and redetermine where and with whom he shall live,

the right and duty to protect, train and discipline him and to provide him with food, shelter, education and ordinary medical care, all subject to any residual parental rights and responsibilities or (ii) the legal status created by court order of joint custody as defined in § 20-107.2.

"Managing parent" means the parent with responsibility for care and control of the child during the majority of time and shall be substituted for "custodial parent".

"Parenting arrangements" includes, but is not limited to, the child's (i) time with each parent, (ii) provisions for health care, (iii) financial needs, (iv) transportation, (v) education and other essentials and shall be substituted for "custody and/or visitation".

"Permanent foster care placement" means the place of residence in which a child resides and in which he has been placed pursuant to the provisions of §§ 63.1-56 and 63.1-206.1 with the expectation and agreement between the placing agency and the place of permanent foster care that the child shall remain in the placement until he reaches the age of majority unless modified by court order or unless removed pursuant to § 16.1-251 or § 63.1-248.9. A permanent foster care placement may be a place of residence of any natural person or persons deemed appropriate to meet a child's needs on a long-term basis.

"Secure facility" or "detention home" means a local, regional or state public or private locked residential facility which has construction fixtures designed to prevent escape and to restrict the movement and activities of children held in lawful custody.

"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 and shall be substituted for "joint custody".

"Shelter care" means the temporary care of children in physically unrestricting facilities.

"Sole 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 and shall be substituted for "sole custody".

"State Board" means the State Board of Juvenile Justice.

"Status offender" means a child who commits an act prohibited by law which would not be criminal if committed by an adult.

"Status offense" means an act prohibited by law which would not be an offense if committed by an adult.

~~"Residual parental rights and responsibilities" means all rights and responsibilities remaining with the parent after the transfer of legal custody or guardianship of the person, including but not limited to the right of visitation, consent to adoption, the right to determine religious affiliation and the responsibility for support.~~

"Violent juvenile felony" means any of the delinquent acts enumerated in subsection B or C of § 16.1-269.1 when committed by a juvenile fourteen years of age or older.

§ 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.~~

~~"Associate parent" has the same meaning as specified in § 16.1-228.~~

~~"Managing parent" has the same meaning as specified in § 16.1-228.~~

~~"Parenting arrangements" has the same meaning as specified in § 16.1-228.~~

"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 § 63.1-219.48 or (ii) who has been convicted of a violation of subsection A of §§ 18.2-61, 18.2-63 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" has the same meaning as specified in § 16.1-228.~~

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

~~"Sole parenting" has the same meaning as specified in § 16.1-228.~~

§ 20-124.2. Court-ordered parenting arrangements.

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

192 B. In determining ~~custody~~ *parenting arrangements*, the court shall give primary consideration to the
193 best interests of the child. The court shall assure minor children of frequent and continuing contact with
194 both parents, ~~when appropriate~~, and encourage parents to share in the responsibilities of rearing their
195 children. As between the parents, there shall be no presumption or inference of law in favor of either.
196 The court shall give due regard to the primacy of the parent-child relationship but may upon a showing
197 by clear and convincing evidence that the best interest of the child would be served thereby award
198 ~~custody or visitation~~ *primary care and control* to any other person with a legitimate interest. The court
199 may award joint custody or sole ~~custody~~ *parenting*.

200 C. The court may order that support be paid for any child of the parties. The court shall also order
201 that support will continue to be paid for any child over the age of eighteen who is (i) a full-time high
202 school student, (ii) not self-supporting, and (iii) living in the home of the party seeking or receiving
203 child support until such child reaches the age of nineteen or graduates from high school, whichever first
204 occurs. The court may also order the continuation of support for any child over the age of eighteen who
205 is (i*a*) severely and permanently mentally or physically disabled, (i*b*) unable to live independently and
206 support himself, and (i*ic*) resides in the home of the parent seeking or receiving child support. In
207 addition, the court may confirm a stipulation or agreement of the parties which extends a support
208 obligation beyond when it would otherwise terminate as provided by law. The court shall have no
209 authority to decree support of children payable by the estate of a deceased party. The court may make
210 such further decree as it shall deem expedient concerning support of the minor children, including an
211 order that any party provide health care coverage.

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

216 § 20-124.3. Best interests of the child; parenting arrangements.

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

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

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

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

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

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

230 6. The propensity of each parent to actively support the child's contact and relationship with the other
231 parent, including whether a parent has unreasonably denied the other parent access to or visitation with
232 the child;

233 7. The relative willingness and demonstrated ability of each parent to maintain a close and
234 continuing relationship with the child, and the ability of each parent to cooperate in and resolve disputes
235 regarding matters affecting the child;

236 8. The reasonable preference of the child, if the court deems the child to be of reasonable
237 intelligence, understanding, age and experience to express such a preference;

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

239 10. Such other factors as the court deems necessary and proper to the determination.

240 The judge shall communicate to the parties the basis of the decision either orally or in writing.

241 § 20-124.5. Notification of relocation.

242 In any proceeding involving ~~custody or visitation~~ *parenting arrangements*, the court shall include as
243 a condition of any ~~custody or visitation~~ *parenting arrangements* order a requirement that thirty days'

advance written notice be given to the court and the other party by any party intending to relocate and of any intended change of address, unless the court, for good cause shown, orders otherwise. The court may require that the notice be in such form and contain such information as it deems proper and necessary under the circumstances of the case.

§ 63.1-250. Definitions.

Unless a different meaning is plainly required by the context, the following words and phrases as hereinafter used in this chapter shall have the following meanings:

"Administrative order" means a noncourt-ordered legally enforceable support obligation having the force and effect of a support order established by the court.

"Assignment of rights" means the legal procedure whereby an individual assigns support rights to the Commonwealth on behalf of a dependent child or spouse and dependent child.

"Associate parent" has the same meaning as specified in § 16.1-228.

"Authorization to seek or enforce a support obligation" means a signed authorization to the Commonwealth to seek or enforce support on behalf of a dependent child or a spouse and dependent child or on behalf of a person deemed to have submitted an application by operation of law.

"Caretaker" means a parent, relative, guardian or other person whose needs are included in a public assistance payment under the aid to families with dependent children program.

"Child support services" includes any civil, criminal or administrative action taken by the Division of Child Support Enforcement to establish, modify, enforce, or collect child support, or child and spousal support.

"Commissioner" means the Commissioner of the State Department of Social Services, his designee or authorized representative.

"Court order" means any judgment or order of any court having jurisdiction to order payment of support or an order of a court of comparable jurisdiction of another state ordering payment of a set or determinable amount of support moneys.

"Debt" means the total unpaid support obligation established by court order, administrative process or by the payment of public assistance and owed by a responsible person to either the Commonwealth or to his dependent(s).

"Department" means the State Department of Social Services.

"Dependent child" means any person who meets the eligibility criteria set forth in § 63.1-105, whose support rights have been assigned or whose authorization to seek or enforce a support obligation has been given to the Commonwealth and whose support is required by Titles 16.1 and 20.

"Director" means the Commissioner of the State Department of Social Services, his designee or authorized representative.

"Disposable income" means that part of the income due and payable of any individual remaining after the deduction of any amount required by law to be withheld.

"Employee" means any individual receiving income.

"Employer" means the source of any income.

"Financial institution" means a depository institution, an institution-affiliated party, any federal credit union or state credit union including an institution-affiliated party of such a credit union, and any benefit association, insurance company, safe deposit company, money market mutual fund, or similar entity authorized to do business in this Commonwealth.

"Financial records" includes, but is not limited to, records held by employers showing income, profit sharing contributions and benefits paid or payable and records held by financial institutions, broker-dealers and other institutions and entities showing bank accounts, IRA and separate contributions, gross winnings, dividends, interest, distributive share, stocks, bonds, agricultural subsidies, royalties, prizes and awards held for or due and payable to a responsible person.

"Health care coverage" means any plan providing hospital, medical or surgical care coverage for dependent children provided such coverage is available and can be obtained by a responsible person, as that term is defined in this section, at a reasonable cost.

"Income" means any periodic form of payment due an individual from any source and shall include, but not be limited to, income from salaries, wages, commissions, royalties, bonuses, dividends, severance pay, payments pursuant to a pension or retirement program, interest, trust income, annuities, capital gains, social security benefits, workers' compensation benefits, unemployment insurance benefits, disability insurance benefits, veterans' benefits, spousal support, net rental income, gifts, prizes or awards.

"Managing parent" has the same meaning as specified in § 16.1-228.

"Mistake of fact" means an error in the identity of the payor or the amount of current support or arrearage.

"Net income" means that income remaining after the following deductions have been taken from gross income: federal income tax, state income tax, federal income compensation act benefits, any union

305 dues where collection thereof is required under federal law, and any other amounts required by law.

306 "Payee" means any person to whom spousal or child support is to be paid.

307 *"Parenting arrangements" has the same meaning as specified in § 16.1-228.*

308 "Reasonable cost" pertaining to health care coverage means available through employers, unions or
309 other groups without regard to service delivery mechanism.

310 "Responsible person" means any obligor or person obligated under Virginia law for support of a
311 dependent child or the child's caretaker.

312 *"Shared parenting" has the same meaning as specified in § 16.1-228.*

313 *"Sole parenting" has the same meaning as specified in § 16.1-228.*