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HOUSE BILL NO. 2106

Offered January 12, 2005

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A BILL to amend and reenact §§ 20-103, 20-124.1, 20-124.2, and 20-124.4 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 20-124.2:2 through 20-124.2:8 relating to child support and custody; parenting plans.

Patron—McQuigg

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 20-103, 20-124.1, 20-124.2, and 20-124.4 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 20-124.2:2 through 20-124.2:8 as follows:

§ 20-103. Court may make orders pending suit for divorce, custody or visitation, etc..

A. In suits for divorce, annulment and separate maintenance, and in proceedings arising under subdivision A 3 or subsection L of § 16.1-241, the court having jurisdiction of the matter may, at any time pending a suit pursuant to this chapter, in the discretion of such court, make any order that may be proper (i) to compel a spouse to pay any sums necessary for the maintenance and support of the petitioning spouse, including an order that the other spouse provide health care coverage for the petitioning spouse, unless it is shown that such coverage cannot be obtained; (ii) to enable such spouse to carry on the suit; (iii) to prevent either spouse from imposing any restraint on the personal liberty of the other spouse; (iv) to provide for the custody and maintenance of the minor children of the parties, including an order that either party provide health care coverage for the children; (v) to provide support, calculated in accordance with § 20-108.2, for any child of the parties to whom a duty of support is owed and to continue to support any child over the age of 18 who meets the requirements set forth in subsection C of § 20-124.2; (vi) for the exclusive use and possession of the family residence during the pendency of the suit, (vii) to preserve the estate of either spouse, so that it be forthcoming to meet any decree which may be made in the suit; or (viii) to compel either spouse to give security to abide such decree. 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 except that 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, no statement or admission by a party in such seminar or program shall be admissible into evidence in any subsequent proceeding.

In an action where a permanent parenting plan is or will be entered pursuant to § 20-124.2:2, each parent shall attend a parent educational seminar as soon as possible after the filing of the complaint. The seminar shall educate parents concerning how to protect and enhance the child's emotional development and inform the parents regarding the legal process. The seminar shall also include a discussion of alternative dispute resolution, marriage counseling, the judicial process, and common domestic violence perpetrator attitudes and conduct. The program may be divided into sessions, which in the aggregate shall last at least four hours. The seminar shall be educational in nature and not designed for individual therapy. The minor children shall be excluded from these sessions. The requirement of attendance at such a seminar may be waived upon motion by either party and the agreement of the court for good cause shown.

The fees or costs of the educational sessions under this section, which shall be reasonable, shall be

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59 borne by the parties and may be assessed by the court as it deems equitable. Such fees may be waived
60 for indigent persons.

61 No court shall deny the granting of a divorce from the bonds of matrimony for failure of a party or
62 both parties to attend the educational session.

63 B. In addition to the terms provided in subsection A, upon a showing by a party of reasonable
64 apprehension of physical harm to that party by such party's family or household member as that term is
65 defined in § 16.1-228, and consistent with rules of the Supreme Court of Virginia, the court may enter
66 an order excluding that party's family or household member from the jointly owned or jointly rented
67 family dwelling. In any case where an order is entered under this paragraph, pursuant to an ex parte
68 hearing, the order shall not exclude a family or household member from the family dwelling for a
69 period in excess of 15 days from the date the order is served, in person, upon the person so excluded.
70 The order may provide for an extension of time beyond the 15 days, to become effective automatically.
71 The person served may at any time file a written motion in the clerk's office requesting a hearing to
72 dissolve or modify the order. Nothing in this section shall be construed to prohibit the court from
73 extending an order entered under this subsection for such longer period of time as is deemed
74 appropriate, after a hearing on notice to the parties.

75 C. In cases other than those for divorce in which a custody or visitation arrangement for a minor
76 child is sought, the court may enter an order providing for custody, visitation or maintenance pending
77 the suit as provided in subsection A. The order shall be directed to either parent or any person with a
78 legitimate interest who is a party to the suit.

79 D. Orders entered pursuant to this section which provide for custody or visitation arrangements
80 pending the suit shall be made in accordance with the standards set out in Chapter 6.1 (§ 20-124.1 et
81 seq.) of this title. Orders entered pursuant to subsection B shall be certified by the clerk and forwarded
82 as soon as possible to the local police department or sheriff's office which shall, on the date of receipt,
83 enter the name of the person subject to the order and other appropriate information required by the
84 Department of State Police into the Virginia crime information network system established and
85 maintained by the Department of State Police pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52. If the
86 order is later dissolved or modified, a copy of the dissolution or modification shall also be certified,
87 forwarded and entered in the system as described above.

88 E. An order entered pursuant to this section shall have no presumptive effect and shall not be
89 determinative when adjudicating the underlying cause.

90 § 20-124.1. Definitions.

91 As used in this chapter:

92 "Dispute resolution" means the mediation process or alternative dispute resolution process in
93 accordance with subsection B of § 20-124.4 except that the parties may agree to another equivalent
94 process.

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

100 "Parenting responsibilities" means those aspects of the parent-child relationship in which the parent
101 makes decisions and performs duties necessary for the care and growth of the child. "Parenting
102 responsibilities," the establishment of which is the objective of a permanent parenting plan, include:

103 1. Providing for the child's emotional care and stability, including maintaining a loving, stable,
104 consistent, and nurturing relationship with the child and supervising the child to encourage and protect
105 emotional, intellectual, moral, and spiritual development;

106 2. Providing for the child's physical care, including attending to the daily needs of the child, such as
107 feeding, clothing, physical care, grooming, supervision, health care, and day care, and engaging in
108 other activities, which are appropriate to the developmental level of the child and that are within the
109 social and economic circumstances of the particular family;

110 3. Providing encouragement and protection of the child's intellectual and moral development,
111 including attending to adequate education for the child, including remedial or other education essential
112 to the best interests of the child;

113 4. Assisting the child in developing and maintaining appropriate interpersonal relationships;

114 5. Exercising appropriate judgment regarding the child's welfare, consistent with the child's
115 developmental level and the family's social and economic circumstances; and

116 6. Providing any financial security and support of the child in addition to child support obligations.

117 "Permanent parenting plan" means a written plan pursuant to § 20-124.2:3 for the parenting and
118 best interests of the child, including the allocation of parenting responsibilities and the establishment of
119 a residential schedule, as well as an award of child support consistent with Chapter 6 (§ 20-89.1 et
120 seq.).

"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; (ii) whose interest in the child derives from or through a person whose parental rights have been terminated, either voluntarily or involuntarily, 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 § 63.2-1241; or (iii) 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.

"Primary residential parent" means the parent with whom the child resides more than 50 percent of the time.

"Residential schedule" is the schedule of when the child is in each parent's physical care. It shall designate the primary residential parent, and in which parent's home each minor child shall reside on given days of the year, including provisions for holidays, birthdays of family members, vacations, and other special occasions, consistent with the criteria of this section; provided, that nothing contained herein shall be construed to modify any provision on § 20-124.5.

"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.

"Temporary parenting plan" means a written plan pursuant to § 20-124.2:2 for the temporary parenting and the best interests of the child, including the establishment of a temporary residential schedule, and the establishment of temporary financial support designed to maintain the financial status quo to the extent possible, consistent with Chapter 6 (§ 20-89.1 et seq.).

§ 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 which shall include a parenting plan developed pursuant to § 20-124.2:2 or 20-124.2:3. 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 reviewing parenting plans and determining custody, the court shall give primary consideration to the best interests of the child. 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. 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 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 the continuation of support for any child over the age of 18 who is (i) severely and permanently mentally or physically disabled, (ii) unable to live independently and support himself, and (iii) resides 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 any party provide health care coverage.

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

E. The court shall have the continuing authority and jurisdiction to make any additional orders necessary to effectuate and enforce any order entered pursuant to this section or § 20-103 including the

182 authority to punish as contempt of court any willful failure of a party to comply with the provisions of
183 the order.

184 § 20-124.2:2. *Temporary parenting plan.*

185 Except as may be specifically provided otherwise herein, a temporary parenting plan shall be
186 incorporated in any temporary order of the court in actions for absolute divorce, legal separation,
187 annulment, or separate maintenance involving a minor child. A temporary parenting plan shall comply
188 with those provisions for a permanent parenting plan under subsection A of § 20-124.2:3 that are
189 applicable for the time frame and shall include a residential schedule as described in subsection B of
190 § 20-124.2:3. The court shall approve a temporary parenting plan as follows:

191 1. If the parties can agree to a temporary parenting plan, no written temporary parenting plan is
192 required to be entered; or

193 2. If the parties cannot agree to a temporary parenting plan, either or both parties may request the
194 court to order dispute resolution. The court may immediately order the parties to participate in dispute
195 resolution to establish a temporary parenting plan unless one of the restrictions in subsection A of
196 § 20-124.2:5 exist. If dispute resolution is not available either party may request and the court may
197 order an expedited hearing to establish a temporary parenting plan. In either dispute resolution or in a
198 hearing before the court each party shall submit a proposed temporary parenting plan and a verified
199 statement of income and a verified statement that the plan is proposed in good faith and is in the best
200 interest of the child. If only one party files a proposed temporary parenting plan in compliance with this
201 section, that party may petition the court for an order adopting that party's plan by default, upon a
202 finding by the court that the plan is in the child's best interest. In determining whether the proposed
203 temporary parenting plan serves the best interests of the child, the court shall be governed by the
204 allocation of residential time and support obligations contained in the child support guidelines and
205 related provisions in Chapter 6 (§ 20-89.1 et seq.).

206 § 20-124.2:3. *Permanent parenting plan.*

207 A. Any final decree or decree of modification in an action for absolute divorce, separation,
208 annulment, or maintenance involving a minor child shall incorporate a permanent parenting plan;
209 provided, however, that this section shall not apply to parties who were divorced prior to July 1, 2005,
210 and thereafter return to court to enter an agreed order modifying terms of the previous court order. A
211 permanent parenting plan shall:

212 1. Provide for the child's changing needs as the child grows and matures, in a way that minimizes
213 the need for further modifications to the permanent parenting plan;

214 2. Establish the authority and responsibilities of each parent with respect to the child, consistent with
215 the criteria in this section;

216 3. Minimize the child's exposure to harmful parental conflict;

217 4. Provide for a process for dispute resolution, before court action, unless precluded or limited by
218 § 20-124.2:5; provided, that state agency cases are excluded from the requirement of dispute resolution
219 as to any child support issue involved. In the process for dispute resolution:

220 a. Preference shall be given to carrying out the parenting plan;

221 b. The parents shall use the designated process to resolve disputes relating to the implementation of
222 the plan;

223 c. A written record shall be prepared of any agreement reached and provided to each party to be
224 drafted into a consent order of modification;

225 d. If the court finds that a parent willfully failed to appear at a scheduled dispute resolution process
226 without good reason, the court may, upon motion, award attorneys' fees and financial sanctions to the
227 prevailing parent;

228 e. The provisions of subsection A shall be set forth in the decree; and

229 f. Nothing in this section shall preclude court action, if required to protect the welfare of the child
230 or a party;

231 5. Allocate decision-making authority to one or both parties regarding the child's education, health
232 care, extracurricular activities, and religious upbringing. The parties may incorporate an agreement
233 related to the care and growth of the child in these specified areas, or in other areas, into their plan,
234 consistent with the criteria in this section. Regardless of the allocation of decision making in the
235 parenting plan, the parties may agree that either parent may make emergency decisions affecting the
236 health or safety of the child;

237 6. Provide that each parent may make the day-to-day decisions regarding the care of the child while
238 the child is residing with that parent;

239 7. Provide that when mutual decision making is designated but cannot be achieved, the parties shall
240 make a good-faith effort to resolve the issue through the appropriate dispute resolution process, subject
241 to the exception set forth in subdivision 4 f of this subsection;

242 8. Require the obligor to report annually on a date certain to the obligee, and the Department of
243 Social Services or its contractor in cases governed by Part D of Title IV of the Social Security Act (42

U.S.C. §651 et seq.), on a form provided by the court, the obligor's income as defined by the child support guidelines and related provisions contained in this title; and

9. Specify that if the driver's license of a parent is currently expired, canceled, suspended, or revoked, or if the parent does not possess a valid driver's license for any other reason, the parent shall make acceptable transportation arrangements as may be necessary to protect and ensure the health, safety, and welfare of the child when such child is in the custody of such parent.

B. Any permanent parenting plan shall include a residential schedule as defined in § 20-124.1. The court shall make residential provisions for each child, consistent with the child's developmental level and the family's social and economic circumstances, that encourage each parent to maintain a loving, stable, and nurturing relationship with the child. If the limitations of § 20-124.2:5 are not dispositive of the child's residential schedule, the court shall consider the following factors:

1. The parent's ability to instruct, inspire, and encourage the child to prepare for a life of service, and to compete successfully in the society which the child faces as an adult;

2. The relative strength, nature, and stability of the child's relationship with each parent, including whether a parent has taken greater responsibility for performing parenting responsibilities relating to the daily needs of the child;

3. The willingness and ability of each of the parents to facilitate and encourage a close and continuing parent-child relationship between the child and the other parent, consistent with the best interests of the child;

4. Willful refusal to attend a court-ordered parent education seminar may be considered by the court as evidence of that parent's lack of good faith in these proceedings;

5. The disposition of each parent to provide the child with food, clothing, medical care, education and other necessary care;

6. The degree to which a parent has been the primary caregiver, defined as the parent who has taken the greater responsibility for performing parental responsibilities;

7. The love, affection, and emotional ties existing between each parent and the child;

8. The emotional needs and developmental level of the child;

9. The character and physical and emotional fitness of each parent as it relates to each parent's ability to parent or the welfare of the child;

10. The child's interaction and interrelationships with siblings and with significant adults, as well as the child's involvement with the child's physical surroundings, school, or other significant activities;

11. The importance of continuity in the child's life and the length of time the child has lived in a stable, satisfactory environment;

12. Evidence of physical or emotional abuse to the child, to the other parent or to any other person;

13. The character and behavior of any other person who resides in or frequents the home of a parent and such person's interactions with the child;

14. The reasonable preference of the child if 12 years of age or older; provided that the court may hear the preference of a younger child upon request but the preference of older children shall be given greater weight than those of younger children except for good cause shown;

15. Each parent's employment schedule, including any accommodations the court may make consistent with those schedules; and

16. Any other factors deemed relevant by the court.

C. The court shall approve a permanent parenting plan as follows:

1. Upon agreement of the parties:

a. With the entry of a final decree or judgment; or

b. With a consent order to modify a final decree or judgment involving a minor child;

2. If the parties cannot reach agreement on a permanent parenting plan, upon the motion of either party, or upon its own motion, the court may order appropriate dispute resolution proceedings pursuant to subsection B of § 20-124.4; or

3. If the parties have not reached agreement on a permanent parenting plan on or before 45 days prior to the date set for trial, each party shall file and serve a proposed permanent parenting plan, even though the parties may continue to mediate or negotiate. Failure to comply by a party may result in the court's adoption of the plan filed by the opposing party if the court finds such plan to be in the best interests of the child. In determining whether the proposed plan is in the best interests of the child, the court may consider the allocation of residential time and support obligations contained in the child support guidelines and related provisions contained in this title. Each parent submitting a proposed permanent parenting plan shall attach a verified statement of income and a verified statement that the plan is proposed in good faith and is in the best interest of the child.

§ 20-124.2:4. Modifying permanent parenting plans.

A. In a proceeding to modify a permanent parenting plan, a proposed parenting plan shall be filed and served with the petition for modification and with the response to the petition for modification. Such

305 plan is not required if the modification pertains only to child support. The obligor parent's proposed
306 parenting plan shall be accompanied by a verified statement of that party's income pursuant to the child
307 support guidelines and related provisions contained in Chapter 5 (§ 20-61 et seq.). The process
308 established by subsection B of § 20-124.2:3 shall be used to establish an amended permanent parenting
309 plan or final decree or judgment.

310 B. Cases governed by Part D of Title IV of the Social Security Act (42 U.S.C. §651 et seq.) involving
311 Department of Social Services or any of its public or private contractors shall not be subject to the
312 remaining parental responsibility issues. Separate orders shall be issued concerning issues relating to
313 such cases, which shall not be contained in, or part of, temporary, permanent or modified parenting
314 plans. The Department of Social Services and its public or private contractors shall not be required to
315 participate in dispute resolution pursuant to this section.

316 § 20-124.2:5. Restrictions in temporary or permanent parenting plans.

317 A. The permanent parenting plan and the mechanism for approval of the permanent parenting plan
318 shall not utilize dispute resolution, and a parent's residential time as provided in the permanent
319 parenting plan or temporary parenting plan shall be limited if it is determined by the court, based upon
320 a prior order or other reliable evidence, that a parent has engaged in any of the following conduct:

321 1. Willful abandonment that continues for an extended period of time or substantial refusal to
322 perform parenting responsibilities; or

323 2. Abuse or a pattern of abuse of the parent, child or of another person living with that child as
324 defined in §§ 16.1-228 and 16.1-281.

325 B. The parent's residential time with the child shall be limited if it is determined by the court, based
326 upon a prior order or other reliable evidence, that the parent resides with a person who has engaged in
327 abuse or a pattern of abuse of the parent, child or of another person living with that child as defined in
328 §§ 16.1-228 and 16.1-281.

329 C. If a parent has been convicted as an adult of a sexual offense under § 18.2-61, 18.2-63,
330 18.2-67.3, 18.2-67.4, 18.2-366, or 18.2-387, or has been found to be a sexual offender under Chapter 9
331 (§ 9.1-900 et seq.) of Title 9.1, the court shall restrain the parent from contact with a child that would
332 otherwise be allowed under this section. If a parent resides with an adult who has been convicted, or
333 with a juvenile who has been adjudicated guilty of a sexual offense under § 18.2-61, 18.2-63, 18.2-67.3,
334 18.2-67.4, 18.2-366, or 18.2-387, or who has been found to be a sexual offender under Chapter 9
335 (§ 9.1-900 et seq.), the court shall restrain that parent from contact with the child unless the contact
336 occurs outside the adult's or juvenile's presence and sufficient provisions are established to protect the
337 child.

338 D. A parent's involvement or conduct may have an adverse effect on the child's best interest, and the
339 court may preclude or limit any provisions of a parenting plan, if any of the following limiting factors
340 are found to exist after a hearing:

341 1. A parent's neglect or substantial nonperformance of parenting responsibilities;

342 2. An emotional or physical impairment, which interferes with the parent's performance of parenting
343 responsibilities as defined in § 20-124.1;

344 3. An impairment resulting from drug, alcohol, or other substance abuse that interferes with the
345 performance of parenting responsibilities;

346 4. The absence or substantial impairment of emotional ties between the parent and the child;

347 5. The abusive use of conflict by the parent which creates the danger of damage to the child's
348 psychological development;

349 6. A parent has withheld from the other parent access to the child for a protracted period without
350 good cause;

351 7. A parent's criminal convictions as they relate either to such parent's ability to parent or to the
352 welfare of the child; or

353 8. Such other factors or conduct as the court expressly finds adverse to the best interests of the
354 child.

355 E. In entering a permanent parenting plan, the court shall not draw any presumptions from the
356 provisions of the temporary parenting plan.

357 F. 1. In all cases governed by Part D of Title IV of the Social Security Act (42 U.S.C. §651 et seq.)
358 involving child or spousal support in which payment of support is to be made by income assignment, or
359 otherwise, and in all cases where payments made by income assignment based upon support orders
360 entered on or after July 1, 2005, that are not such cases but support payments must be made to the
361 central collection and disbursement unit as provided by Chapter 19 (§ 63.2-1900 et seq.) of Title 63.2,
362 and, except as may otherwise be allowed by a stipulation or contract pursuant to § 20-79.2, the court
363 shall only approve a temporary or permanent parenting plan involving the payment of support that
364 complies with the requirements for central collection and disbursement as required by Chapter 19
365 (§ 63.2-1900 et seq.). Prior to approval of a parenting plan in which payments are to be made directly
366 to the spouse or the court clerk or to some other person or entity, there shall be filed with the plan

presented to the court a written certification, under oath if filed by a party, or signed by the party's counsel, stating whether the case for which the plan is to be approved is a case governed by Part D of Title IV of the Social Security Act (42 U.S.C. §651 et seq.) subject to enforcement by the Department of Social Services or is otherwise subject to collection through the central collection and disbursement unit established by Chapter 19 (§ 63.2-1900 et seq.).

2. Any provision of any parenting plan, agreement or court order providing for any other payment procedure contrary to the requirements of Chapter 19 (§ 63.2-1900 et seq.) of Title 63.2, except as may otherwise be allowed by a stipulation or contract pursuant to § 20-79.2, whether or not approved by the court, shall be void and of no effect. No credit for support payments shall be given by the court, the court clerk or the Department of Social Services for child or spousal support payments required by the support order that are made in contravention of such requirements; provided, however, the Department of Social Services may make any necessary adjustments to the balances owed to account for changes in the central collection and disbursement status of support cases governed by Part D of Title IV of the Social Security Act (42 U.S.C. §651 et seq.).

G. Forms used by parties as parenting plans or adopted by the court for their use, shall conform to all substantive language requirements established by the administrative office of the courts at such time as parenting plan forms are promulgated and approved by that office.

§ 20-124.2:6. Allocation of parenting responsibilities.

A. The court shall approve agreements of the parties allocating parenting responsibilities, or specifying rules, if it finds that:

1. The agreement is consistent with any limitations on a parent's decision-making authority mandated by § 20-124.2:5;

2. The agreement is knowing and voluntary; and

3. The agreement is in the best interest of the child and is agreed to by the guardian ad litem, if one has been appointed by the court.

B. The court may consider a parent's refusal, without just cause, to attend a court-ordered parental educational seminar in making an award of sole decision-making authority to the other parent. The court shall order sole decision-making to one parent when it finds that:

1. A limitation on the other parent's decision-making authority is mandated by § 20-124.2:5;

2. Both parents are opposed to mutual decision making; or

3. One parent is opposed to mutual decision making, and such opposition is reasonable in light of the parties' inability to satisfy the criteria for mutual decision-making authority.

C. Except as provided in subsections A and B, the court shall consider the following criteria in allocating decision-making authority:

1. The existence of a limitation under § 20-124.2:5;

2. The history of participation of each parent in decision making in each of the following areas: physical care, emotional stability, intellectual and moral development, health, education, extracurricular activities, and religion; and whether each parent attended a court-ordered parent education seminar;

3. Whether the parents have demonstrated the ability and desire to cooperate with one another in decision making regarding the child in each of the following areas: physical care, emotional stability, intellectual and moral development, health, education, extracurricular activities, and religion; and

4. The parents' geographic proximity to one another, to the extent that it affects their ability to make timely mutual decisions.

§ 20-124.2:7. Designation of custody for the purpose of other state and federal statutes; jurisdiction; presumption.

A. Solely for the purpose of all other state and federal statutes and any applicable policies of insurance, which require a designation or determination of custody, a parenting plan shall designate the parent with whom the child is scheduled to reside a majority of the time as the custodian of the child; provided, that this designation shall not affect either parent's rights and responsibilities under the parenting plan. In the absence of such a designation, the parent with whom the child is scheduled to reside a majority of the time shall be deemed to be the custodian for the purposes of such federal and state statutes.

B. Nothing in this section shall be construed to alter, modify or restrict the exclusive jurisdiction of the juvenile court pursuant to § 16.1-241.

C. The sex of the party seeking to be the primary residential parent shall not give rise to a presumption of parental fitness or cause a presumption in favor of or against such party.

§ 20-124.2:8. Evaluation.

The parenting plan processes established by §§ 20-124.2:2 through 20-124.2:7 shall be evaluated by the Office of the Executive Secretary of the Supreme Court after the program has been in effect for three years. The Office shall report to the Committees on Courts of Justice in the House of Delegates and in the Senate no later than February 15, 2009.

428 § 20-124.4. Mediation; dispute resolution.

429 A. In any appropriate case the court shall refer the parents or persons with a legitimate interest to a
430 dispute resolution evaluation session to be conducted by a mediator certified pursuant to guidelines
431 promulgated by the Judicial Council at no cost and in accordance with the procedures set out in Chapter
432 20.2 (§ 8.01-576.4 et seq.) of Title 8.01. In assessing the appropriateness of a referral, the court shall
433 ascertain upon motion of a party whether there is a history of family abuse. If an agreement is not
434 reached on any issue through further mediation as agreed to by the parties, prior to the return date set
435 by the court pursuant to § 8.01-576.5, the court shall proceed with a hearing on any unresolved issue,
436 unless a continuance has been granted by the court. The fee of a mediator appointed in any custody,
437 support or visitation case shall be \$100 per appointment and shall be paid by the Commonwealth from
438 the funds appropriated for payment of appointments made pursuant to subsection B of § 16.1-267.

439 B. *The following procedures and restrictions are applicable to the use of the dispute resolution*
440 *process for those persons subject to the requirements of a parenting plan pursuant to §§ 20-124.2:2 and*
441 *20-124.2:3:*

442 1. *Each neutral party or the court shall apply or, in the case of mediation, assist the parties to*
443 *uphold as a standard for making decisions in mediation, the criteria in this section. Nothing in this*
444 *section shall be construed to prevent a party from having the party's attorney present at the dispute*
445 *resolution procedure.*

446 2. *The neutral party may rely upon evidence submitted that reasonably prudent persons would rely*
447 *upon in the conduct of their affairs.*

448 3. *When dispute resolution is utilized in this subsection, it shall be preceded by a pretrial conference*
449 *and the attendance by parents at the parent education seminar set forth in § 20-103.*

450 4. *The court shall not order a dispute resolution process, except court action, if the court:*

451 a. *Finds that any limiting factor under § 20-124.2:5 applies;*

452 b. *Finds that either parent is unable to afford the cost of the proposed dispute resolution process,*
453 *unless such cost is waived or subsidized;*

454 c. *Enters a default judgment against the defendant; or*

455 d. *Preempts such process upon motion of either party for just cause.*

456 5. *If an order of protection issued in or recognized by this state is in effect or if there is a court*
457 *finding of domestic abuse or criminal conviction involving domestic abuse within the marriage, that is*
458 *the subject of the proceeding for divorce or separate support and maintenance, the court may order*
459 *mediation or refer the parties to mediation only if:*

460 a. *Mediation is agreed to by the victim of the alleged domestic or family violence;*

461 b. *Mediation is provided by a certified mediator who is trained in domestic and family violence in a*
462 *specialized manner that protects the safety of the victim; and*

463 c. *The victim is permitted to have in attendance at mediation a supporting person of the victim's*
464 *choice, including, but not limited to, an attorney or advocate. No victim may provide monetary*
465 *compensation to a nonattorney advocate for attendance at mediation. The other party may also have in*
466 *attendance at mediation a supporting person of such party's choice, including, but not limited to, an*
467 *attorney or advocate.*

468 6. *If a dispute resolution process is not precluded or limited, then in designating such a process the*
469 *court shall consider all relevant factors, including:*

470 a. *Differences between the parents that would substantially inhibit their effective participation in any*
471 *designated process;*

472 b. *The parents' wishes or agreements and, if the parents have entered into agreements, whether the*
473 *agreements were made knowingly and voluntarily; and*

474 c. *The financial circumstances of the parties to pay for alternative dispute resolution processes where*
475 *court-sanctioned alternative dispute resolution programs are unavailable.*