

2018 SESSION

LEGISLATION NOT PREPARED BY DLS
INTRODUCED

18104789D

HOUSE BILL NO. 807

Offered January 10, 2018

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A BILL to amend and reenact §§ 20-124.3 and 16.1-228 of the Code of Virginia, relating to custody and visitation agreements; best interests of the child; other violent abuse.

Patrons—Levine and Campbell

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 20-124.3 of the Code of Virginia is amended and reenacted as follows:

§ 20-124.3. Best interests of the child; visitation.

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

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

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

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

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

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

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

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

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

9. Any history of family abuse or other violent abuse as those terms are as that term is defined in § 16.1-228 or sexual abuse. If the court finds such a history, the court may disregard the factors in subdivision 6; and

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

The judge shall communicate to the parties the basis of the decision either orally or in writing. Except in cases of consent orders for custody and visitation, this communication shall set forth the judge's findings regarding the relevant factors set forth in this section.

2. That § 16.1-228 of the Code of Virginia is 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, including, but not limited to, a child who is with his parent or other person responsible for his care either (i) during the manufacture or attempted manufacture of a Schedule I or II controlled substance, or (ii) during the unlawful sale of such substance by that child's parents or other person responsible for his care, where such manufacture, or attempted manufacture or unlawful sale would constitute a felony violation of § 18.2-248;

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

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59 sexual act upon a child in violation of the law;

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

63 6. Whose parents or other person responsible for his care creates a substantial risk of physical or
64 mental injury by knowingly leaving the child alone in the same dwelling, including an apartment as
65 defined in § 55-79.2, with a person to whom the child is not related by blood or marriage and who the
66 parent or other person responsible for his care knows has been convicted of an offense against a minor
67 for which registration is required as a violent sexual offender pursuant to § 9.1-902; or

68 7. Who has been identified as a victim of sex trafficking or severe forms of trafficking as defined in
69 the Trafficking Victims Protection Act of 2000, 22 U.S.C § 7102 et seq., and in the Justice for Victims
70 of Trafficking Act of 2015, 42 U.S.C. § 5101 et seq.

71 If a civil proceeding under this chapter is based solely on the parent having left the child at a
72 hospital or emergency medical services agency, it shall be an affirmative defense that such parent safely
73 delivered the child to a hospital that provides 24-hour emergency services or to an attended emergency
74 medical services agency that employs emergency medical services personnel, within 14 days of the
75 child's birth. For purposes of terminating parental rights pursuant to § 16.1-283 and placement for
76 adoption, the court may find such a child is a neglected child upon the ground of abandonment.

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

80 "Adult" means a person 18 years of age or older.

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

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

87 "Child," "juvenile," or "minor" means a person less than 18 years of age.

88 "Child in need of services" means (i) a child whose behavior, conduct or condition presents or results
89 in a serious threat to the well-being and physical safety of the child or (ii) a child under the age of 14
90 whose behavior, conduct or condition presents or results in a serious threat to the well-being and
91 physical safety of another person; however, no child who in good faith is under treatment solely by
92 spiritual means through prayer in accordance with the tenets and practices of a recognized church or
93 religious denomination shall for that reason alone be considered to be a child in need of services, nor
94 shall any child who habitually remains away from or habitually deserts or abandons his family as a
95 result of what the court or the local child protective services unit determines to be incidents of physical,
96 emotional or sexual abuse in the home be considered a child in need of services for that reason alone.

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

102 "Child in need of supervision" means:

103 1. A child who, while subject to compulsory school attendance, is habitually and without justification
104 absent from school, and (i) the child has been offered an adequate opportunity to receive the benefit of
105 any and all educational services and programs that are required to be provided by law and which meet
106 the child's particular educational needs, (ii) the school system from which the child is absent or other
107 appropriate agency has made a reasonable effort to effect the child's regular attendance without success,
108 and (iii) the school system has provided documentation that it has complied with the provisions of
109 § 22.1-258; or

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

117 "Child welfare agency" means a child-placing agency, child-caring institution or independent foster
118 home as defined in § 63.2-100.

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

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

"Delinquent child" means a child who has committed a delinquent act or an adult who has committed a delinquent act prior to his 18th birthday, except where the jurisdiction of the juvenile court has been terminated under the provisions of § 16.1-269.6.

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

"Family abuse" means any act involving violence, force, or threat that results in bodily injury or places one in reasonable apprehension of death, sexual assault, or bodily injury and that is committed by a person against such person's family or household member. Such act includes, but is not limited to, any forceful detention, stalking, criminal sexual assault in violation of Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2, or any criminal offense that results in bodily injury or places one in reasonable apprehension of death, sexual assault, or bodily injury.

"Family or household member" means (i) the person's spouse, whether or not he or she resides in the same home with the person, (ii) the person's former spouse, whether or not he or she resides in the same home with the person, (iii) the person's parents, stepparents, children, stepchildren, brothers, sisters, half-brothers, half-sisters, grandparents and grandchildren, regardless of whether such persons reside in the same home with the person, (iv) the person's mother-in-law, father-in-law, sons-in-law, daughters-in-law, brothers-in-law and sisters-in-law who reside in the same home with the person, (v) any individual who has a child in common with the person, whether or not the person and that individual have been married or have resided together at any time, or (vi) any individual who cohabits or who, within the previous 12 months, cohabited with the person, and any children of either of them then residing in the same home with the person.

"Foster care services" means the provision of a full range of casework, treatment and community services for a planned period of time to a child who is abused or neglected as defined in § 63.2-100 or in need of services as defined in this section and his family when the child (i) has been identified as needing services to prevent or eliminate the need for foster care placement, (ii) has been placed through an agreement between the local board of social services or a public agency designated by the community policy and management team and the parents or guardians where legal custody remains with the parents or guardians, (iii) has been committed or entrusted to a local board of social services or child welfare agency, or (iv) has been placed under the supervisory responsibility of the local board pursuant to § 16.1-293.

"Independent living arrangement" means placement of a child at least 16 years of age who is in the custody of a local board or licensed child-placing agency and has been placed by the local board or licensed child-placing agency in a living arrangement in which he does not have daily substitute parental supervision.

"Independent living services" means services and activities provided to a child in foster care 14 years of age or older and who has been committed or entrusted to a local board of social services, child welfare agency, or private child-placing agency. "Independent living services" may also mean services and activities provided to a person who was in foster care on his 18th birthday and has not yet reached the age of 21 years. Such services shall include counseling, education, housing, employment, and money management skills development and access to essential documents and other appropriate services to help children or persons prepare for self-sufficiency.

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

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

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

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

"Legal custody" means (i) a legal status created by court order which vests in a custodian the right to 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

182 and ordinary medical care, all subject to any residual parental rights and responsibilities or (ii) the legal
183 status created by court order of joint custody as defined in § 20-107.2.

184 *"Other violent abuse" means conduct committed by a person against someone who is not such*
185 *person's family or household member which otherwise meets the definition of family abuse.*

186 "Permanent foster care placement" means the place of residence in which a child resides and in
187 which he has been placed pursuant to the provisions of §§ 63.2-900 and 63.2-908 with the expectation
188 and agreement between the placing agency and the place of permanent foster care that the child shall
189 remain in the placement until he reaches the age of majority unless modified by court order or unless
190 removed pursuant to § 16.1-251 or 63.2-1517. A permanent foster care placement may be a place of
191 residence of any natural person or persons deemed appropriate to meet a child's needs on a long-term
192 basis.

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

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

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

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

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

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

206 "Violent juvenile felony" means any of the delinquent acts enumerated in subsection B or C of
207 § 16.1-269.1 when committed by a juvenile 14 years of age or older.