

# VIRGINIA ACTS OF ASSEMBLY -- 1994 SESSION

## CHAPTER 769

*An Act to amend and reenact §§ 16.1-278.15 and 20-79, as they are currently effective and as they may become effective, and §§ 20-103 and 20-107.2 of the Code of Virginia and to amend the Code of Virginia by adding in Title 20 a chapter numbered 6.1, consisting of sections numbered 20-124.1 through 20-124.6, relating to custody and visitation arrangements for minor children.*

[S 88]

Approved April 11, 1994

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 16.1-278.15 and 20-79, as they are currently effective and as they may become effective, and §§ 20-103 and 20-107.2 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding in Title 20 a chapter numbered 6.1, consisting of sections numbered 20-124.1 through 20-124.6, as follows:**

§ 16.1-278.15. Custody or visitation, child or spousal support generally.

A. In cases involving the custody, visitation or support of a child pursuant to subdivision A 3 of § 16.1-241, the court may make any order of disposition to protect the welfare of the child and family as may be made by the circuit court. If support is ordered for a child, the order shall provide that support will continue to be paid for a child who is (i) a full-time high school student, (ii) not self-supporting, and (iii) living in the home of the parent seeking or receiving child support, until the child reaches the age of nineteen or graduates from high school, whichever occurs first.

B. In any case involving the custody or visitation of a child, the court may award custody upon petition to any party with a legitimate interest therein, including, but not limited to, grandparents, stepparents, former stepparents, blood relatives and family members. The term "legitimate interest" shall be broadly construed to accommodate the best interest of the child. The authority of the juvenile court to consider a petition involving the custody of a child shall not be proscribed or limited where the custody of the child has previously been awarded to a local board of social services.

C. In any determination of support obligation under this section, the support obligation as it becomes due and unpaid creates a judgment by operation of law. Such judgment becomes a lien against real estate only when docketed in the county or city where such real estate is located. Nothing herein shall be construed to alter or amend the process of attachment of any lien on personal property.

D. In cases involving charges for desertion, abandonment or failure to provide support by any person in violation of law, disposition shall be made in accordance with Chapter 5 (§ 20-61 et seq.) of Title 20.

E. In cases involving a spouse who seeks spousal support after having separated from his spouse, the court may enter any appropriate order to protect the welfare of the spouse seeking support.

F. In any case or proceeding involving the custody or visitation of a child, the court shall consider the best interest of the child, including the considerations for determining custody and visitation set forth in ~~§ 20-107.2~~ Chapter 6.1 (§ 20-124.1 et seq.) of Title 20.

§ 16.1-278.15. (Delayed effective date) Custody or visitation, child or spousal support generally.

A. In cases involving the custody, visitation or support of a child pursuant to subdivision A 3 of § 16.1-241, the court may make any order of disposition to protect the welfare of the child and family. If support is ordered for a child, the order shall provide that support will continue to be paid for a child who is (i) a full-time high school student, (ii) not self-supporting, and (iii) living in the home of the parent seeking or receiving child support, until the child reaches the age of nineteen or graduates from high school, whichever occurs first.

B. In any case involving the custody or visitation of a child, the court may award custody upon petition to any party with a legitimate interest therein, including, but not limited to, grandparents, stepparents, former stepparents, blood relatives and family members. The term "legitimate interest" shall be broadly construed to accommodate the best interest of the child. The authority of the family court to consider a petition involving the custody of a child shall not be proscribed or limited where the custody of the child has previously been awarded to a local board of social services.

C. In any determination of support obligation under this section, the support obligation as it becomes due and unpaid creates a judgment by operation of law. Such judgment becomes a lien against real estate only when docketed in the county or city where such real estate is located. Nothing herein shall be construed to alter or amend the process of attachment of any lien on personal property.

D. In cases involving charges for desertion, abandonment or failure to provide support by any person in violation of law, disposition shall be made in accordance with Chapter 5 (§ 20-61 et seq.) of Title 20.

E. In cases involving a spouse who seeks spousal support after having separated from his spouse, the court may enter any appropriate order to protect the welfare of the spouse seeking support.

F. In any case or proceeding involving the custody or visitation of a child, the court shall consider the best interest of the child, including the considerations for determining custody and visitation set forth

in ~~§ 20-107.2~~ *Chapter 6.1 (§ 20-124.1 et seq.) of Title 20.*

§ 20-79. Effect of divorce proceedings.

(a) In any case where an order has been entered under the provisions of this chapter, directing either party to pay any sum or sums of money for the support of his or her spouse, or concerning the care, custody or maintenance of any child, or children, the jurisdiction of the court which entered such order shall cease and its orders become inoperative upon the entry of a decree by the court or the judge thereof in vacation in a suit for divorce instituted in any circuit court in this Commonwealth having jurisdiction thereof, in which decree provision is made for support and maintenance for the spouse or concerning the care, custody or maintenance of a child or children, or concerning any matter provided in a decree in the divorce proceedings in accordance with the provisions of § 20-103.

(b) In any suit for divorce, the court in which the suit is instituted or pending, when either party to the proceedings so requests, shall provide in its decree for the maintenance, support, care or custody of the child or children *in accordance with Chapter 6.1 (§ 20-124.1 et seq.) of Title 20*, support and maintenance for the spouse, if the same be sought, and counsel fees and other costs, if in the judgment of the court any or all of the foregoing should be so decreed.

(c) In any suit for divorce or suit for maintenance and support, the court may after a hearing, pendente lite, or in any decree of divorce a mensa et thoro, decree of divorce a vinculo matrimonii, final decree for maintenance and support, or subsequent decree in such suit, transfer to the juvenile and domestic relations district court the enforcement of its orders pertaining to support and maintenance for the spouse, maintenance, support, care and custody of the child or children. After the entry of a decree of divorce a vinculo matrimonii the court may transfer to the juvenile and domestic relations district court any other matters pertaining to support and maintenance for the spouse, maintenance, support, care and custody of the child or children on motion by either party, and may so transfer such matters before the entry of such decree on motion joined in by both parties. In the transfer of any matters referred to herein, the court may, upon the motion of any party, or on its own motion, and for good cause shown, transfer any matters covered by said decree or decrees to any juvenile and domestic relations district court within the Commonwealth that constitutes a more appropriate forum. An appeal of an order by such juvenile and domestic relations district court which is to enforce or modify the decree in the divorce suit shall be as provided in § 16.1-296.

§ 20-79. (Delayed effective date) Effect of divorce proceedings.

(a) In any case where an order has been entered under the provisions of this chapter, directing either party to pay any sum or sums of money for the support of his or her spouse, or concerning the care, custody or maintenance of any child, or children, such orders become inoperative upon the entry of a decree by the court in a suit for divorce instituted in any family court in this Commonwealth having jurisdiction thereof, in which decree provision is made for support and maintenance for the spouse or concerning the care, custody or maintenance of a child or children, or concerning any matter provided in a decree in the divorce proceedings in accordance with the provisions of § 20-103.

(b) In any suit for divorce, the court in which the suit is instituted or pending, when either party to the proceedings so requests, shall provide in its decree for the maintenance, support, care or custody of the child or children *in accordance with Chapter 6.1 (§ 20-124.1 et seq.) of Title 20*, support and maintenance for the spouse, if the same be sought, and counsel fees and other costs, if in the judgment of the court any or all of the foregoing should be so decreed.

(c) In any suit for divorce or suit for maintenance and support filed in a circuit court prior to January 1, 1995, the circuit court may after a hearing, pendente lite, or in any decree of divorce a mensa et thoro, decree of divorce a vinculo matrimonii, final decree for maintenance and support, or subsequent decree in such suit, transfer to the family court the enforcement of its orders. After the entry of a decree of divorce a vinculo matrimonii the circuit court may transfer to the family court any other matters on motion by either party, and may so transfer such matters before the entry of such decree on motion joined in by both parties. In the transfer of any matters referred to herein, the circuit court may, for good cause shown, transfer any matters covered by said decree or decrees to any family court within the Commonwealth that constitutes a more appropriate forum. Upon any transfer under this section, the circuit court is divested of any further jurisdiction over the transferred matters. An appeal of an order by a family court which is to enforce or modify the decree in the divorce suit shall be as provided in § 16.1-296.2.

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

A. The court may, at any time pending ~~the~~ *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 for any child of the parties under the age of nineteen who is a full-time high school student and who otherwise meets the requirements set forth in § 20-107.2, (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.

*B. Upon a showing by a party of reasonable apprehension of physical harm to that party by such party's spouse, and consistent with rules of the Supreme Court of Virginia, the court may enter an order excluding that party's spouse from the jointly owned or jointly rented family dwelling. In any case where an order is entered under this paragraph, pursuant to an ex parte hearing, the order shall not exclude a spouse from the family dwelling for a period in excess of fifteen days from the date the order is served, in person, upon the spouse so excluded. The order may provide for an extension of time beyond the fifteen days, to become effective automatically. The spouse served may at any time file a written motion in the clerk's office requesting a hearing to dissolve or modify the order. Nothing in this section shall be construed to prohibit the court from extending an order entered under this paragraph for such longer period of time as is deemed appropriate, after a hearing on notice to the parties.*

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

*D. Orders entered pursuant to this section which provide for custody or visitation arrangements pending the suit shall be made in accordance with the standards set out in Chapter 6.1 (§ 20-124.1 et seq.) of Title 20.*

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

§ 20-107.2. Court may decree as to custody and support of minor children.

Upon decreeing the dissolution of a marriage, and also upon decreeing a divorce, whether from the bond of matrimony or from bed and board, and upon decreeing that neither party is entitled to a divorce, the court may make such further decree as it shall deem expedient concerning the custody, or visitation and support of the minor children of the parties *as provided in Chapter 6.1 (§ 20-124.1 et seq.) of Title 20*, including an order that either party provide health care coverage. In any case involving the custody or visitation of a child, the court may award custody or visitation to any party with a legitimate interest therein, including but 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 "legitimate interest" shall be construed broadly to accommodate the best interests of the child. The court may also order that support be paid for any child of the parties and, if support is ordered, the court shall order that it will continue to be paid for any child who is (i) a full-time high school student, (ii) not self-supporting and (iii) living in the home of the parent seeking or receiving child support until such child reaches the age of nineteen or graduates from high school, whichever first occurs. However, 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, in determining custody and visitation of minor children, shall consider the following:

1. The age and physical and mental condition of the child or children;
2. The age and physical and mental condition of each parent;
3. The relationship existing between each parent and each child;
4. The needs of the child or children;
5. The role which each parent has played, and will play in the future, in the upbringing and care of the child or children;
6. The propensity of each parent to allow the child contact with the other parent and the relative willingness and demonstrated ability of each parent to maintain a close and continuing relationship with the child;
7. 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;
8. Any history of family abuse as defined in § 16.1-228; and
9. Such other factors considered by the court to be relevant to the best interests of the child.

In awarding the custody of the child or children, the court may give consideration to joint custody or to sole custody, but shall give primary consideration to the welfare of the child or children, and, as between the parents, there shall be no presumption or inference of law in favor of either.

For the purposes of this section, "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.

In any proceeding involving custody or visitation, the court shall include as a condition of any custody or visitation 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.

Notwithstanding any other provision of law, neither parent shall be denied access to the academic, medical, hospital or other health records of that parent's minor child unless otherwise ordered by the court for good cause shown.

#### CHAPTER 6.1.

#### CUSTODY AND VISITATION ARRANGEMENTS FOR MINOR CHILDREN.

##### § 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 involuntarily terminated by court order if the child subsequently has been legally adopted, 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.

"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.

##### § 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. 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.

B. In 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 and, if support is ordered, the court shall order that it will continue to be paid for any child 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. However, 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.

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

##### § 20-124.3. Best interests of the child.

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 which 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, 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 matters affecting the child;*

7. *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;*

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

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

**§ 20-124.4. Mediation.**

*In any appropriate case the court shall refer the parents or persons with a legitimate interest to a dispute resolution evaluation session to be conducted at no cost to the parties and in accordance with the procedures set out in Chapter 20.2 of Title 8.01 (§ 8.01-576.4 et seq.). In assessing the appropriateness of a referral, the court shall ascertain upon motion of a party whether there is a history of family abuse. If an agreement is not reached on any issue through further mediation as agreed to by the parties, prior to the return date set by the court pursuant to § 8.01-576.5, the court shall proceed with a hearing on any unresolved issue, unless a continuance has been granted by the court.*

**§ 20-124.5. Notification of relocation.**

*In any proceeding involving custody or visitation, the court shall include as a condition of any custody or visitation 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.*

**§ 20-124.6. Access to child's records.**

*Notwithstanding any other provision of law, neither parent shall be denied access to the academic, medical, hospital or other health records of that parent's minor child unless otherwise ordered by the court for good cause shown.*

**2. That on or before July 1, 1995, the State Board of Youth and Family Services and the State Board of Social Services shall jointly establish guidelines for child custody evaluations conducted by their respective employees which address, at a minimum, both the scope of inquiry and suggested staff qualifications and each Board shall thereafter make their final joint work product available to judges, pro se litigants and members of the Bar throughout the Commonwealth.**

**3. That the State Board of Psychology, the State Board of Medicine and the State Board of Social Services, each in conjunction with the Department of Health Professions, shall develop minimum standards to be used within each discipline for gathering information relevant to child custody decisions in the course of conducting child custody evaluations and each Board shall thereafter make information regarding the standards developed available to the judges, pro se litigants and members of the Bar.**

**4. That the Department of Youth and Family Services, the Department of Social Services and the Department of Health Professions, and all relevant Boards within each Department, shall ensure that information regarding the developing standards for child custody evaluations be shared among the Boards regulated by the respective Departments.**