

## 1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact §§ 16.1-278.15 and 20-124.2 of the Code of Virginia, relating to custody and*  
 3 *visitation; possession or consumption of authorized substances.*

4 [H 942]

5 Approved

6 **Be it enacted by the General Assembly of Virginia:**7 **1. That §§ 16.1-278.15 and 20-124.2 of the Code of Virginia are amended and reenacted as follows:**8 **§ 16.1-278.15. Custody or visitation, child or spousal support generally.**

9 A. In cases involving the custody, visitation or support of a child pursuant to subdivision A 3 of  
 10 § 16.1-241, the court may make any order of disposition to protect the welfare of the child and family as may  
 11 be made by the circuit court. The parties to any petition where a child whose custody, visitation, or support is  
 12 contested shall show proof that they have attended within the 12 months prior to their court appearance or  
 13 that they shall attend within 45 days thereafter an educational seminar or other like program conducted by a  
 14 qualified person or organization approved by the Office of the Executive Secretary of the Supreme Court of  
 15 Virginia. The court may require the parties to attend such seminar or program in uncontested cases only if the  
 16 court finds good cause. The seminar or other program shall be a minimum of four hours in length and shall  
 17 address the effects of separation or divorce on children, parenting responsibilities, options for conflict  
 18 resolution and financial responsibilities. Once a party has completed one educational seminar or other like  
 19 program, the required completion of additional programs shall be at the court's discretion. Parties under this  
 20 section shall include natural or adoptive parents of the child, or any person with a legitimate interest as  
 21 defined in § 20-124.1. The fee charged a party for participation in such program shall be based on the party's  
 22 ability to pay; however, no fee in excess of \$50 may be charged. Whenever possible, before participating in  
 23 mediation or alternative dispute resolution to address custody, visitation or support, each party shall have  
 24 attended the educational seminar or other like program. The court may grant an exemption from attendance of  
 25 such program for good cause shown or if there is no program reasonably available. Other than statements or  
 26 admissions by a party admitting criminal activity or child abuse or neglect, no statement or admission by a  
 27 party in such seminar or program shall be admissible into evidence in any subsequent proceeding. If support  
 28 is ordered for a child, the order shall also provide that support will continue to be paid for a child over the age  
 29 of 18 who is (i) a full-time high school student, (ii) not self-supporting, and (iii) living in the home of the  
 30 parent seeking or receiving child support, until the child reaches the age of 19 or graduates from high school,  
 31 whichever occurs first. The court may also order that support be paid or continue to be paid for any child over  
 32 the age of 18 who is (a) severely and permanently mentally or physically disabled, and such disability existed  
 33 prior to the child reaching the age of 18 or the age of 19 if the child met the requirements of clauses (i), (ii),  
 34 and (iii); (b) unable to live independently and support himself; and (c) residing in the home of the parent  
 35 seeking or receiving child support. Upon request of either party, the court may also order that support  
 36 payments be made to a special needs trust or an ABLE savings trust account as defined in § 23.1-700.

37 B. In any case involving the custody or visitation of a child, the court may award custody upon petition to  
 38 any party with a legitimate interest therein, including, but not limited to, grandparents, stepparents, former  
 39 stepparents, blood relatives and family members. For purposes of this section, a party with a legitimate  
 40 interest shall also include a parent whose rights previously had been terminated, provided that the child  
 41 whose custody or visitation is at issue (i) is at least 14 years of age; (ii) has had a permanency goal previously  
 42 achieved by adoption; (iii) has had his adoptive parents die or, pursuant to § 16.1-277.02, each of such child's  
 43 adoptive parents has permanently been relieved of custody of such child and each adoptive parent has had his  
 44 parental rights terminated; and (iv) is in the custody of a local board of social services, and provided that the  
 45 parent whose rights had previously been terminated has (a) complied with the terms of any written  
 46 post-adoption contact and communication agreement entered into pursuant to Article 1.1 (§ 63.2-1220.2 et  
 47 seq.) of Chapter 12 of Title 63.2 and (b) maintained a positive, continuous relationship with the child since  
 48 termination. The term "legitimate interest" shall be broadly construed to accommodate the best interest of the  
 49 child. The authority of the juvenile court to consider a petition involving the custody of a child shall not be  
 50 proscribed or limited where the custody of the child has previously been awarded to a local board of social  
 51 services.

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

56 D. Orders entered prior to July 1, 2008, shall not be deemed void or voidable solely because the petition

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57 or motion that resulted in the order was completed, signed and filed by a nonattorney employee of the  
58 Department of Social Services.

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

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

63 G. In any case or proceeding involving the custody or visitation of a child, the court shall consider the best  
64 interest of the child, including the considerations for determining custody and visitation set forth in Chapter  
65 6.1 (§ 20-124.1 et seq.) of Title 20.

66 G1. In any case or proceeding involving the custody or visitation of a child, as to a parent, the court may,  
67 in its discretion, use the phrase "parenting time" to be synonymous with the term "visitation."

68 H. In any proceeding before the court for custody or visitation of a child, the court may order a custody or  
69 a psychological evaluation of any parent, guardian, legal custodian or person standing in loco parentis to the  
70 child, if the court finds such evaluation would assist it in its determination. The court may enter such orders  
71 as it deems appropriate for the payment of the costs of the evaluation by the parties.

72 I. When deemed appropriate by the court in any custody or visitation matter, the court may order drug  
73 testing of any parent, guardian, legal custodian or person standing in loco parentis to the child. *Such parent,*  
74 *guardian, legal custodian, or person standing in loco parentis to the child shall not be construed to have*  
75 *failed a drug test if such drug test includes a positive result for such substance authorized under Title 4.1 or*  
76 *Chapter 34 (§ 54.1-3400 et seq.) of Title 54.1. The court may enter such orders as it deems appropriate for the*  
77 *payment of the costs of the testing by the parties. A person's legal possession or consumption of substances*  
78 *authorized under Title 4.1 or Chapter 34 of Title 54.1 alone shall not serve as a basis to restrict custody or*  
79 *visitation unless other facts establish that such possession or consumption is not in the best interest of the*  
80 *child.*

81 J. In any custody or visitation case or proceeding wherein an order prohibiting a party from picking the  
82 child up from school is entered pursuant to this section, the court shall order a party to such case or  
83 proceeding to provide a copy of such custody or visitation order to the school at which the child is enrolled  
84 within three business days of such party's receipt of such custody or visitation order.

85 If a custody determination affects the school enrollment of the child subject to such custody order and  
86 prohibits a party from picking the child up from school, the court shall order a party to provide a copy of such  
87 custody order to the school at which the child will be enrolled within three business days of such party's  
88 receipt of such order. Such order directing a party to provide a copy of such custody or visitation order shall  
89 further require such party, upon any subsequent change in the child's school enrollment, to provide a copy of  
90 such custody or visitation order to the new school at which the child is subsequently enrolled within three  
91 business days of such enrollment.

92 If the court determines that a party is unable to deliver the custody or visitation order to the school, such  
93 party shall provide the court with the name of the principal and address of the school, and the court shall  
94 cause the order to be mailed by first class mail to such school principal.

95 Nothing in this section shall be construed to require any school staff to interpret or enforce the terms of  
96 such custody or visitation order.

97 **§ 20-124.2. Court-ordered custody and visitation arrangements.**

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

107 B. In determining custody, the court shall give primary consideration to the best interests of the child. The  
108 court shall consider and may award joint legal, joint physical, or sole custody, and there shall be no  
109 presumption in favor of any form of custody. The court shall assure minor children of frequent and  
110 continuing contact with both parents, when appropriate, and encourage parents to share in the responsibilities  
111 of rearing their children. As between the parents, there shall be no presumption or inference of law in favor of  
112 either. The court shall give due regard to the primacy of the parent-child relationship but may upon a showing  
113 by clear and convincing evidence that the best interest of the child would be served thereby award custody or  
114 visitation to any other person with a legitimate interest. *A person's legal possession or consumption of*  
115 *substances authorized under Title 4.1 or Chapter 34 (§ 54.1-3400 et seq.) of Title 54.1 alone shall not serve*  
116 *as a basis to restrict custody or visitation unless other facts establish that such possession or consumption is*  
117 *not in the best interest of the child.*

118 B1. In any case or proceeding involving the custody or visitation of a child, as to a parent, the court may,

119 in its discretion, use the phrase "parenting time" to be synonymous with the term "visitation."  
 120 B2. In any case or proceeding in which a grandparent has petitioned the court for visitation with a minor  
 121 grandchild, and a natural or adoptive parent of the minor grandchild is deceased or incapacitated, the  
 122 grandparent who is related to such deceased or incapacitated parent shall be permitted to introduce evidence  
 123 of such parent's consent to visitation with the grandparent, in accordance with the rules of evidence. If the  
 124 parent's consent is proven by a preponderance of the evidence, the court may then determine if grandparent  
 125 visitation is in the best interest of the minor grandchild. For the purposes of this subsection, "incapacitated  
 126 parent" has the same meaning ascribed to the term "incapacitated person" in § 64.2-2000.

127 C. The court may order that support be paid for any child of the parties. Upon request of either party, the  
 128 court may order that such support payments be made to a special needs trust or an ABLE savings trust  
 129 account as defined in § 23.1-700. The court shall also order that support will continue to be paid for any child  
 130 over the age of 18 who is (i) a full-time high school student, (ii) not self-supporting, and (iii) living in the  
 131 home of the party seeking or receiving child support until such child reaches the age of 19 or graduates from  
 132 high school, whichever first occurs. The court may also order that support be paid or continue to be paid for  
 133 any child over the age of 18 who is (a) severely and permanently mentally or physically disabled, and such  
 134 disability existed prior to the child reaching the age of 18 or the age of 19 if the child met the requirements of  
 135 clauses (i), (ii), and (iii); (b) unable to live independently and support himself; and (c) residing in the home of  
 136 the parent seeking or receiving child support. In addition, the court may confirm a stipulation or agreement of  
 137 the parties which extends a support obligation beyond when it would otherwise terminate as provided by law.  
 138 The court shall have no authority to decree support of children payable by the estate of a deceased party. The  
 139 court may make such further decree as it shall deem expedient concerning support of the minor children,  
 140 including an order that either party or both parties provide health care coverage or cash medical support, or  
 141 both.

142 D. In any case in which custody or visitation of minor children is at issue, whether in a circuit or district  
 143 court, the court may order an independent mental health or psychological evaluation to assist the court in its  
 144 determination of the best interests of the child. The court may enter such order as it deems appropriate for the  
 145 payment of the costs of the evaluation by the parties.

146 E. The court shall have the continuing authority and jurisdiction to make any additional orders necessary  
 147 to effectuate and enforce any order entered pursuant to this section or § 20-103 including the authority to  
 148 punish as contempt of court any willful failure of a party to comply with the provisions of the order. A parent  
 149 or other person having legal custody of a child may petition the court to enjoin and the court may enter an  
 150 order to enjoin a parent of the child from filing a petition relating to custody and visitation of that child for  
 151 any period of time up to 10 years if doing so is in the best interests of the child and such parent has been  
 152 convicted of an offense under the laws of the Commonwealth or a substantially similar law of another state,  
 153 the United States, or any foreign jurisdiction which constitutes (i) murder or voluntary manslaughter, or a  
 154 felony attempt, conspiracy or solicitation to commit any such offense, if the victim of the offense was a child  
 155 of the parent, a child with whom the parent resided at the time the offense occurred, or the other parent of the  
 156 child, or (ii) felony assault resulting in serious bodily injury, felony bodily wounding resulting in serious  
 157 bodily injury, or felony sexual assault, if the victim of the offense was a child of the parent or a child with  
 158 whom the parent resided at the time of the offense. When such a petition to enjoin the filing of a petition for  
 159 custody and visitation is filed, the court shall appoint a guardian ad litem for the child pursuant to § 16.1-266.

160 F. In any custody or visitation case or proceeding wherein an order prohibiting a party from picking the  
 161 child up from school is entered pursuant to this section or § 20-103, the court shall order a party to such case  
 162 or proceeding to provide a copy of such custody or visitation order to the school at which the child is enrolled  
 163 within three business days of such party's receipt of such custody or visitation order.

164 If a custody determination affects the school enrollment of the child subject to such custody order and  
 165 prohibits a party from picking the child up from school, the court shall order a party to provide a copy of such  
 166 custody order to the school at which the child will be enrolled within three business days of such party's  
 167 receipt of such order. Such order directing a party to provide a copy of such custody or visitation order shall  
 168 further require such party, upon any subsequent change in the child's school enrollment, to provide a copy of  
 169 such custody or visitation order to the new school at which the child is subsequently enrolled within three  
 170 business days of such enrollment.

171 If the court determines that a party is unable to deliver the custody or visitation order to the school, such  
 172 party shall provide the court with the name of the principal and address of the school, and the court shall  
 173 cause the order to be mailed by first class mail to such school principal.

174 Nothing in this section shall be construed to require any school staff to interpret or enforce the terms of  
 175 such custody or visitation order.

176 **2. That the Board of Social Services shall amend its regulations, guidance documents, and other**  
 177 **instructional materials to ensure that such regulations, documents, and materials comply with, and**  
 178 **that investigations and family assessments are conducted by local departments of social services in**  
 179 **accordance with, the provisions of this act.**