CODE OF VIRGINIA

Title 20

Domestic Relations

Title 20 - Domestic Relations

Chapter 1 - PRE-MARITAL SYPHILIS TESTS AND EXAMINATIONS [Repealed]

§§ 20-1 through 20-12. Repealed.

Repealed by Acts 1984, c. 140.

Chapter 2 - Marriage Generally

§ 20-13. License and solemnization required.

Every marriage in this Commonwealth shall be under a license and solemnized in the manner herein provided.

Code 1919, § 5071.

§ 20-13.1. Repealed.

Repealed by Acts 1995, c. 355, cl. 2.

§ 20-14. By whom license to be issued.

Every license for a marriage shall be issued by the clerk or deputy clerk of a circuit court of any county or city. If from any cause neither the clerk nor his deputy is able to issue the license, it may be issued by the judge of the circuit court of such county, or city, who shall make return thereof to the clerk as soon as there may be one.

Code 1919, § 5072; 1924, p. 398; 1948, p. 107; 1968, c. 318; 1977, c. 102; 1995, c. 355.

§ 20-14.1. Duration of license; issuance of additional licenses.

Every marriage license issued under § 20-14 shall constitute authority for a period of only sixty days from the date of issuance for the solemnization of a marriage of the licensees. Whenever such sixty-day period shall have elapsed without the solemnization of a marriage of the licensees, the license shall expire.

The provisions of this section shall not be construed to prevent licensees from applying for or receiving an additional license, either before or after expiration of any license, but no new license shall be issued except in compliance with all provisions of law applicable to the issuance of a license in the first instance.

1958, c. 8; 1968, c. 318.

§ 20-14.2. Repealed.

Repealed by Acts 2012, c. 802, cl. 2.

§ 20-15. Tax on license.

On each marriage license issued under § 20-14 there is hereby levied a license tax of $20, which tax shall be collected by the clerk when the license is issued and accounted for as in the case of other

state taxes collected by him. Ten dollars of this license tax shall be allocated to the Virginia Department of Social Services for the purpose of providing services to victims of domestic violence.

Code 1919, § 5072; 1924, p. 398; 1948, p. 107; 1975, c. 119; 1982, c. 305; 1993, c. 887; 2004, c. 375.

§ 20-16. Issuance of marriage licenses and marriage certificates.

The clerk issuing any marriage license shall require the parties contemplating marriage to state, under oath, the information required to complete the application for marriage license. The parties shall be able to designate themselves on the application for marriage license as spouse, bride, or groom. The clerk shall provide the parties with two copies of the marriage certificate to be completed by the marriage officiant, who shall return the completed certificates to the clerk after the marriage ceremony of the parties. The clerk shall retain one copy of the completed marriage certificate and provide the other copy to the State Registrar of Vital Records. The clerk may provide the parties with a commemorative marriage certificate and the parties may request a certified copy of the official marriage certificate as provided in Article 7 (§ 32.1-270 et seq.) of Chapter 7 of Title 32.1. For the purposes of this section any statement made by such applicant, under oath, concerning the information to be entered on the application for marriage license is hereby declared to be a material matter or thing in any prosecution for perjury for any violation of this section.

Code 1919, § 5074; 1928, p. 314; 1938, p. 151; 1968, c. 318; 2015, c. 708.

§ 20-16.1. Clerk authorized to amend marriage records.

The clerk (i) may, on his own authority, correct marriage records established in his office by amending the same upon application under oath and submission of evidence deemed by the clerk to be adequate and sufficient and (ii) shall correct such records upon order of the court in which the marriage record was established. Upon correction of a marriage record the clerk shall forward to the State Registrar a certified copy of the corrected marriage record.

1988, c. 54.

§§ 20-17 through 20-19. Repealed.

Repealed by Acts 1968, c. 318.

§ 20-20. Clerk to file license and certificate; indexing names of parties; certified copies as evidence.

The clerk to whom the license and certificate are returned, shall file and preserve the original in his office, and make an index of the names of both of the parties married.

When the certificates of such person celebrating such marriage are returned to the clerk, and recorded as provided in this section and § 32.1-267, copies of the same properly certified by the clerk lawfully having the custody thereof or properly certified by the State Registrar of Vital Records shall be prima facie evidence of the facts therein set forth in all courts of this Commonwealth.

Code 1919, §§ 5074, 5076; 1928, p. 315; 1938, p. 152; 1968, c. 318.

§ 20-21. Clerk to furnish attorney for the Commonwealth list of licenses not returned by minister.

It shall be the duty of every clerk issuing marriage licenses no later than March 31 of each year to furnish to the attorney for the Commonwealth of his county or city a list of all marriage licenses issued during the preceding calendar year that have not been returned by the minister or other person celebrating the marriage.

Code 1919, § 5074; 1928, p. 314; 1938, p. 151; 2000, cc. 31, 214.

§ 20-22. Attorney for the Commonwealth to ascertain before circuit court name of minister failing to return certificates.

It shall be the duty of the attorney for the Commonwealth for each county and city, upon the receipt from the clerk of the list required by § 20-21, to have such person or persons as he may think proper summoned before the circuit court of his county or city to ascertain the name of the minister or other person celebrating such marriage and failing to return the license and certificates to the clerk as required by § 32.1-267.

Code 1919, § 5074; 1928, p. 314; 1938, p. 151; 1979, c. 502.

§ 20-23. Order authorizing ministers to perform ceremony.

When a minister of any religious denomination produces before the circuit court of any county or city in the Commonwealth, or before the judge of such court or before the clerk of such court at any time, proof of his ordination and of his being in regular communion with the religious society of which he is a reputed member, or proof that he is commissioned to pastoral ministry or holds a local minister's license and is serving as a regularly appointed pastor in his denomination, such court, or the judge thereof, or the clerk of such court at any time, may make an order authorizing such minister to celebrate the rites of matrimony in the Commonwealth. Any order made under this section may be rescinded at any time by the court or by the judge thereof. No oath shall be required of a minister authorized to celebrate the rites of matrimony, nor shall such minister be considered an officer of the Commonwealth by virtue of such authorization.

Code 1919, §§ 5079, 5080; 1962, c. 362; 1980, c. 154; 1981, c. 295; 2012, c. 565; 2016, c. 611.

§ 20-24. Penalty for failure to certify record of marriage.

If any minister, authorized to celebrate rites of marriage under § 20-23, shall fail to comply with § 32.1-267, he shall be subject to forfeit twenty-five dollars.

Code 1919, § 5093; 1979, c. 502; 1981, c. 298.

§ 20-25. Persons other than ministers who may perform rites.

Upon petition filed with the clerk and payment of applicable clerk's fees, any circuit court judge may issue an order authorizing one or more persons resident in the circuit in which the judge sits to celebrate the rites of marriage in the Commonwealth. Any person so authorized shall, before acting, enter into bond in the penalty of $500, with or without surety, as the court may direct; however, upon a showing that the person would otherwise be qualified for in forma pauperis status, the court may waive such bond. Any order made under this section may be rescinded at any time. No oath shall be

required of a person authorized to celebrate the rites of marriage, nor shall such person be considered an officer of the Commonwealth by virtue of such authorization.

Any judge or justice of a court of record, any judge of a district court, any retired judge or justice of the Commonwealth, any active, senior, or retired federal judge or justice who is a resident of the Commonwealth, or any current (i) member of the General Assembly, (ii) Governor of Virginia, (iii) Lieutenant Governor of Virginia, or (iv) Attorney General of Virginia may celebrate the rites of marriage anywhere in the Commonwealth without the necessity of bond or order of authorization.

Code 1919, § 5080; 1938, c. 152; 1981, c. 295; 1981, Sp. Sess., c. 15; 1983, c. 64; 1985, c. 195; 1987, c. 149; 2003, c. 228; 2004, cc. 612, 680; 2012, c. 802; 2016, c. 611; 2021, Sp. Sess. I, c. 87; 2023, c. 789.

§ 20-26. Marriage between members of religious society having no minister.

Marriages between persons belonging to any religious society which has no ordained minister, may be solemnized by the persons and in the manner prescribed by and practiced in any such society. One person chosen by the society shall be responsible for completing the certification of marriage in the same manner as a minister or other person authorized to perform marriages; such person chosen by the society for this purpose shall be required to execute a bond in the penalty of $500, with surety. No oath shall be required of a person authorized to celebrate the rites of marriage, nor shall such person be considered an officer of the Commonwealth by virtue of such authorization.

Code 1919, § 5081; 1968, c. 318; 1981, c. 295; 2016, c. 611.

§ 20-27. Fee for celebrating marriage.

Any person authorized under § 20-25 to celebrate the rites of marriage shall be permitted to charge the parties a fee for the ceremony not to exceed $75 for each ceremony. Such person and parties may negotiate payment for any additional services agreed to by the celebrant and the parties. Additionally, such person shall be permitted to charge the parties travel expenses to and from the marriage site. If conveyance is by public transportation, reimbursement shall be at the actual cost thereof. If conveyance is by private transportation, reimbursement shall be at the rate specified in the current general appropriations act of the Commonwealth. In either event, the actual cost of the ceremony together with travel expenses shall be given to the parties at least three days prior to the marriage ceremony.

Code 1919, § 5083; 1970, c. 362; 1975, c. 644; 1993, cc. 941, 966; 2006, c. 625; 2014, c. 529; 2020, c. 181.

§ 20-28. Penalty for celebrating marriage without license.

If any person knowingly perform the ceremony of marriage without lawful license, or officiate in celebrating the rites of marriage without being authorized by law to do so, he shall be confined in jail not exceeding one year, and fined not exceeding $500.

Code 1919, § 4542.

§ 20-29. Repealed.

Repealed by Acts 1975, c. 644.

§ 20-30. Licenses of persons on federal reservations.

The clerks of the circuit courts of any counties or their deputies and the clerks of the circuit courts of any cities or their deputies are authorized to issue marriage licenses in conformity with the law now governing the same, to any persons desiring to be married on any of the government reservations of this Commonwealth, lying within their respective counties and which reservations were before the acquisition thereof part of the political territory of this Commonwealth, and any marriage ceremony performed on such reservations shall be as legal to all intents and purposes as if performed in any county or city of the Commonwealth, if the person performing the ceremony was qualified to so act.

All marriages heretofore solemnized within the limits of any such reservations are hereby ratified and legalized to all intents and purposes as if performed in any county or city of the Commonwealth.

1930, p. 701; Michie Code 1942, § 5077a.

§ 20-31. Belief of parties in lawful marriage validates certain defects.

No marriage solemnized under a license issued in this Commonwealth by any person professing to be authorized to solemnize the same shall be deemed or adjudged to be void, nor shall the validity thereof be in any way affected on account of any want of authority in such person, or any defect, omission or imperfection in such license, if the marriage be in all other respects lawful, and be consummated with a full belief on the part of the persons so married, or either of them, that they have been lawfully joined in marriage.

Code 1919, § 5082.

§ 20-31.1. When marriage legitimates children; issue of marriages prohibited by law, etc., legitimate.

If a person, having had a child, shall afterwards intermarry with the mother or father, such child if recognized by both of them, as their own child, jointly or separately, before or after marriage, shall be deemed legitimate.

The issue of marriages prohibited by law, deemed null or void or dissolved by a court shall nevertheless be legitimate.

1978, c. 647.

§ 20-32. Repealed.

Repealed by Acts 2010, c. 352, cl. 2.

§ 20-33. Penalty for clerk issuing license contrary to law.

If any clerk of a court knowingly issue a marriage license contrary to law, he shall be confined in jail not exceeding one year, and fined not exceeding $500.

Code 1919, § 4541.

§§ 20-34 through 20-36. Repealed.

Repealed by Acts 1968, c. 318.

§ 20-37. Validation of certain marriages when license issued by clerk of county court.

All marriages of females residing within jurisdiction of a corporation court, which were solemnized prior to February 1, 1904, by virtue of a license issued by the clerk of the court of the county wherein a city was or is situated, shall be as valid as if such license had been issued by the clerk of such corporation court.

Code 1919, § 5073.

§ 20-37.1. Validation of certain marriages solemnized outside of Commonwealth.

All marriages heretofore solemnized outside this Commonwealth by a minister authorized to celebrate the rites of marriage in this Commonwealth, under a license issued in this Commonwealth, and showing on the application therefor the place out of this Commonwealth where said marriage is to be performed, shall be valid as if such marriage had been performed in this Commonwealth.

1952, c. 133.

§ 20-37.2. Repealed.

Repealed by Acts 1977, c. 624.

Chapter 3 - UNLAWFUL MARRIAGES GENERALLY

§ 20-38. Repealed.

Repealed by Acts 1975, c. 644.

§ 20-38.1. Certain marriages prohibited.

The following marriages are prohibited:

1. A marriage entered into prior to the dissolution of an earlier marriage of one of the parties;

2. A marriage between an ancestor and descendant, or between siblings, whether the relationship is by the half or the whole blood or by adoption;

3. A marriage between an uncle or aunt and a nephew or niece, whether the relationship is by the half or the whole blood.

1975, c. 644; 1978, c. 647; 2020, c. 900.

§ 20-39. Prohibition continues notwithstanding dissolution of previous marriage.

In the cases mentioned in § 20-38.1, in which the relationship is founded on a marriage, the prohibition shall continue in force, notwithstanding the dissolution of such marriage by death or by divorce, unless the divorce be for a cause which made the marriage originally unlawful or void.

Code 1919, § 5086; 1976, c. 356.

§ 20-40. Punishment for violation of such prohibition; leaving Commonwealth to avoid.

If any person marry in violation of § 20-38.1, he shall be confined in jail not exceeding six months, or fined not exceeding $500, in the discretion of the jury. If any persons, resident in the Commonwealth and within the degrees of relationship mentioned in that section, shall go out of the Commonwealth for the purpose of being married, and with the intention of returning, and be married out of it, and

afterwards return to and reside in it, cohabiting as a married couple, they shall be punished as provided in this section, and the marriage shall be governed by the same law as if it had been solemnized in the Commonwealth. The fact of such cohabitation here shall be evidence of such marriage. Venue for a violation of this section may be in the county or city where the subsequent marriage occurred or where the parties to the subsequent marriage cohabited.

Code 1919, §§ 4540, 5089; 1976, c. 356; 2003, c. 99; 2020, c. 900.

§§ 20-41, 20-42. Repealed.

Repealed by Acts 1975, c. 589.

§ 20-43. Bigamous marriages void without decree.

All marriages that are prohibited by law on account of either of the parties having a former spouse then living shall be absolutely void, without any decree of divorce or other legal process.

Code 1919, § 5087; 2020, c. 900.

§ 20-44. Repealed.

Repealed by Acts 1975, c. 589.

§ 20-45. Repealed.

Repealed by Acts 1975, c. 644.

§ 20-45.1. Void and voidable marriages.

A. All marriages that are prohibited by § 20-38.1 are void.

B. All marriages solemnized when either of the parties lacked capacity to consent to the marriage at the time the marriage was solemnized, because of mental incapacity or infirmity, shall be void from the time they shall be so declared by a decree of divorce or nullity.

C. All marriages solemnized on or after July 1, 2016, when either or both of the parties were, at the time of the solemnization, under the age of 18 and have not been emancipated as required by § 20-48 shall be void from the time they shall be so declared by a decree of divorce or nullity. Notwithstanding the foregoing, this section shall not apply to a lawful marriage entered in another state or country prior to the parties being domiciled in the Commonwealth.

1975, c. 644; 2016, cc. 457, 543.

§§ 20-45.2, 20-45.3. Repealed.

Repealed by Acts 2020, cc. 75 and 195, cl. 1, and c. 900, cl. 2.

§§ 20-46, 20-47. Repealed.

Repealed by Acts 1985, c. 421.

§ 20-48. Minimum age of marriage.

The minimum age at which persons may marry shall be 18, unless a minor has been emancipated by court order. Upon application for a marriage license, an emancipated minor shall provide a certified copy of the order of emancipation.

Code 1919, § 5090; 1932, p. 529; 1942, p. 230; 1946, p. 500; 1960, c. 363; 1972, c. 823; 1974, cc. 44, 45; 1975, c. 644; 1989, c. 733; 2008, cc. 174, 206; 2016, cc. 457, 543.

§ 20-49. Repealed.

Repealed by Acts 2016, cc. 457 and 543, cl. 2.

Chapter 3.1 - Proceedings to Determine Parentage

§ 20-49.1. How parent and child relationship established.

A. The parent and child relationship between a child and a woman may be established prima facie by proof of her having given birth to the child, or as otherwise provided in this chapter.

B. The parent and child relationship between a child and a man may be established by:

1. Scientifically reliable genetic tests, including blood tests, which affirm at least a ninety-eight percent probability of paternity. Such genetic test results shall have the same legal effect as a judgment entered pursuant to § 20-49.8.

2. A voluntary written statement of the father and mother made under oath acknowledging paternity and confirming that prior to signing the acknowledgment, the parties were provided with a written and oral description of the rights and responsibilities of acknowledging paternity and the consequences arising from a signed acknowledgment, including the right to rescind. The acknowledgement may be rescinded by either party within sixty days from the date on which it was signed unless an administrative or judicial order relating to the child in an action to which the party seeking rescission was a party is entered prior to the rescission. A written statement shall have the same legal effect as a judgment entered pursuant to § 20-49.8 and shall be binding and conclusive unless, in a subsequent judicial proceeding, the person challenging the statement establishes that the statement resulted from fraud, duress or a material mistake of fact. In any subsequent proceeding in which a statement acknowledging paternity is subject to challenge, the legal responsibilities of any person signing it shall not be suspended during the pendency of the proceeding, except for good cause shown. Written acknowledgments of paternity made under oath by the father and mother prior to July 1, 1990, shall have the same legal effect as a judgment entered pursuant to § 20-49.8.

3. In the absence of such acknowledgment or if the probability of paternity is less than ninety-eight percent, such relationship may be established as otherwise provided in this chapter.

C. The parent and child relationship between a child and an adoptive parent may be established by proof of lawful adoption.

1988, cc. 866, 878; 1990, c. 836; 1992, c. 516; 1997, cc. 792, 896; 1998, c. 884.

§ 20-49.2. Commencement of action; parties; jurisdiction.

Proceedings under this chapter may be instituted upon petition, verified by oath or affirmation, filed by a child, a parent, a person claiming parentage, a person standing in loco parentis to the child or having legal custody of the child or a representative of the Department of Social Services or the Department of Juvenile Justice.

The child may be made a party to the action, and if he is a minor and is made a party, he shall be represented by a guardian ad litem appointed by the court in accordance with the procedures specified in § 16.1-266 or § 8.01-9. The child's mother or father may not represent the child as guardian or otherwise. The determination of the court under the provisions of this chapter shall not be binding on any person who is not a party.

The circuit courts shall have concurrent original jurisdiction of cases arising under this chapter with the juvenile and domestic relations district courts when the parentage of a child is at issue in any matter otherwise before the circuit court. The determination of parentage, when raised in any proceeding, shall be governed by this chapter.

1988, cc. 866, 878; 1989, c. 368; 2008, cc. 164, 201.

§ 20-49.3. Admission of genetic tests.

A. In the trial of any matter in any court in which the question of parentage arises, the court, upon its own motion or upon motion of either party, may and, in cases in which child support is in issue, shall direct and order that the alleged parents and the child submit to scientifically reliable genetic tests including blood tests. The motion of a party shall be accompanied by a sworn statement either (i) alleging paternity and setting forth facts establishing a reasonable possibility of the requisite sexual contact between the parties or (ii) denying paternity.

B. The court shall require the person requesting such genetic test, including a blood test, to pay the cost. However, if such person is indigent, the Commonwealth shall pay for the test. The court may, in its discretion, assess the costs of the test to the party or parties determined to be the parent or parents.

C. The results of a scientifically reliable genetic test, including a blood test, may be admitted in evidence when contained in a written report prepared and sworn to by a duly qualified expert, provided the written results are filed with the clerk of the court hearing the case at least fifteen days prior to the hearing or trial. Verified documentary evidence of the chain of custody of the blood specimens is competent evidence to establish the chain of custody. Any qualified expert performing such test outside the Commonwealth shall consent to service of process through the Secretary of the Commonwealth by filing with the clerk of the court the written results. Upon motion of any party in interest, the court may require the person making the analysis to appear as a witness and be subject to cross-examination, provided that the motion is made at least seven days prior to the hearing or trial. The court may require the person making the motion to pay into court the anticipated costs and fees of the witness or adequate security for such costs and fees.

1988, cc. 866, 878; 1989, c. 598; 1992, c. 516; 1997, cc. 792, 896.

§ 20-49.4. Evidence relating to parentage.

The standard of proof in any action to establish parentage shall be by clear and convincing evidence. All relevant evidence on the issue of paternity shall be admissible. Such evidence may include, but shall not be limited to, the following:

1. Evidence of open cohabitation or sexual intercourse between the known parent and the alleged parent at the probable time of conception;

2. Medical or anthropological evidence relating to the alleged parentage of the child based on tests performed by experts. If a person has been identified by the mother as the putative father of the child, the court may, and upon request of a party shall, require the child, the known parent, and the alleged parent to submit to appropriate tests;

3. The results of scientifically reliable genetic tests, including blood tests, if available, weighted with all the evidence;

4. Evidence of the alleged parent consenting to or acknowledging, by a general course of conduct, the common use of such parent's surname by the child;

5. Evidence of the alleged parent claiming the child as his child on any statement, tax return or other document filed by him with any state, local or federal government or any agency thereof;

6. A true copy of an acknowledgment pursuant to § 20-49.5; and

7. An admission by a male between the ages of fourteen and eighteen pursuant to § 20-49.6.

1988, cc. 866, 878; 1992, c. 516.

§ 20-49.5. Support of children of unwed parents by the father; testimony under oath.

Whenever in any legal proceedings a man voluntarily testifies under oath or affirmation that he is the father of a child whose parents are not married, or are not married to each other, the court may require that he complete an acknowledgment of paternity on a form provided by the Department of Social Services. This acknowledgment shall be sent by the clerk of the court within thirty days of completion to the Department of Social Services.

In any proceeding under this chapter, the petitioner may request a true copy of this form from the Department of Social Services and the Department shall remit such form to the court where the petition has been filed. Such true copy of an acknowledgment of paternity shall then be admissible in any proceeding under this chapter.

1988, cc. 866, 878.

§ 20-49.6. Proceedings to establish paternity or enforce support obligations of males between the ages of fourteen and eighteen.

In any proceeding to establish or enforce an obligation for support and maintenance of a child of unwed parents, a male between the ages of fourteen and eighteen who is represented by a guardian ad litem pursuant to § 8.01-9 and who has not otherwise been emancipated shall not be deemed to be under a disability as provided in § 8.01-2. The court may enter an order establishing the paternity of the child based upon an admission of paternity by such male made under oath before the court or upon such other evidence as may be sufficient in law to support a finding of paternity. The order may provide for support and maintenance of the child by the father and shall be enforceable as if the father were an adult.

1988, cc. 866, 878.

§ 20-49.7. Civil actions.

An action brought under this chapter is a civil action. The natural parent and the alleged parent are competent to testify. Testimony of a physician concerning the medical circumstances of the pregnancy and the condition and characteristics of the child upon birth shall not be privileged. Bills for expenses incurred for pregnancy, childbirth and genetic testing shall be admissible as prima facie evidence of the facts stated therein, without requiring third-party foundation testimony if the party offering such evidence is under oath.

1988, cc. 866, 878; 1997, cc. 792, 896.

§ 20-49.8. Judgment or order; costs; birth record.

A. As used in this section, "pregnancy and delivery expenses" means an amount equal to the sum of a pregnant mother's reasonable and necessary medical costs, minus any portion of such sum that a court determines is equitable based on the totality of the circumstances. Any amount paid by either parent may be credited by a court.

B. A judgment or order establishing parentage may include any provision directed against the appropriate party to the proceeding, concerning the duty of support, including an equitable apportionment of the expenses incurred on behalf of the child from the date the proceeding under this chapter was filed with the court against the alleged parent or, if earlier, the date an order of the Department of Social Services entered pursuant to Title 63.2 and directing payment of support was delivered to the sheriff or process server for service upon the obligor. The judgment or order may be in favor of the natural parent or any other person or agency who incurred such expenses provided the complainant exercised due diligence in the service of the respondent. The judgment or order may also include provisions for the custody and guardianship of the child, visitation privileges with the child, or any other matter in the best interest of the child. In circumstances where the parent is outside the jurisdiction of the court, the court may enter a further order requiring the furnishing of bond or other security for the payment required by the judgment or order. In the event that the initial petition for the establishment of parentage is commenced within six months of the live birth of a child, the judgment or order shall, except for good cause shown or as otherwise agreed to by the parties, apportion between the legal parents, in proportion to the legal parents' gross incomes, as used for calculating the monthly child support obligation pursuant to § 20-108.2, (i) the mother's unreimbursed pregnancy and delivery expenses and (ii) those reasonable expenses incurred by either parent for the benefit of the child prior to the birth of the child. However, when the Commonwealth, through the Medicaid program or other government program, has paid such expenses, the court may order reimbursement to the Commonwealth for such expenses.

C. A determination of paternity made by any other state shall be given full faith and credit, whether established through voluntary acknowledgment or through administrative or judicial process; provided, however, that, except as may otherwise be required by law, such full faith and credit shall be

given only for the purposes of establishing a duty to make payments of support and other payments contemplated by subsection B.

D. For each court determination of parentage made under the provisions of this chapter, a certified copy of the order or judgment shall be transmitted to the State Registrar of Vital Records by the clerk of the court within thirty days after the order becomes final. Such order shall set forth the full name and date and place of birth of the person whose parentage has been determined, the full names of both parents, including the maiden name, if any, of the mother and the name and address of an informant who can furnish the information necessary to complete a new birth record. In addition, when the State Registrar receives a document signed by a man indicating his consent to submit to scientifically reliable genetic tests, including blood tests, to determine paternity and the genetic test results affirming at least a ninety-eight percent probability of paternity, a new birth record shall be completed as provided in § 32.1-261. When the State Registrar receives a copy of a judgment or order for a person born outside of this Commonwealth, such order shall be forwarded to the appropriate registration authority in the state of birth or the appropriate federal agency.

1988, cc. 866, 878; 1990, c. 615; 1992, c. 867; 1994, c. 869; 1996, c. 491; 1998, c. 592; 2023, cc. 570, 571.

§ 20-49.9. Repealed.

Repealed by Acts 2002, c. 747, cl. 10, effective October 1, 2002.

§ 20-49.10. Relief from legal determination of paternity.

An individual may file a petition for relief and, except as provided herein, the court may set aside a final judgment, court order, administrative order, obligation to pay child support or any legal determination of paternity if a scientifically reliable genetic test performed in accordance with this chapter establishes the exclusion of the individual named as a father in the legal determination. The court shall appoint a guardian ad litem to represent the interest of the child. The petitioner shall pay the costs of such test. A court that sets aside a determination of paternity in accordance with this section shall order completion of a new birth record and may order any other appropriate relief, including setting aside an obligation to pay child support. No support order may be retroactively modified, but may be modified with respect to any period during which there is a pending petition for relief from a determination of paternity, but only from the date that notice of the petition was served on the nonfiling party.

A court shall not grant relief from determination of paternity if the individual named as father (i) acknowledged paternity knowing he was not the father, (ii) adopted the child, or (iii) knew that the child was conceived through artificial insemination.

2001, c. 814.

Chapter 4 - COLORED PERSONS; MARRIAGE BETWEEN WHITE AND COLORED PERSONS [Repealed]

§§ 20-50 through 20-60. Repealed.

Repealed by Acts 1968, c. 318.

Chapter 4.1 - SUPPORT

§ 20-60.1. Applicability of chapter.

The provisions of this chapter shall apply to and govern all cases arising under Title 16.1 and this title in which child or spousal support is at issue in any court of the Commonwealth, unless specifically excepted.

1985, c. 488.

§ 20-60.2. Admissibility and identification of support payment records.

Copies of support payment records maintained by the Department of Social Services, when certified over the signature of a designated employee of such entity, shall be considered to be satisfactorily identified and shall be admitted in any proceeding as prima facie evidence of such transactions. Additional proof of the official character of the person certifying such record or the authenticity of his signature shall not be required. Whenever an employee of the Department of Social Services is served with a summons, subpoena, subpoena duces tecum or order directing him to produce such records, the employee may comply by transmitting a copy of the payment records certified as described above to the clerk of the court. Notwithstanding the provisions of this section, a judge may, upon good cause shown and upon notice of the items in the records being questioned, direct that an employee of the Department personally appear.

1985, c. 488.

§ 20-60.3. Contents of support orders.

All orders directing the payment of spousal support where there are minor children whom the parties have a mutual duty to support and all orders directing the payment of child support, including those orders confirming separation agreements, entered on or after October 1, 1985, whether they are original orders or modifications of existing orders, shall contain the following:

1. Notice that support payments may be withheld as they become due pursuant to § 20-79.1 or § 20-79.2, from income as defined in § 63.2-1900, without further amendments of this order or having to file an application for services with the Department of Social Services; however, absence of such notice in an order entered prior to July 1, 1988, shall not bar withholding of support payments pursuant to § 20-79.1;

2. Notice that support payments may be withheld pursuant to Chapter 19 (§ 63.2-1900 et seq.) of Title 63.2 without further amendments to the order upon application for services with the Department of Social Services; however, absence of such notice in an order entered prior to July 1, 1988, shall not bar withholding of support payments pursuant to Chapter 19 (§ 63.2-1900 et seq.) of Title 63.2;

3. The name, date of birth, and last four digits of the social security number of each child to whom a duty of support is then owed by the parent;

4. If known, the name, date of birth, and last four digits of the social security number of each parent of the child and, unless otherwise ordered, each parent's residential and, if different, mailing address, residential and employer telephone number, and number appearing on a driver's license or other document issued under Chapter 3 (§ 46.2-300 et seq.) of Title 46.2 or the comparable law of another jurisdiction, and the name and address of each parent's employer; however, when a protective order has been issued or the court otherwise finds reason to believe that a party is at risk of physical or emotional harm from the other party, information other than the name of the party at risk shall not be included in the order;

5. Notice that, pursuant to § 20-124.2, 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 occurs first, and that the court may also order that support be paid or continue to be paid for any child over the age of 18 who is (a) severely and permanently mentally or physically disabled, and such disability existed prior to the child reaching the age of 18 or the age of 19 if the child met the requirements of clauses (i), (ii), and (iii); (b) unable to live independently and support himself; and (c) residing in the home of the parent seeking or receiving child support;

6. On and after July 1, 1994, notice that a petition may be filed for suspension of any license, certificate, registration or other authorization to engage in a profession, trade, business, occupation, or recreational activity issued by the Commonwealth to a parent as provided in § 63.2-1937 upon a delinquency for a period of 90 days or more or in an amount of $5,000 or more. The order shall indicate whether either or both parents currently hold such an authorization and, if so, the type of authorization held;

7. The monthly amount of support and the effective date of the order. In proceedings on initial petitions, the effective date shall be the date of filing of the petition; in modification proceedings, the effective date may be the date of notice to the responding party. The first monthly payment shall be due on the first day of the month following the hearing date and on the first day of each month thereafter. In addition, an amount shall be assessed for any full and partial months between the effective date of the order and the date that the first monthly payment is due. The assessment for the initial partial month shall be prorated from the effective date through the end of that month, based on the current monthly obligation;

8. a. An order for health care coverage, including the health insurance policy information, for dependent children pursuant to §§ 20-108.1 and 20-108.2 if available at reasonable cost as defined in § 63.2-1900, or a written statement that health care coverage is not available at a reasonable cost as defined in such section, and a statement as to whether there is an order for health care coverage for a spouse or former spouse; and

b. A statement as to whether cash medical support, as defined in § 63.2-1900, is to be paid by or reimbursed to a party pursuant to subsections D and G of § 20-108.2, and if such expenses are ordered, then the provisions governing how such payment is to be made;

9. If support arrearages exist, (i) to whom an arrearage is owed and the amount of the arrearage, (ii) the period of time for which such arrearage is calculated, and (iii) a direction that all payments are to be credited to current support obligations first, with any payment in excess of the current obligation applied to arrearages;

10. If child support payments are ordered to be paid through the Department of Social Services or directly to the obligee, and unless the court for good cause shown orders otherwise, the parties shall give each other and the court and, when payments are to be made through the Department, the Department of Social Services at least 30 days' written notice, in advance, of any change of address and any change of telephone number within 30 days after the change;

11. If child support payments are ordered to be paid through the Department of Social Services, a provision requiring an obligor to keep the Department of Social Services informed, or if payments are ordered to be paid directly to the obligee, a provision requiring an obligor to keep the court informed, of (i) the name, address, and telephone number of his current employer; (ii) any change to his employment status; and (iii) if he has filed a claim for or is receiving benefits under the provisions of Title 60.2. The provision shall further specify that any such change in employment status or filing of a claim shall be communicated to the Department of Social Services or the court in writing within 30 days of such change or filing;

12. If child support payments are ordered to be paid through the Department of Social Services, a provision requiring the party obligated to provide health care coverage to keep the Department of Social Services informed of any changes in the availability of the health care coverage for the minor child or children, or if payments are ordered to be paid directly to the obligee, a provision requiring the party obligated to provide health care coverage to keep the other party informed of any changes in the availability of the health care coverage for the minor child or children;

13. The separate amounts due to each person under the order, unless the court specifically orders a unitary award of child and spousal support due or the order affirms a separation agreement containing provision for such unitary award;

14. Notice that in determination of a support obligation, the support obligation as it becomes due and unpaid creates a judgment by operation of law. The order shall also provide, pursuant to § 20-78.2, for interest on the arrearage at the judgment rate as established by § 6.2-302 unless the obligee, in a writing submitted to the court, waives the collection of interest;

15. Notice that on and after July 1, 1994, the Department of Social Services may, pursuant to Chapter 19 (§ 63.2-1900 et seq.) of Title 63.2 and in accordance with §§ 20-108.2 and 63.2-1921, initiate a review of the amount of support ordered by any court;

16. A statement that if any arrearages for child support, including interest or fees, exist at the time the youngest child included in the order emancipates, payments shall continue in the total amount due (current support plus amount applied toward arrearages) at the time of emancipation until all arrearages are paid; and

17. Notice that, in cases enforced by the Department of Social Services, the Department of Motor Vehicles may suspend or refuse to renew the driver's license, or other document issued under Chapter 3 (§ 46.2-300 et seq.) of Title 46.2 authorizing the operation of a motor vehicle upon the highways, of any person upon receipt of notice from the Department of Social Services that the person (i) is delinquent in the payment of child support by 90 days or in an amount of $5,000 or more or (ii) has failed to comply with a subpoena, summons, or warrant relating to paternity or child support proceedings.

The provisions of this section shall not apply to divorce decrees where there are no minor children whom the parties have a mutual duty to support.

1985, c. 488; 1986, c. 594; 1987, cc. 597, 658, 706; 1988, c. 906; 1991, cc. 651, 694; 1992, c. 199; 1993, c. 534; 1994, cc. 764, 795; 1997, cc. 796, 895; 1998, cc. 727, 884; 2000, c. 305; 2003, c. 625; 2004, c. 1008; 2006, cc. 720, 869; 2009, cc. 706, 713; 2015, cc. 653, 654; 2020, cc. 1227, 1246; 2021, Sp. Sess. I, c. 222.

§ 20-60.4. Abstracts of orders, etc.; clerk shall transmit information regarding any order of support which is entered or modified to Department of Social Services.

The transmission of data between the courts and the Department of Social Services shall be accomplished by electronic data transmission or by transmission of notices, abstracts of orders and other documents. The form and content of such transmissions shall be mutually approved by the Committee on District Courts and the Department of Social Services.

1985, c. 488.

§ 20-60.5. Support payment provisions; how paid.

A. 1. Unless otherwise directed by the Committee on District Courts, in all cases in which payment of a support obligation arising under an order or decree entered prior to October 1, 1985, is made by the obligor through the office of a clerk of court, the clerk shall notify the payee and the obligor that the obligor will be directed to pay future support payments to the Department of Social Services as of the date provided in the notice.

In cases transferred from the courts to the Department of Social Services on or after October 1, 1985, the payee shall be deemed as having executed an authorization to seek or enforce a support obligation with the Department's Division of Child Support Enforcement unless the payee specifically indicates that the Division's services are not desired.

2. Unless otherwise directed by the Department of Social Services, the notice of change in payment shall be served or sent by certified mail, return receipt requested, and shall contain (i) the name of the payee and, if different in whole or in part, the names of the persons to whom an obligation of support is

owed by the obligor, (ii) the name of the obligor, (iii) the amount of the periodic support payment, the due dates of such payments and any arrearages, (iv) the beginning date for sending payments to the Department of Social Services, and (v) the date by which the payee and obligor shall notify the Department of Social Services of the election to (a) have the Department of Social Services collect and disburse support payments together with forms and instructions for applying for such services or (b) have support payment made by the obligor directly to the payee. A copy of the notice also shall be transmitted to the Department of Social Services.

3. Unless otherwise directed by the Committee on District Courts, if both the obligor and the payee request in writing to the Department of Social Services that all support payments be made by the obligor directly to the payee, then the Department of Social Services shall so notify the court and the court shall enter an order to such effect. In the event an election is taken pursuant to subdivision 2 (v) (a), the notice of election shall have the same force and effect as an order of the court.

4. The above provisions shall also apply to payroll deductions made pursuant to § 20-79.1, except that only the payee and the employer shall receive such notice.

5. The change in payment provision required by subsection A shall be initiated by October 1, 1985, unless a different date is mutually agreed to by the Department of Social Services and the Committee on District Courts as to individual courts.

B. Unless a different date is mutually agreed to by the Department of Social Services and the Committee on District Courts, all orders or decrees for support entered on or after October 1, 1985, shall direct that payment be made only to the payee unless one of the parties objects, in which case the order or decree shall direct that payment be made to or through the Department of Social Services.

C. The Department of Social Services shall promptly pay to the payee all support payments collected by it which have been ordered by a court to be paid to or through the Department. The Department shall pay interest to the payee when such interest amount exceeds $5 on a support payment as provided in § 63.2-1951.

D. If the Department of Social Services enters into a contract with a public or private entity for the processing of support payments, then, except as provided in subsection E, and notwithstanding any other provision of this section:

1. The Department shall notify the affected court of the existence of such contract and how payments are contractually required to be made to such contractors; and

2. The affected court shall include in all support orders (i) how payments are required to be made to such contractors and (ii) that payments are to be made in such manner until different payment instructions are mailed to the person making payments by the court or by the Department.

E. An employer of 10,000 persons or more shall not be required to make payments other than by combined single payment to the Department's central office in Richmond without the express written con-

sent of the employer, unless the order is from a support enforcement agency outside the Commonwealth.

F. Upon any obligee's application for public assistance benefits or child support services, the Department of Social Services may change the payee to the Department so that payment is sent to the Department at its address as contained in the notice of change as described in this subsection. Upon the obligee's request that support services no longer be provided, the Department may change the payee to the obligee so that payment is sent to the obligee at the address provided by the obligee as contained in the notice of change as described in this subsection. Notice of such change shall be served on the obligor by certified mail, return receipt requested, by electronic means, or in accordance with Chapter 8 (§ 8.01-285 et seq.) or Chapter 9 (§ 8.01-328 et seq.) of Title 8.01. The change described in the notice shall be effective as to all payments paid on or after the date that notice was served regardless of when such payments were due. Return of service shall be made to the Department of Social Services at the location described in the notice. Upon obtaining service of the notice on the obligor, the Department of Social Services shall transmit a copy of such notice together with a copy of the proof of service to the court having jurisdiction for enforcement of the order and to the custodial parent.

1985, c. 488; 1986, c. 594; 1986, Sp. Sess., cc. 1, 3; 1987, cc. 609, 658, 706; 1988, c. 906; 1990, c. 836; 1991, cc. 651, 694; 1996, c. 416; 2016, c. 29.

§ 20-60.6. When delivery of notice to party at last known address sufficient.

In any subsequent child support enforcement proceeding between the parties, upon sufficient showing that diligent effort was made to ascertain the location of a party, that party may be served with any required notice by delivery of the written notice to that party's residential or business address as filed with the court pursuant to § 20-60.3 or the Department of Social Services, or if changed, as shown in the records of the Department of Social Services, or the court. However, any person served with notice as provided in this section may challenge, in a subsequent judicial proceeding, an order entered based upon such service on the grounds that he did not receive the notice and enforcement of the order would constitute manifest injustice.

1997, cc. 796, 895; 1998, c. 884.

Chapter 5 - DESERTION AND NONSUPPORT

§ 20-61. Desertion or nonsupport of wife, husband or children in necessitous circumstances.

Any spouse who without cause deserts or willfully neglects or refuses or fails to provide for the support and maintenance of his or her spouse, and any parent who deserts or willfully neglects or refuses or fails to provide for the support and maintenance of his or her child under the age of eighteen years of age, or child of whatever age who is crippled or otherwise incapacitated from earning a living, the spouse, child or children being then and there in necessitous circumstances, shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not exceeding $500, or confinement in jail not exceeding twelve months, or both, or on work release employment as provided in § 53.1-131

for a period of not less than ninety days nor more than twelve months; or in lieu of the fine or confinement being imposed upon conviction by the court or by verdict of a jury he or she may be required by the court to suffer a forfeiture of an amount not exceeding the sum of $1,000 and the fine or forfeiture may be directed by the court to be paid in whole or in part to the spouse, or to the guardian, curator, custodian or trustee of the minor child or children, or to some discreet person or responsible organization designated by the court to receive it. This section shall not apply to the parent of a child of whatever age, if the child qualifies for and is receiving aid under a federal or state program for aid to the permanently and totally disabled; or is an adult and meets the visual requirements for aid to the blind; and for this purpose any state agency shall use only the financial resources of the child of whatever age in determining eligibility; however, such parent is subject to prosecution under this section for the desertion or nonsupport of a spouse or of another child who is not receiving such aid.

1944, p. 210; Michie Suppl. 1946, § 1936; 1950, p. 613; 1954, c. 481; 1960, c. 275; 1966, c. 360; 1970, c. 284; 1972, cc. 460, 845; 1973, cc. 315, 346; 1974, c. 464; 1975, c. 644; 1976, c. 462; 2010, c. 619.

§§ 20-61.1, 20-61.2. Repealed.

Repealed by Acts 1988, cc. 866, 878.

§ 20-61.3. Consequences of a putative father failing to appear.

If a putative father fails to appear after having been personally served with notice, in accordance with the provisions of subdivision 1 of § 8.01-296 or § 8.01-320, alleging that he is the father of a minor child, the court shall proceed in hearing the evidence in the case as provided in Chapter 3.1 (§ 20-49.1 et seq.) of Title 20 as if the putative father were present. The order of the court in any such proceedings shall be served upon the father in accordance with the provisions of Chapter 8 (§ 8.01-285 et seq.) or Chapter 9 (§ 8.01-328 et seq.) of Title 8.01.

1988, cc. 867, 894; 1994, c. 869.

§ 20-62. Commitment to workhouse, city farm or work squad for such desertion.

In the event that the cities or counties of this Commonwealth or any of them establish workhouses, city farms or work squads on which prisoners are put to work, persons convicted of nonsupport under the provisions of this chapter may be committed to the farms, workhouses or work squads instead of to jail. Persons sentenced to jail or to a workhouse or city farm under the provisions of this chapter shall be required to do such work as they are capable of in accordance with the opinion of the physician examining such persons pursuant to § 53.1-33 and shall be returned, when released, to the court which exercised original jurisdiction in the case and by that court may be placed on probation upon the terms and conditions and in the manner prescribed by law for probation of original offenders in such cases.

1944, p. 210; Michie Suppl. 1946, § 1936; 1954, c. 481; 1970, c. 630; 1978, c. 377.

§ 20-63. Support payments by county or city.

It shall be the duty of the governing body of the county or city within the boundaries of which any work is performed under the provisions of this chapter to allow and order payment at the end of each

calendar month, out of the current funds of the county or city, to the Department of Social Services for the support of the prisoner's spouse or child or children, a sum not less than $20 nor more than $40 for each week in the discretion of the court during any part of which any work is so performed by such prisoner.

1944, p. 211; Michie Suppl. 1946, § 1936a; 1954, c. 481; 1958, c. 637; 1966, cc. 120, 437; 1974, c. 464; 1978, c. 586; 2016, c. 220.

§ 20-64. Proceedings instituted by petition.

Proceedings under this chapter may be instituted upon petition, verified by oath or affirmation, filed by the spouse or child or by any probation officer or by any state or local law-enforcement officer or by the Department of Social Services upon information received, or by any other person having knowledge of the facts, and the petition shall set forth the facts and circumstances of the case.

1944, p. 211; Michie Suppl. 1946, § 1937; 1974, c. 464; 2002, c. 747.

§ 20-65. Summons or warrant; investigation and hearing.

Upon the filing of such petition the court shall forthwith issue its summons or warrant against the spouse or parent and upon its execution may cause an investigation of the case to be made by a probation officer or other person designated for that purpose who shall report thereon to the court, and thereupon the court shall, upon the return date of the warrant or summons, proceed to determine and hear the case on its merits.

1944, p. 211; Michie Suppl. 1946, § 1937; 1974, c. 464; 1975, c. 557.

§ 20-66. Contempt proceedings; trial in absence of defendant.

(a) If the person so summoned fails without reasonable cause to appear as herein required, he or she may be proceeded against as for contempt of court and the court may, (1) proceed with the trial of the case in his or her absence and render such judgment as to it seems right and proper, or (2) continue the case to some future date.

(b) If the trial be proceeded with in the absence of the defendant and judgment of conviction be entered against him or her, he or she may, within thirty days after the judgment of conviction is rendered, make application to the court to have the case reopened, and after due notice to the original complainant, for good cause, the court may reopen the case and enter such judgment or order as is right and proper.

1944, p. 211; Michie Suppl. 1946, § 1937a; 1974, c. 464.

§ 20-67. Jurisdiction.

Proceedings under this chapter shall be had in the juvenile and domestic relations district courts, which shall have exclusive original jurisdiction in all cases arising under this chapter, except that any grand jury of any circuit court may indict for desertion and nonsupport in any case wherein the defendant is a fugitive from the Commonwealth, and any defendant so indicted or presented and appre-

hended may be tried by the court in which the indictment or presentment is found or, in the discretion of the court, referred to the juvenile and domestic relations district court.

1944, p. 212; Michie Suppl. 1946, § 1937c; 1974, c. 464; 1975, c. 644.

§ 20-68. Appeal.

The person accused shall have the same right of appeal as provided by law in other similar cases; provided that any order of court requiring support of a spouse or children shall remain in full force and effect until reversed or modified by judgment of a superior court, and in the interim the order shall be enforceable by the court entering it and the court may punish for violation of the order as for contempt. After the judgment of conviction and entry of order of support from which no appeal is taken the hearing in the appellate court on an appeal from any subsequent order, modification or amendment shall be restricted to the particular matter or order appealed from.

1944, p. 212; Michie Suppl. 1946, § 1937c; 1974, c. 464.

§ 20-69. Fees of officers.

The officers acting under this chapter shall be entitled to the same fees as are now or hereafter allowed in misdemeanor cases.

1944, p. 212; Michie Suppl. 1946, § 1937c; 1974, c. 464.

§ 20-70. No warrant of arrest to issue.

Except as otherwise in this chapter provided, no warrant of arrest shall be issued by a magistrate against any person within the terms of this chapter, but all proceedings shall be instituted upon petition as aforesaid, provided that upon affidavit of the spouse or other person that there is reasonable cause to believe that the spouse or parent is about to leave the jurisdiction of the court with intent to desert the spouse, child or children, the court of, or any magistrate serving, the city or county may issue a warrant for the spouse or parent returnable before the court.

1944, p. 211; Michie Suppl. 1946, § 1937b; 1974, c. 464; 1975, c. 644; 2008, cc. 551, 691.

§ 20-71. Temporary orders for support.

At any time before the trial, upon motion of the complainant, with notice to the defendant, the court may enter such temporary order as seems just, providing for the support of the neglected spouse or children, or both, pendente lite, and may punish for violation of the order as for contempt.

1944, p. 212; Michie Suppl. 1946, § 1938; 1974, c. 464.

§ 20-71.1. Attorneys' fees in proceedings under § 20-71.

In any proceeding by a spouse petitioning under § 20-71 before the juvenile and domestic relations district court or on appeal before a court of record, to be allowed support for himself or herself or the infant child or children of the defendant, the juvenile and domestic relations district court may direct the defendant, in addition to the allowance to the spouse and support and maintenance for the infant children, to pay to the spouse's attorney, upon such terms and conditions and in such time as the court shall deem reasonable, an attorney's fee deemed reasonable by the court for such services as said

attorney before said court. Upon appeal of the matter to a court of record, the judge of the circuit court may direct that the defendant, in addition to the fees allowed to the spouse's attorney by the juvenile and domestic relations district court, pay to the spouse's attorney at such time and upon such terms and conditions as the judge deems reasonable, an attorney's fee deemed reasonable by the court for such services of said attorney before said court of record, but in fixing said fee such court shall take into consideration the fee or fees directed to be paid by the court from which said appeal was taken.

1950, p. 741; 1974, c. 464; 1975, c. 644.

§ 20-72. Probation on order directing defendant to pay and enter recognizance.

Before the trial, with the consent of the defendant, or at the trial on entry of a plea of guilty, or after conviction, instead of imposing the penalties hereinbefore provided, or in addition thereto, the judge, in his discretion, having regard to the circumstances of the case and to the financial ability or earning capacity of the defendant, shall have the power to make an order, directing the defendant to pay a certain sum or a certain percentage of his or her earnings periodically, either directly or through the court to the spouse or to the guardian, curator or custodian of such minor child or children, or to an organization or individual designated by the court as trustee, and to suspend sentence and release the defendant from custody on probation, upon his or her entering into a recognizance with or without surety, in such sum as the court may order and approve.

Code 1919, § 1939; 1932, p. 466; 1940, p. 476; 1952, c. 692; 1974, c. 464.

§ 20-73. Condition of the recognizance.

The condition of the recognizance shall be such that if the defendant shall make his or her personal appearance in court upon such date as may be specified by the court, or whenever, in the meantime, he or she may be ordered so to do, and shall further comply with the terms of such order, or any subsequent modification or amendment thereof, then such recognizance shall be void, otherwise in full force and effect.

Code 1919, § 1939; 1932, p. 466; 1940, p. 477.

§ 20-74. Support orders to remain in effect until annulled; modification.

Any order of support or amendment thereof entered under the provisions of this chapter shall remain in full force and effect until annulled by the court of original jurisdiction, or the court to which an appeal may be taken; however, such order of support or terms of probation shall be subject to change or modification by the court from time to time, as circumstances may require, but no such change or modification shall affect or relieve the surety of his or her obligation under such recognizance, provided notice thereof be forthwith given to such surety. No support order may be retroactively modified, but may be modified with respect to any period during which there is a pending petition for modification in any court, but only from the date that notice of such petition has been given to the responding party.

Code 1919, § 1939; 1932, p. 467; 1940, p. 477; 1975, c. 644; 1987, c. 649; 2004, c. 204.

§ 20-75. Procedure when accused outside territorial jurisdiction.

Whenever the accused is outside the territorial jurisdiction of the court, instead of requiring his or her arrest and personal appearance before the court, the court may allow the accused to accept service of the process or warrant and enter a written plea of guilty. The court may thereupon proceed as if the accused were present and enter such order of support as may be just and proper, requiring the accused to enter into the recognizance hereinbefore mentioned. For the purposes of this chapter the court may authorize the entering into of such recognizance outside the territorial jurisdiction of the court before such official of the place where the accused or his or her surety may be and under such conditions and subject to such stipulations and requirements as the court may direct and approve. The provisions of this chapter as to the entering into of recognizances outside the territorial jurisdiction of the court shall likewise apply to any renewal of any recognizance heretofore or hereafter entered into in any desertion and nonsupport case.

Code 1919, § 1939; 1932, p. 467; 1940, p. 477; 1975, c. 644.

§ 20-76. Repealed.

Repealed by Acts 1974, c. 464.

§ 20-77. When authority to suspend sentence may be exercised; deduction of certain time from sentence.

The authority of the court to suspend sentences under §§ 20-72 to 20-79 may be exercised at any time after conviction and before the completion of the sentence, and as often as the court may deem advisable and to the best interests of the parties, provided that such period or periods of time as may be actually served by the defendant shall be allowed against and deducted from the original sentence.

Code 1919, § 1939; 1932, p. 467; 1940, p. 477; 1974, c. 464.

§ 20-78. Continuance of failure to support after completion of sentence.

Any person sentenced under §§ 20-72 to 20-79 who, after the completion of such sentence, shall continue in his or her failure, without just cause, adequately to support his or her spouse or children, as the case may be, may again be sentenced on the original petition, as for a new offense, in the same manner and under like conditions as herein provided, and so on from time to time, as often as such failure or failures shall occur.

Code 1919, § 1939; 1932, p. 467; 1940, p. 478; 1974, c. 464.

§ 20-78.1. Effect of entry of support order in certain garnishment proceedings.

A. A judgment for arrearage, or an order or decree of support for a spouse or support and maintenance of a child or children entered under the provisions of this chapter or §§ 16.1-278.15 through 16.1-278.18, 20-103 and 20-107.1 through 20-109 may be enforced in any garnishment proceeding in which the liability is against the United States of America.

B. Except as otherwise provided herein, the provisions of Article 7 (§ 8.01-511 et seq.) of Chapter 18 of Title 8.01 shall govern such garnishment. Any garnishment under the provisions of this section shall continue until modified by the issuing court, or in the case of an arrearage, until the sum or sums of money found to be in arrears are paid in full.

C. The provisions of this section shall apply to arrearages accumulated prior to and after July 1, 1976.

1976, c. 659; 1978, c. 736; 1980, c. 102; 1987, c. 597; 1991, c. 534; 1999, c. 577.

§ 20-78.2. Attorney fees and interest on support arrearage.

The entry of an order or decree of support for a spouse or for support and maintenance of a child under the provisions of this chapter or §§ 20-107.1 through 20-109 shall constitute a final judgment for any sum or sums in arrears. This order shall also include an amount for interest on the arrearage including from the date support is established or retroactively modified at the judgment interest rate as established by § 6.2-302 unless the obligee, in a writing submitted to the court, waives the collection of interest; and may include reasonable attorney fees if the total arrearage for support and maintenance, excluding interest, is equal to or greater than three months of support and maintenance.

1983, c. 488; 1987, c. 190; 1995, c. 483; 2005, c. 880; 2022, c. 527.

§ 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.), 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) Enforcement of orders. 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.

Transfer of case for modification. 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. A court shall not (i) transfer a case for modification to the juvenile and domestic relations district court in the absence of a motion by either party or (ii) require a provision for

transfer of matters for modification to the juvenile and domestic relations district court as a condition of entry of a decree of divorce a vinculo matrimonii.

Change of venue. 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 circuit court or 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.

Code 1919, § 1939; 1940, p. 478; 1960, c. 76; 1964, c. 636; 1970, c. 459; 1974, cc. 464, 473; 1975, c. 644; 1976, c. 345; 1977, c. 71; 1988, c. 502; 1994, c. 769; 2018, c. 254.

§ 20-79.1. Enforcement of support orders; income deduction; penalty for wrongful discharge.

A. For the purposes of this section, the terms "employee," "employer," "income," and "independent contractor" shall have the same meanings ascribed to them in § 63.2-1900.

B. As part of any order directing a person to pay child support, except for initial orders entered pursuant to § 20-79.2, or spousal support pursuant to this chapter or §§ 16.1-278.15 through 16.1-278.18, 20-103, 20-107.2, or 20-109.1, or by separate order at any time thereafter, a court of competent jurisdiction may order a person's employer to deduct from the amounts due or payable to such person, the entitlement to which is based upon income as defined in § 63.2-1900, the amount of current support due and an amount to be applied to arrearages, if any. The court shall order such income deductions (i) if so provided in a stipulation or contract signed by the party ordered to pay such support and filed with the pleadings or depositions, (ii) upon receipt of a notice of arrearages in a case in which an order has been entered pursuant to § 20-60.3, or (iii) upon a finding that the respondent is in arrears for an amount equal to one month's support obligation. The court may, in its discretion, order such payroll deduction (a) on the basis of the obligor's past financial responsibility, history of prior payments pursuant to any such support order, and any other matter that the court considers relevant in determining the likelihood of payment in accordance with the support order or (b) at the request of the obligor.

C. Any income deduction order shall be entered upon motion and concurrent proper notice sent by the clerk or counsel. The notice shall cite this section. If the notice is sent by the clerk, it shall be served in accordance with the provisions of § 8.01-296 or 8.01-329, or sent by certified mail or by electronic means, including facsimile transmission, to the employer. An employer paying wages or other income subject to deduction shall deliver the notice to the person ordered to pay such support.

The notice shall advise the obligor (i) of the amount proposed to be withheld; (ii) that the order of the court will apply to current and future income; (iii) of the right to contest the order; (iv) that the obligor must file a written notice of contest of such deduction with the court within 10 days of the date of issuance of the notice; (v) that if the notice is contested, a hearing will be held and a decision rendered within 10 days from the receipt of the notice of contest by the court, unless good cause is shown for additional time, which shall in no event exceed 45 days from receipt of the notice by the obligor; (vi)

that only disputes as to mistakes of fact as defined in § 63.2-1900 will be heard; (vii) that any order for income deduction entered will state when the deductions will start and the information that will be provided to the person's employer; and (viii) that payment of overdue support upon receipt of the notice shall not be a bar to the implementation of withholding.

Whenever the obligor and the obligee agree to income deductions in a contract or stipulation, the obligor shall be deemed to have waived notice as required in this subsection and the deduction shall be ordered only upon the stipulation or contract being approved by the court.

D. The income deduction order of the court shall by its terms direct the clerk to issue an order in accordance with § 20-79.3 to any employer and, if required, to each future employer, as necessary to implement the order. The order shall cite this section as authority for the entry of the order.

E. The rights and responsibilities of employers with respect to income deduction orders are set out in § 20-79.3.

F. The order to the employer pursuant to this section shall be effective when a certified copy thereof has been served upon or sent to the employer by electronic means, including facsimile transmission. A copy shall be provided to the employee or independent contractor by the employer. If the employer is a corporation, such service shall be accomplished as is provided in § 8.01-513.

G. Any order issued pursuant to this section shall be promptly terminated or modified, as appropriate, after notice and an opportunity for a hearing for the parties when (i) the whereabouts of the children entitled to support and their custodian become unknown, or (ii) the support obligation to an obligee ceases. Any such order shall be promptly modified, as appropriate, when arrearages have been paid in full.

H. The Department of Social Services may charge an obligee an appropriate fee when complying with an order entered under this section sufficient to cover the Department's cost.

I. If a court of competent jurisdiction in any state or territory of the United States or the District of Columbia has ordered a person to pay child support, a court of competent jurisdiction in the Commonwealth, upon motion, notice, and opportunity for a hearing as provided in this section, shall enter an income deduction order, conforming with § 20-79.3 as provided in this section. The rights and responsibilities of the employer with respect to the order are set out in § 20-79.3. Similar orders of the courts of the Commonwealth may be enforced in a similar manner in such other state, territory, or district.

J. If the employee is not an independent contractor, the court or clerk shall attempt to ascertain the obligor's pay period interval prior to service of the clerk's order. If, after the order is served, the employer replies to the court that the pay period interval in the income deduction order differs from the obligor's pay period interval, the clerk shall convert the single monetary amount in the income deduction order to an equivalent single monetary amount for the obligor's pay period interval pursuant to a formula approved by the Committee on District Courts. The equivalent single monetary amount shall

be contained in a new order issued by the clerk and served on the employer and which conforms to § 20-79.3.

K. If the Department of Social Services or the Department's designee receives payments deducted from income of the obligor pursuant to more than one judicial order or a combination of judicial and administrative orders, the Department or the Department's designee shall first allocate such payments among the obligees under such orders with priority given to payment of the order for current support. Where payments are received pursuant to two or more orders for current support, the Department or the Department's designee shall prorate the payments received on the basis of the amounts due under each such order. Upon satisfaction of any amounts due for current support the Department or the Department's designee shall prorate the remainder of the payments received on the basis of amounts due under any orders for accrued arrearages.

1982, c. 298; 1983, c. 481; 1985, c. 488; 1986, c. 594; 1987, cc. 658, 706; 1988, c. 906; 1990, c. 896; 1991, c. 534; 1997, cc. 648, 663; 1998, c. 727; 2018, c. 707; 2020, c. 722.

§ 20-79.2. Immediate income deduction; income withholding.

A. For the purposes of this section, the terms "employer" and "income" shall have the same meanings ascribed to them in § 63.2-1900.

B. Every initial order entered on or after July 1, 1995, directing a person to pay child support shall include a provision for immediate withholding from the income of the obligor for the amount of the support order, plus an amount for the liquidation of arrearages, if any, unless the obligor and either the obligee or the Department on behalf of the obligee, agree in writing to an alternative payment arrangement or one of the parties demonstrates and the court finds good cause for not imposing immediate withholding. In determining whether good cause is shown, the court shall consider the obligor's past financial responsibility, history of prior payment under any support order, and any other matter that the court considers relevant to the likelihood of payment in accordance with the support order. An alternative payment arrangement may include but is not limited to, a voluntary income assignment pursuant to § 20-79.1 or 63.2-1945.

An order that modifies an initial order may include a provision for immediate income withholding.

The total amount withheld shall not exceed the maximum amount permitted under § 34-29.

A withholding order issued to an obligor's employer pursuant to this section shall conform to § 20-79.3. The rights and obligations of the employer with respect to the order are set out in § 20-79.3. The order shall direct the employer to forward payments to the Department for recording and disbursement to the obligee, or as otherwise required by law. The Department shall not charge a fee for recording and disbursing payments when it is providing support enforcement services to the obligee pursuant to § 63.2-1904 or 63.2-1908.

1988, c. 906; 1990, cc. 836, 896; 1991, c. 534; 1995, c. 714; 1998, c. 727; 2020, c. 722.

§ 20-79.3. Information required in income deduction order.

A. For the purposes of this section, the terms "employee," "employer," "income," and "independent contractor" shall have the same meanings ascribed to them in § 63.2-1900.

B. Orders for withholding from the income of an employee or independent contractor shall state and include the following:

1. The name and correct social security number of the obligor and the name and correct address of the payee;

2. That the employer shall withhold and pay out of the disposable income as defined in § 63.2-100, a single monetary amount or the maximum amount permitted under § 34-29, whichever is less, for each regular pay period of the obligor and such payment may be by check. If the employee is an independent contractor, then the order shall state that the employer shall withhold and pay out of the obligor's income a single monetary amount or the maximum amount permitted under § 34-29, whichever is less, for each instance of compensation of the obligor, once the aggregate amount of remuneration reaches $600 or more in a calendar year, and such payment may be by check;

3. That the income deduction shall begin with the next regular pay period of the obligor following service of the order on the employer, and payment shall be made at regular intervals consistent with the pay periods of the obligor, or, if the obligor is an independent contractor, the order shall begin with the next instance of compensation of the obligor, and payment shall be made at each instance of compensation of the obligor;

4. A statement of the maximum percentage under § 34-29 that may be withheld from the obligor's disposable income;

5. That, to the extent required by the provisions for health care coverage contained in the order, the employer shall (i) enroll the employee, the employee's spouse or former spouse, and the employee's dependent children listed in the order as covered persons in a group health insurance plan or other similar plan providing health care services or coverage offered by the employer, without regard to enrollment season restrictions, if the subject spouse, former spouse, or children are eligible for such coverage under the employer's enrollment provisions and (ii) deduct any required premiums from the employee's income to pay for the insurance. If more than one plan is offered by the employer, the spouse, former spouse, or children shall be enrolled prospectively in the insurance plan in which the employee is enrolled or, if the employee is not enrolled, in the least costly plan otherwise available. The employer shall also enroll the children of an employee in the appropriate health coverage plan upon application by the children's other parent or legal guardian or upon application by the Department of Medical Assistance Services. In each case that is being enforced by the Department of Social Services, the employer shall respond to such orders by advising the Department in which plan the children are enrolled or if the children are ineligible for any plan through the employer. The order to the employer shall specify either support withholdings or insurance premium deductions as having priority for the duration of the order in the event the maximum total deduction permitted at any time by § 34-29 is insufficient to fully cover both; the employer shall consider and direct insurance premium deductions

and support withholdings the same for purposes of § 34-29. The employer shall not be held liable for any medical expenses incurred on behalf of the spouse, former spouse, or dependent children because of the employer's failure to enroll the spouse, former spouse, or dependent children in a health care plan after being directed to do so by a court or the Department. The employer shall not be obligated to subsequently make or change such enrollment if the group health insurance plan or other factors change after the spouse's, former spouse's, or child's eligibility or ineligibility for coverage is initially determined in response to the order for withholding. However, the employer shall not disenroll such children unless the employer (i) is provided satisfactory written evidence that such court or administrative order is no longer in effect, (ii) is provided satisfactory written evidence that the children are or will be enrolled in a comparable health coverage plan that will take effect not later than the effective date of such disenrollment, or (iii) has eliminated family health coverage for all of its employees. A one-time fee of no more than $5 may be charged by the employer to the employee for the administration of this requirement;

6. That a fee of up to a maximum of $5 for each reply or remittance on account of the obligor may be charged by the employer and withheld from the obligor's income in addition to the support amount to be withheld; however, child support withholding amounts collected from unemployment insurance benefits shall not be subject to this fee;

7. That the order is binding upon the employer and obligor and withholding is to continue until further notice by order of the court or the Department is served, or the obligor is no longer employed, whichever occurs first;

8. That the order shall have priority over any other types of liens created by state law against such income, except that if there is more than one court or administrative order for withholding for support against an obligor, the employer shall prorate among the orders based upon the current amounts due pursuant to more than one judicial or administrative order or a combination thereof, with any remaining amounts prorated among the accrued arrearages, if any, to the extent that the amounts withheld, when combined, do not exceed the maximum limits imposed under § 34-29 as specified in the order being honored;

9. That the obligor's rights are protected pursuant to § 63.2-1944 and that no employer shall discharge any employee, take disciplinary action against an employee, or terminate a contract with or refuse to employ a person by reason of the fact that his income has been made subject to a deduction pursuant to Chapter 19 (§ 63.2-1900 et seq.) of Title 63.2 or § 20-79.1 or 20-79.2 and an employer who discharges or takes disciplinary action against an employee or terminates a contract with or refuses to employ any person because of an order for withholding under these sections shall be liable for a civil fine of not more than $1,000;

10. The address to which the withholding is to be sent at the Department of Social Services and the case number, if available;

11. That the employer shall be liable for payments that he fails to withhold or mail as specified in the order;

12. That employers shall remit payments on each regular pay date of the obligor, or instance of compensation if the obligor is an independent contractor, or, if electronic funds transfer is used, within four days of the pay date, directly to the Division of Child Support Enforcement for disbursement. All employers with at least 100 employees and all payroll processing firms with at least 50 clients shall remit payments by electronic funds transfer;

13. That the employer shall be deemed to have complied with the order by (i) mailing on each regular pay date of the obligor, or instance of compensation if the obligor is an independent contractor, to the Department, by first-class mail, any amount required to be deducted or (ii) submitting such amounts by electronic funds transfer transmitted within four days of the obligor's regular pay date or instance of compensation;

14. That the employer and obligor shall notify the Department promptly when the obligor terminates employment and shall provide the last known address of the obligor and name and address of the new employer, if known;

15. That amounts withheld from multiple employees identified as such by (i) amount, (ii) name, (iii) social security number, (iv) case number if provided in the order, and (v) date payment was withheld from obligor's income may be combined into a single payment when payable to the same payee;

16. No order or directive shall require employers of 10,000 or more employees to make payments other than by combined single payment to the Department's central office in Richmond, without the employer's express written consent, unless the order is from a support enforcement agency outside the Commonwealth;

17. Payment pursuant to an order issued under this section shall serve as full acquittance of the employer under any contract of employment;

18. Notice that any employer who fails to timely withhold payments pursuant to this section shall be liable for any amount not timely withheld;

19. That the employer shall provide to the employee or independent contractor a copy of the withholding order and the notice to the employee sent by the court.

C. If the employer receives an order that (i) does not contain the obligor's correct social security number, (ii) does not specify a single monetary amount to be withheld per regular pay period interval of the obligor, unless the obligor is an independent contractor or the order is for lump sum withholding, (iii) does not state the maximum percentage that may be withheld pursuant to § 34-29, (iv) contains information that is in conflict with the employer's current payroll records, or (v) orders payment to an entity other than to the Department of Social Services or the Department's designee, the employer may deposit in the mail or otherwise file a reply to that effect within five business days from service of such order. The order shall be void from transmission or filing of such reply unless the court or the

Department, as applicable, finds that the reply is materially false. In addition, an employer of 10,000 or more persons may also file a reply, with like effect, if payment is ordered other than by combined single payment in the case of withholdings from multiple employees to the Department's central office in Richmond, without the employer's express written consent, unless the order is from a support enforcement agency outside the Commonwealth.

1990, c. 896; 1991, cc. 651, 694; 1994, c. 767; 1996, c. 416; 1998, c. 727; 2001, c. 209; 2006, c. 365; 2007, c. 557; 2020, c. 722; 2022, c. 447.

§ 20-80. Violation of orders; trial; forfeiture of recognizance.

If at any time the court may be satisfied by information and due proof that the defendant has violated the terms of such order, it may forthwith proceed with the trial of the defendant under the original charge, or sentence him or her, under the original conviction, or annul suspension of sentence, and enforce such sentence, or in its discretion may extend or renew the term of probation as the case may be. Upon due proof that the terms of such order have been violated, the court shall in any event have the power to declare the recognizance forfeited, the sum or sums thereon to be paid, in the discretion of the court, in whole or in part to the defendant's spouse, or to the guardian, curator, custodian or trustee of the minor child or children, or to an organization or individual designated by the court to receive the same.

Code 1919, § 1940; 1918, p. 761; 1922, p. 846; 1974, c. 464.

§ 20-81. Presumptions as to desertion and abandonment.

Proof of desertion or of neglect of spouse, child or children by any person shall be prima facie evidence that such desertion or neglect is willful; and proof that a person has left his or her spouse, or his or her child or children in destitute or necessitous circumstances, or has contributed nothing to their support for a period of thirty days prior or subsequent either or both to his or her departure, shall constitute prima facie evidence of an intention to abandon such family.

Code 1919, § 1941; 1918, p. 761; 1922, p. 846; 1974, c. 464.

§ 20-82. Spouses competent as witnesses.

In every prosecution under this chapter, persons married to each other shall be competent witnesses to testify against each other in all relevant matters, including the facts of such marriage, provided that neither shall be compelled to give evidence incriminating himself.

Code 1919, § 1941; 1918, p. 761; 1922, p. 846; 2020, c. 900.

§ 20-83. Venue of offense.

Any offense under this chapter shall be held to have been committed in any county or city in which such spouse, child or children may be at the time of desertion, or in which such child or children may be or remain, with the knowledge and acquiescence of the accused, in destitute or necessitous condition, or where the accused shall be found in this Commonwealth.

Code 1919, § 1942; 1918, p. 761; 1922, p. 846; 1975, c. 644.

§ 20-83.1. Transfer of cases between courts in certain instances.

(a) In the event that a spouse or dependent child has left the jurisdiction of the court in which the original petition was filed, but is still within the Commonwealth, and the accused is not within the jurisdiction embraced by such court, on motion of the spouse or child, or accused or the person having custody of such child, the court in which the original petition was filed may transfer the case to the court having original jurisdiction to hear such petitions in the county or city in this Commonwealth in which the spouse or child or accused resides. The court to which such case has been transferred shall have power to enforce such orders and decrees as may have been made in the court transferring the case as though the petition had been originally filed therein, and to make such other orders and decrees as may be necessary to enforce the provisions of this chapter.

(b) In the event that an appeal is pending in a court of record in this Commonwealth from the decision of any court having jurisdiction to hear such petitions, upon motion of the spouse or child, or the person having custody of the child, stating that such spouse or child no longer resides within the jurisdiction of such court of record, such court, upon reaching its decision, may transfer the case to the court having original jurisdiction to hear such petitions in the county or city in which the spouse or child resides in the same manner and to the same effect as provided in subsection (a) hereof.

1964, c. 12; 1974, c. 464.

§ 20-84. Extradition.

Whenever the judge of, or magistrate serving, the jurisdiction wherein such offense is alleged to have been committed shall, after an investigation of the facts and circumstances thereof, certify that in his opinion the charge is well founded and the case a proper one for extradition, or in any case if the cost of extradition is borne by the parties interested in the case, the person charged with having left the Commonwealth with the intention of evading the terms of his or her probation or of abandoning or deserting his or her spouse, or his or her child or children, or failing to support them, shall be apprehended and brought back to the county or city having jurisdiction of the case in accordance with the law providing for the apprehension and return to the Commonwealth of fugitives from justice, and upon conviction punished as hereinabove provided.

Code 1919, § 1942; 1918, p. 761; 1922, p. 846; 1974, c. 464; 2008, cc. 551, 691.

§§ 20-85, 20-86. Repealed.

Repealed by Acts 1988, c. 495.

§ 20-87. Arrest for violating directions, rules or regulations given by judge.

Whenever the chief of police or sheriff becomes satisfied that such person is violating the directions, rules or regulations given or prescribed by the judge for his or her conduct, such chief of police or sheriff shall have authority to arrest such person after a proper capias or warrant has been issued for such person and forthwith carry him before the court before whom he or she was first brought.

Code 1919, § 1944; 1918, p. 762; 1922, p. 847; 1974, c. 464; 1975, c. 644; 1988, c. 495.

§ 20-87.1. Repealed.

Repealed by Acts 2003, c. 467.

§ 20-88. Support of parents by children.

It shall be the joint and several duty of all persons eighteen years of age or over, of sufficient earning capacity or income, after reasonably providing for his or her own immediate family, to assist in providing for the support and maintenance of his or her mother or father, he or she being then and there in necessitous circumstances.

If there be more than one person bound to support the same parent or parents, the persons so bound to support shall jointly and severally share equitably in the discharge of such duty. Taking into consideration the needs of the parent or parents and the circumstances affecting the ability of each person to discharge the duty of support, the court having jurisdiction shall have the power to determine and order the payment, by such person or persons so bound to support, of that amount for support and maintenance which to the court may seem just. Where the court ascertains that any person has failed to render his or her proper share in such support and maintenance it may, upon the complaint of any party or on its own motion, compel contribution by that person to any person or authority which has theretofore contributed to the support or maintenance of the parent or parents. The court may from time to time revise the orders entered by it or by any other court having jurisdiction under the provisions of this section, in such manner as to it may seem just.

The juvenile and domestic relations district court shall have exclusive original jurisdiction in all cases arising under this section. Any person aggrieved shall have the same right of appeal as is provided by law in other cases.

All proceedings under this section shall conform as nearly as possible to the proceedings under the other provisions of this chapter, and the other provisions of this chapter shall apply to cases arising under this section in like manner as though they were incorporated in this section. Prosecutions under this section shall be in the jurisdiction where the parent or parents reside.

This section shall not apply if there is substantial evidence of desertion, neglect, abuse or willful failure to support any such child by the father or mother, as the case may be, prior to the child's emancipation or, except as provided hereafter in this section, if a parent is otherwise eligible for and is receiving public assistance or services under a federal or state program.

To the extent that the financial responsibility of children for any part of the costs incurred in providing medical assistance to their parents pursuant to the plan provided for in § 32.1-325 is not restricted by that plan and to the extent that the financial responsibility of children for any part of the costs incurred in providing to their parents services rendered, administered or funded by the Department of Behavioral Health and Developmental Services is not restricted by federal law, the provisions of this section shall apply. A proceeding may be instituted in accordance with this section in the name of the Commonwealth by the state agency administering the program of assistance or services in order to compel any child of a parent receiving such assistance or services to reimburse the Commonwealth for such portion of the costs incurred in providing the assistance or services as the court may

determine to be reasonable. If costs are incurred for the institutionalization of a parent, the children shall in no case be responsible for such costs for more than sixty months of institutionalization.

Any person violating the provisions of an order entered pursuant to this section shall be guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding $500 or imprisonment in jail for a period not exceeding twelve months or both.

1920, p. 413; 1922, p. 544; 1928, p. 745; 1942, p. 406; Michie Code 1942, § 1944a; 1952, c. 510; 1954, c. 481; 1962, c. 557; 1968, c. 665; 1970, c. 278; 1974, c. 657; 1975, c. 644; 1982, c. 472; 1984, c. 781; 2009, cc. 813, 840.

§ 20-88.01. Repealed.

Repealed by Acts 1992, c. 662.

§ 20-88.02. Transfer of assets to qualify for assistance; liability of transferees.

A. As used in this section, "uncompensated value" means the aggregate amount by which the fair market value of all property or resources, including fractional interests, transferred by any transferor after the effective date of and subject to this section, exceeds the aggregate consideration received for such property or resources.

B. Within thirty months prior to the date on which any person receives benefits from any program of public assistance or social services as defined in § 63.2-100, if such person has transferred any property or resources resulting in uncompensated value, the transferee of such property or resources shall be liable to repay the Commonwealth for benefits paid on behalf of the transferor up to the amount of that uncompensated value less $25,000.

C. In their discretion, the heads of the agencies which administer the appropriate program or programs of public assistance may petition the circuit court having jurisdiction over the property or over the transferee for an order requiring repayment. That order shall continue in effect, as the court may determine, for so long as the transferor receives public assistance or until the uncompensated value is completely repaid. With respect to all transfers subject to this section, a rebuttable presumption is created that the transferee acted with the intent and for the purpose of assisting the transferor to qualify for public assistance. If the presumption is rebutted, this section shall not apply and the petition shall be dismissed.

D. After reasonable investigation, the agency or agencies administering the program of public assistance shall not file any petition, and no court shall order payments under subsection B of this section if it is determined that: (i) the uncompensated value of the property transferred is $25,000 or less, (ii) that the property transferred was the home of the transferor at the time of the transfer and the transferor or any of the following individuals reside in the home: the transferor's spouse, any natural or adopted child of the transferor under the age of twenty-one years or any natural or adopted child of the transferor, regardless of age, who is blind or disabled as defined by the federal Social Security Act or the Virginia Medicaid Program, or (iii) the transferee is without financial means or that such payment would work a hardship on the transferee or his family. If the transferee does not fully cooperate with

the investigating agency to determine the nature and extent of the hardship, there shall be a rebuttable presumption that no hardship exists.

1992, c. 662; 2002, c. 747.

§ 20-88.02:1. Limitations on spousal support orders resulting in eligibility for medical assistance services; definitions.

A. Whenever any court shall determine that any petition for a spousal support order will have the effect of rendering either spouse eligible for medical assistance services or for accelerating eligibility for medical assistance services, and the community spouse is asking for additional resources which will bring his total resources to an amount in excess of the federally established maximum spousal resource allowance:

1. The court shall not enter the requested spousal support order unless the court first orders the institutionalized spouse to make available the maximum income contribution to the community spouse.

2. The court must ascertain, when determining additional income in excess of the federally established community spouse minimum monthly maintenance needs allowance, that the increase is necessary due to exceptional circumstances resulting in significant financial duress to the community spouse.

3. When determining the amount of any additional resources to be allowed to raise the community spouse's income up to either the federally established community spouse minimum monthly maintenance needs allowance or in excess of such minimum monthly maintenance needs allowance, the amount of such additional resources to be allowed shall be the greater of (i) those additional resources necessary to generate an amount sufficient to increase the community spouse's income to the applicable monthly needs or income allowance, as the case may be when based on the current earnings of such resources or (ii) the amount necessary, at the time of the court's deliberations, to purchase a single premium annuity that would generate monthly income to the community spouse in an amount sufficient to increase the community spouse's income to the applicable monthly needs or income allowance, as the case may be.

B. For the purpose of making the determinations required by this section:

"Community spouse" means the spouse of an individual residing in a medical institution or nursing facility.

"Federally established maximum spousal resource allowance" means that amount established as the maximum spousal resource allowance in 42 U.S.C. 1396r-5 (f) (2) (A) as adjusted annually in accordance with 42 U.S.C. 1396r-5 (g).

"Institutionalized spouse" means an individual who has been residing in a medical institution or nursing facility for at least thirty consecutive days and who is married to an individual who is not residing in a medical institution or nursing facility.

"Significant financial duress" means, but is not limited to, threatened loss of basic shelter, food or medically necessary health care or the financial burden of caring for a disabled child, sibling or other immediate relative.

1994, cc. 836, 952.

Chapter 5.1 - CIVIL PROCEEDINGS TO COMPEL SUPPORT [Repealed]

§§ 20-88.1 through 20-88.11. Repealed.

Repealed by Acts 1952, c. 516.

Chapter 5.2 - REVISED UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ACT [Repealed]

§§ 20-88.12 through 20-88.31. Repealed.

Repealed by Acts 1994, c. 673.

Chapter 5.3 - UNIFORM INTERSTATE FAMILY SUPPORT ACT

Article 1 - General Provisions

§ 20-88.32. Definitions.

In this chapter:

"Child" means an individual, whether over or under the age of majority, who is or is alleged to be owed a duty of support by the individual's parent or who is or is alleged to be the beneficiary of a support order directed to the parent.

"Child support order" means a support order for a child, including a child who has attained the age of majority under the law of the issuing state or foreign country.

"Convention" means the Convention on the International Recovery of Child Support and Other Forms of Family Maintenance, concluded at The Hague on November 23, 2007.

"Duty of support" means an obligation imposed or imposable by law to provide support for a child, spouse, or former spouse, including an unsatisfied obligation to provide support.

"Employer" means the source of any income as defined in § 63.2-1900.

"Foreign country" means a country, including a political subdivision thereof, other than the United States, that authorizes the issuance of support orders and:

1. That has been declared under the law of the United States to be a foreign reciprocating country;

2. That has established a reciprocal arrangement for child support with the Commonwealth as provided in § 20-88.50;

3. That has enacted a law or established procedures for the issuance and enforcement of support orders which are substantially similar to the procedures under this chapter; or

4. In which the Convention is in force with respect to the United States.

"Foreign support order" means a support order of a foreign tribunal.

"Foreign tribunal" means a court, administrative agency, or quasi-judicial entity of a foreign country which is authorized to establish, enforce, or modify support orders or to determine parentage of a child. The term includes a competent authority under the Convention.

"Home state" means the state or foreign country in which a child lived with a parent or a person acting as parent for at least six consecutive months immediately preceding the time of filing of a petition or comparable pleading for support and, if a child is less than six months old, the state or foreign country in which the child lived from birth with any of them. A period of temporary absence of any of them is counted as part of the six-month or other period.

"Income" includes earnings or other periodic entitlements to money from any source and any other property subject to withholding for support under the law of the Commonwealth.

"Income-withholding order" means an order or other legal process directed to an obligor's employer or other debtor, to withhold support from the obligor's income as defined in § 63.2-1900.

"Initiating tribunal" means the tribunal of a state or foreign country from which a petition or comparable pleading is forwarded or in which a petition or comparable pleading is filed for forwarding to another state or foreign country.

"Issuing foreign country" means the foreign country in which a tribunal issues a support order or a judgment determining parentage of a child.

"Issuing state" means the state in which a tribunal issues a support order or a judgment determining parentage of a child.

"Issuing tribunal" means the tribunal of a state or foreign country that issues a support order or a judgment determining parentage of a child.

"Law" includes decisional and statutory law and rules and regulations having the force of law.

"Obligee" means (i) an individual to whom a duty of support is or is alleged to be owed or in whose favor a support order or a judgment determining parentage of a child has been issued, (ii) a foreign country, state, or political subdivision of a state to which the rights under a duty of support or support order have been assigned or which has independent claims based on financial assistance provided to an individual obligee in place of child support, (iii) an individual seeking a judgment determining parentage of the individual's child, or (iv) a person that is a creditor in a proceeding under Article 13 (§ 20-88.83 et seq.).

"Obligor" means an individual, or the estate of a decedent that (i) owes or is alleged to owe a duty of support, (ii) is alleged but has not been adjudicated to be a parent of a child, (iii) is liable under a support order, or (iv) is a debtor in a proceeding under Article 13 (§ 20-88.83 et seq.).

"Outside the Commonwealth" means a location in another state, political subdivision of a state, or a country other than the United States, whether or not the country is a foreign country.

"Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

"Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

"Register" means to file in a tribunal of the Commonwealth a support order or judgment determining parentage of a child issued in another state or a foreign country.

"Registering tribunal" means a tribunal in which a support order or judgment determining parentage of a child is registered.

"Responding state" means a state or a foreign country in which a petition or comparable pleading for support or to determine parentage of a child is filed or to which a petition or comparable pleading is forwarded for filing from another state or a foreign country.

"Responding tribunal" means the authorized tribunal in a responding state or foreign country.

"Spousal-support order" means a support order for a spouse or former spouse of the obligor.

"State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession under the jurisdiction of the United States. The term includes an Indian nation or tribe.

"Support enforcement agency" means a public official, governmental entity, or private agency authorized to (i) seek enforcement of support orders or laws relating to the duty of support, (ii) seek establishment or modification of child support, (iii) request determination of parentage of a child, (iv) attempt to locate obligors or their assets, or (v) request determination of the controlling child support order. A support enforcement agency of the Commonwealth is not authorized to establish or enforce a support order for spousal support only.

"Support order" means a judgment, decree, order, decision, or directive, whether temporary, final, or subject to modification, issued in a state or foreign country for the benefit of a child, a spouse, or a former spouse, which provides for monetary support, health care, arrearages, retroactive support, or reimbursement for financial assistance provided to an individual obligee in place of child support. The term may include related costs and fees, interest, income withholding, automatic adjustment, reasonable attorney's fees, and other relief.

"Tribunal" means a court, administrative agency, or quasi-judicial entity authorized to establish, enforce, or modify support orders or to determine parentage of a child; however, the support enforcement agency of the Commonwealth has no authority to establish or enforce a support order for spousal support only.

1994, c. 673; 1995, c. 484; 1996, cc. 882, 925; 1997, cc. 797, 897; 1998, c. 727; 2005, c. 754; 2015, c. 727.

§ 20-88.32:1. Uniformity of application and construction.

In applying and construing this Uniform Interstate Family Support Act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

2015, c. 727.

§ 20-88.33. Tribunals of the Commonwealth and support enforcement agency.

A. The juvenile and domestic relations district courts, circuit courts, and the Department of Social Services are the tribunals of the Commonwealth.

B. The Department of Social Services is the support enforcement agency of the Commonwealth.

1994, c. 673; 2005, c. 754; 2015, c. 727.

§ 20-88.34. Remedies cumulative.

A. Remedies provided by this chapter are cumulative and do not affect the availability of remedies under other law or the recognition of a foreign support order on the basis of comity.

B. This chapter does not provide the exclusive method of establishing or enforcing a support order under the law of the Commonwealth or grant a tribunal of the Commonwealth jurisdiction to render judgment or issue an order relating to child custody or visitation in a proceeding under this chapter.

1994, c. 673; 2005, c. 754; 2015, c. 727.

§ 20-88.34:1. Application of chapter to resident of foreign country and foreign support proceeding.

A. A tribunal of the Commonwealth shall apply Articles 1 through 9 (§ 20-88.32 et seq.) and, as applicable, Article 13 (§ 20-88.83 et seq.) to a support proceeding involving a foreign support order, a foreign tribunal, or an obligee, obligor, or child residing in a foreign country.

B. A tribunal of the Commonwealth that is requested to recognize and enforce a support order on the basis of comity may apply the procedural and substantive provisions of Articles 1 through 9 (§ 20-88.32 et seq.).

C. Article 13 (§ 20-88.83 et seq.) applies only to a support proceeding under the Convention. In such a proceeding, if a provision of Article 13 is inconsistent with Articles 1 through 9 (§ 20-88.32 et seq.), Article 13 controls.

2015, c. 727.

Article 2 - EXTENDED PERSONAL JURISDICTION

§ 20-88.35. Bases for jurisdiction over nonresident.

In a proceeding to establish or enforce a support order or to determine parentage of a child, a tribunal of the Commonwealth may exercise personal jurisdiction over a nonresident individual or the individual's guardian or conservator if:

1. The individual is personally served with process within the Commonwealth;

2. The individual submits to the jurisdiction of the Commonwealth by consent, by entering a general appearance, or by filing a responsive document having the effect of waiving any contest to personal jurisdiction;

3. The individual resided with the child in the Commonwealth;

4. The individual resided in the Commonwealth and paid prenatal expenses or provided support for the child;

5. The child resides in the Commonwealth as a result of the acts or directives of the individual;

6. The individual engaged in sexual intercourse in the Commonwealth and the child may have been conceived by the act of intercourse;

7. The individual asserted parentage of a child in the Virginia Birth Father Registry maintained in the Commonwealth by the Department of Social Services;

8. The exercise of personal jurisdiction is authorized under subdivision A 8 of § 8.01-328.1; or

9. There is any other basis consistent with the constitutions of the Commonwealth and the United States for the exercise of personal jurisdiction.

The bases of personal jurisdiction set forth in this section or any other law of the Commonwealth may not be used to acquire personal jurisdiction for a tribunal of the Commonwealth to modify a child support order issued by a tribunal of another state unless the requirements of § 20-88.76 or 20-88.77:3 are met.

1994, c. 673; 2005, c. 754; 2015, c. 727; 2017, c. 200.

§ 20-88.36. Duration of personal jurisdiction.

Personal jurisdiction acquired by a tribunal of the Commonwealth in a proceeding under this chapter or other law of the Commonwealth relating to a support order continues as long as a tribunal of the Commonwealth has continuing, exclusive jurisdiction to modify its order or continuing jurisdiction to enforce its order as provided by §§ 20-88.39, 20-88.40 and 20-88.43:2.

1994, c. 673; 1995, c. 484; 2005, c. 754.

Article 3 - JURISDICTION IN PROCEEDINGS INVOLVING TWO OR MORE STATES

§ 20-88.37. Initiating and responding tribunal of the Commonwealth.

Under this chapter, a tribunal of the Commonwealth may serve as an initiating tribunal to forward proceedings to a tribunal of another state and as a responding tribunal for proceedings initiated in another state or a foreign country.

1994, c. 673; 2015, c. 727.

§ 20-88.38. Simultaneous proceedings in another state.

A. A tribunal of the Commonwealth may exercise jurisdiction to establish a support order if the petition or comparable pleading is filed after a pleading is filed in another state or foreign country only if:

1. The petition or comparable pleading in the Commonwealth is filed before the expiration of the time allowed in the other state or the foreign country for filing a responsive pleading challenging the exercise of jurisdiction by the other state or the foreign country;

2. The contesting party timely challenges the exercise of jurisdiction in the other state or the foreign country; and

3. If relevant, the Commonwealth is the home state of the child.

B. A tribunal of the Commonwealth may not exercise jurisdiction to establish a support order if the petition or comparable pleading is filed before a petition or comparable pleading is filed in another state or foreign country if:

1. The petition or comparable pleading in the other state or foreign country is filed before the expiration of the time allowed in the Commonwealth for filing a responsive pleading challenging the exercise of jurisdiction by the Commonwealth;

2. The contesting party timely challenges the exercise of jurisdiction in the Commonwealth; and

3. If relevant, the other state or foreign country is the home state of the child.

1994, c. 673; 2015, c. 727.

§ 20-88.39. Continuing, exclusive jurisdiction to modify child support order.

A. A tribunal of the Commonwealth that has issued a child support order consistent with the law of the Commonwealth has and shall exercise continuing, exclusive jurisdiction to modify its child support order if the order is the controlling order, and:

1. At the time of the filing of a request for modification, the Commonwealth is the residence of the obligor, the individual obligee, or the child for whose benefit the support order is issued; or

2. Even if the Commonwealth is not the residence of the obligor, the individual obligee, or the child for whose benefit the support order is issued, the parties consent in a record that the tribunal of the Commonwealth may continue to exercise its jurisdiction to modify its order.

B. A tribunal of the Commonwealth that has issued a child support order consistent with the law of the Commonwealth may not exercise continuing, exclusive jurisdiction to modify the order if:

1. All of the parties who are individuals file consent in a record with the tribunal of the Commonwealth that a tribunal of another state that has jurisdiction over at least one of the parties who is an individual or who is located in the state of residence of the child may modify the order and assume continuing, exclusive jurisdiction; or

2. Its order is not the controlling order.

C. If a tribunal of another state has issued a child support order pursuant to this chapter or a law substantially similar to this chapter that modifies a child support order of a tribunal of the Commonwealth, tribunals of the Commonwealth shall recognize the continuing, exclusive jurisdiction of the tribunal of the other state.

D. A tribunal of the Commonwealth that lacks continuing, exclusive jurisdiction to modify a child support order may serve as an initiating tribunal to request a tribunal of another state to modify a support order issued in that state.

E. A temporary support order issued ex parte or pending resolution of a jurisdictional conflict does not create continuing, exclusive jurisdiction in the issuing tribunal.

F. The support enforcement agency of the Commonwealth is not authorized to establish or enforce a support order for spousal support only.

1994, c. 673; 1996, cc. 882, 925; 1997, cc. 797, 897; 2005, c. 754.

§ 20-88.40. Continuing jurisdiction to enforce child support order.

A. A tribunal of the Commonwealth that has issued a child support order consistent with the law of the Commonwealth may serve as an initiating tribunal to request a tribunal of another state to enforce:

1. The order if the order is the controlling order and has not been modified by a tribunal of another state that assumed jurisdiction pursuant to this chapter; or

2. A money judgment for arrears of support and interest on the order accrued before a determination that an order of a tribunal of another state is the controlling order.

B. A tribunal of the Commonwealth having continuing jurisdiction over a support order may act as a responding tribunal to enforce the order.

1994, c. 673; 2005, c. 754; 2015, c. 727.

Article 4 - RECONCILIATION OF TWO OR MORE ORDERS

§ 20-88.41. Determination of controlling child support order.

A. If a proceeding is brought under this chapter and only one tribunal has issued a child support order, the order of that tribunal controls and shall be so recognized.

B. If a proceeding is brought under this chapter, and two or more child support orders have been issued by tribunals of the Commonwealth or another state or foreign country with regard to the same obligor and same child, a tribunal of the Commonwealth having personal jurisdiction over both the obligor and individual obligee shall apply the following rules and by order shall determine which order controls and must be recognized:

1. If only one of the tribunals would have continuing, exclusive jurisdiction under this chapter, the order of that tribunal controls.

2. If more than one of the tribunals would have continuing, exclusive jurisdiction under this chapter, (i) an order issued by a tribunal in the current home state of the child controls, or (ii) if an order has not been issued in the current home state of the child, the order most recently issued controls.

3. If none of the tribunals would have continuing, exclusive jurisdiction under this chapter, a tribunal of the Commonwealth shall issue a child support order, which controls.

C. If two or more child support orders have been issued for the same obligor and same child, upon request of a party who is an individual or a support enforcement agency, a tribunal of the Commonwealth having personal jurisdiction over both the obligor and the obligee who is an individual shall determine which order controls under subsection B. The request may be filed with a registration for enforcement or registration for modification pursuant to Articles 8 (§ 20-88.66 et seq.) and 9 (§ 20-88.74 et seq.) or may be filed as a separate proceeding.

D. A request to determine which is the controlling order shall be accompanied by a copy of every child support order in effect and the applicable record of payments. The requesting party shall give notice of the request to each party whose rights may be affected by the determination.

E. The tribunal that issued the controlling order under subsection A, B or C has continuing jurisdiction to the extent provided in § 20-88.39 or 20-88.40.

F. A tribunal of the Commonwealth that determines by order which is the controlling order under subdivision B 1 or B 2 or under subsection C or that issues a new controlling order under subdivision B 3 shall state in that order:

1. The basis upon which the tribunal made its determination;

2. The amount of prospective support, if any; and

3. The total amount of consolidated arrears and accrued interest, if any, under all of the orders after all payments made are credited as provided by § 20-88.43.

G. Within 30 days after issuance of an order determining which is the controlling order, the party obtaining that order shall file a certified copy of it in each tribunal that had issued or registered an earlier order of child support. A party or support enforcement agency obtaining the order that fails to file a certified copy is subject to appropriate sanctions by a tribunal in which the issue of failure arises. The failure to file does not affect the validity or enforceability of the controlling order.

H. An order that has been determined to be the controlling order, or a judgment for consolidated arrears of support and interest, if any, made pursuant to this section shall be recognized in proceedings under this chapter.

1994, c. 673; 1997, cc. 797, 897; 2005, c. 754; 2015, c. 727.

§ 20-88.42. Child support orders for two or more obligees.

In responding to registrations or petitions for enforcement of two or more child support orders in effect at the same time with regard to the same obligor and different individual obligees, at least one of

which was issued by a tribunal of another state or a foreign country, a tribunal of the Commonwealth shall enforce those orders in the same manner as if the orders had been issued by a tribunal of the Commonwealth.

1994, c. 673; 2005, c. 754; 2015, c. 727.

§ 20-88.43. Credit for payments.

A tribunal of the Commonwealth shall credit amounts collected for a particular period pursuant to any child support order against the amounts owed for the same period under any other child support order for support of the same child issued by a tribunal of this or another state or a foreign country.

1994, c. 673; 2005, c. 754; 2015, c. 727.

§ 20-88.43:1. Application to nonresident subject to personal jurisdiction.

A tribunal of the Commonwealth exercising personal jurisdiction over a nonresident in a proceeding under this chapter, under other law of the Commonwealth relating to a support order, or recognizing a foreign support order may receive evidence from outside the Commonwealth pursuant to § 20-88.59, communicate with a tribunal of another state outside the Commonwealth pursuant to § 20-88.60 and obtain discovery through a tribunal outside the Commonwealth pursuant to § 20-88.61. In all other respects, Articles 5 through 9 (§ 20-88.44 et seq.) do not apply and the tribunal shall apply the procedural and substantive law of the Commonwealth.

2005, c. 754; 2015, c. 727.

§ 20-88.43:2. Continuing, exclusive jurisdiction to modify spousal support order.

A. A court of the Commonwealth issuing a spousal support order consistent with the law of the Commonwealth has continuing, exclusive jurisdiction to modify the spousal support order throughout the existence of the support obligation.

B. A court of the Commonwealth may not modify a spousal support order issued by a tribunal of another state or a foreign country having continuing, exclusive jurisdiction over that order under the law of that state or foreign country.

C. A court of the Commonwealth that has continuing, exclusive jurisdiction over a spousal support order may serve as:

1. An initiating court to request a tribunal of another state to enforce the spousal support order issued in the Commonwealth; or

2. A responding court to enforce or modify its own spousal support order.

2005, c. 754; 2015, c. 727.

Article 5 - CIVIL PROVISIONS OF GENERAL APPLICATION

§ 20-88.44. Proceedings under this chapter.

A. Except as otherwise provided in this chapter, this article applies to all proceedings under this chapter.

B. An individual or a support enforcement agency may initiate a proceeding authorized under this chapter by filing a petition in an initiating tribunal for forwarding to a responding tribunal or by filing a petition or a comparable pleading directly in a tribunal of another state or foreign country that has or can obtain personal jurisdiction over the respondent.

1994, c. 673; 2005, c. 754; 2015, c. 727.

§ 20-88.45. Action by minor parent.

A minor parent, or a guardian or other legal representative of a minor parent, may maintain a proceeding on behalf of or for the benefit of the minor's child.

1994, c. 673.

§ 20-88.46. Application of law of the Commonwealth.

Except as otherwise provided in this chapter, a responding tribunal of the Commonwealth shall apply the procedural and substantive law generally applicable to similar proceedings originating in the Commonwealth and may exercise all powers and provide all remedies available in those proceedings.

A responding tribunal of the Commonwealth shall determine the duty of support and the amount payable in accordance with the law and support guidelines of the Commonwealth.

1994, c. 673; 2005, c. 754.

§ 20-88.47. Duties of initiating tribunal.

A. Upon the filing of a petition authorized by this chapter, an initiating tribunal of the Commonwealth shall forward the petition and its accompanying documents (i) to the responding tribunal or appropriate support enforcement agency in the responding state or, (ii) if the identity of the responding tribunal is unknown, to the state information agency of the responding state with a request that they be forwarded to the appropriate tribunal and that receipt be acknowledged.

B. If requested by the responding tribunal, a tribunal of the Commonwealth shall issue a certificate or other documents and make findings required by the law of the responding state. If the responding tribunal is in a foreign country, upon request the tribunal of the Commonwealth shall specify the amount of support sought, convert that amount into the equivalent amount in the foreign currency under applicable official or market exchange rate as publicly reported, and provide any other documents necessary to satisfy the requirements of the responding foreign tribunal.

1994, c. 673; 1997, cc. 797, 897; 2005, c. 754; 2015, c. 727.

§ 20-88.48. Duties and powers of responding tribunal.

A. When a responding tribunal of the Commonwealth receives a petition or comparable pleading from an initiating tribunal or directly pursuant to subsection B of § 20-88.44, it shall cause the petition or pleading to be filed and notify the petitioner where and when it was filed. An order for spousal support only shall be forwarded to the appropriate juvenile and domestic relations court.

B. A responding tribunal of the Commonwealth, to the extent not prohibited by other law, may do one or more of the following:

1. Establish or enforce a support order, modify a child support order, determine the controlling child support order, or determine parentage of a child;

2. Order an obligor to comply with a support order, specifying the amount and the manner of compliance;

3. Order income withholding;

4. Determine the amount of any arrearages, and specify a method of payment;

5. Enforce orders by civil or criminal contempt, or both;

6. Set aside property for satisfaction of the support order;

7. Place liens and order execution on the obligor's property;

8. Order an obligor to keep the tribunal informed of the obligor's current residential address, electronic mail address, telephone number, employer, address of employment, and telephone number at the place of employment;

9. Issue a capias for an obligor who has failed after proper notice to appear at a hearing ordered by the tribunal and enter the capias in any local and state computer systems for criminal warrants;

10. Order the obligor to seek appropriate employment by specified methods;

11. Award reasonable attorney's fees and other fees and costs; and

12. Grant any other available remedy.

C. A responding tribunal of the Commonwealth shall include in a support order issued under this chapter, or in the documents accompanying the order, the calculations on which the support order is based.

D. A responding tribunal of the Commonwealth may not condition the payment of a support order issued under this chapter upon compliance by a party with provisions for visitation.

E. If a responding tribunal of the Commonwealth issues an order under this chapter, the tribunal shall promptly send a copy of the order to the petitioner and the respondent and to the initiating tribunal, if any.

F. If requested to enforce a support order, arrears, or judgment or modify a support order stated in a foreign currency, a responding tribunal of the Commonwealth shall convert the amount stated in the foreign currency to the equivalent amount in U.S. dollars under the applicable official or market exchange rate as publicly reported.

1994, c. 673; 1996, cc. 882, 925; 1997, cc. 797, 897; 2005, c. 754; 2015, c. 727.

§ 20-88.49. Inappropriate tribunal.

If a petition or comparable pleading is received by an inappropriate tribunal of this Commonwealth, it shall forward the pleading and accompanying documents to an appropriate tribunal in this Commonwealth or another state, and notify the petitioner where and when the pleading was sent.

1994, c. 673; 1997, cc. 797, 897.

§ 20-88.50. Duties of support enforcement agency.

A. A support enforcement agency of the Commonwealth, upon request, shall provide services to a petitioner in a proceeding under this chapter.

B. In a proceeding under this chapter, a support enforcement agency of the Commonwealth that is providing services to the petitioner shall:

1. Take all steps necessary to enable an appropriate tribunal of the Commonwealth, another state, or a foreign country to obtain jurisdiction over the respondent;

2. Request an appropriate tribunal to set a date, time, and place for a hearing;

3. Make a reasonable effort to obtain all relevant information, including information as to income and property of the parties;

4. Within two days, exclusive of Saturdays, Sundays, and legal holidays, after receipt of a written notice in a record from an initiating, responding, or registering tribunal, send a copy of the notice to the petitioner;

5. Within two days, exclusive of Saturdays, Sundays, and legal holidays, after receipt of a written communication in a record from the respondent or the respondent's attorney, send a copy of the communication to the petitioner; and

6. Notify the petitioner if jurisdiction over the respondent cannot be obtained.

C. A support enforcement agency of the Commonwealth that requests registration of a child support order in the Commonwealth for enforcement or for modification shall make reasonable efforts to ensure that:

1. The order to be registered is the controlling order; or

2. If two or more child support orders exist and the identity of the controlling order has not been determined, a request for such a determination is made in a tribunal having jurisdiction to do so.

D. A support enforcement agency of the Commonwealth that requests registration and enforcement of a support order, arrears, or judgment stated in a foreign currency shall convert the amounts stated in the foreign currency into the equivalent amounts in U.S. dollars under the applicable official or market exchange rate as publicly reported.

E. A support enforcement agency of the Commonwealth shall issue or request a tribunal of the Commonwealth to issue a child support order and an income-withholding order that redirects payment of

current support, arrears, and interest to a support enforcement agency of the Commonwealth if requested to do so by a support enforcement agency of another state pursuant to § 20-88.62.

F. This chapter does not create a relationship of attorney and client or other fiduciary relationship between a support enforcement agency or the attorney for the agency and the individual being assisted by the agency.

1994, c. 673; 1997, cc. 797, 897; 2005, c. 754; 2015, c. 727.

§ 20-88.51. Duty of Secretary of Health and Human Resources.

A. If the Secretary of Health and Human Resources determines that the support enforcement agency is neglecting or refusing to provide services to an individual, he may order the agency to perform its duties under this chapter or may provide those services directly to the individual.

B. The Secretary of Health and Human Resources may determine that a foreign country has established a reciprocal arrangement for child support with the Commonwealth and take appropriate action for notification of the determination.

1994, c. 673; 2005, c. 754; 2015, c. 727.

§ 20-88.52. Private counsel.

An individual may employ private counsel to represent the individual in proceedings authorized by this chapter.

1994, c. 673.

§ 20-88.53. Duties of state information agency.

A. The Department of Social Services is the state information agency under this chapter.

B. The state information agency shall:

1. Compile and maintain a current list, including addresses, of the tribunals in the Commonwealth that have jurisdiction under this chapter and any support enforcement agencies in the Commonwealth and transmit a copy to the state information agency of every other state;

2. Maintain a register of names and addresses of tribunals and support enforcement agencies received from other states;

3. Forward to the appropriate tribunal in the county or city in the Commonwealth in which the obligee who is an individual or the obligor resides, or in which the obligor's property is believed to be located, all documents concerning a proceeding under this chapter received from another state or a foreign country; and

4. Obtain information concerning the location of the obligor and the obligor's property within the Commonwealth not exempt from execution, by such means as postal verification and federal or state locator services, examination of telephone directories, requests for the obligor's address from employers, and examination of governmental records, including, to the extent not prohibited by other law, those

relating to real property, vital statistics, law enforcement, taxation, motor vehicles, driver's licenses, and social security.

1994, c. 673; 2005, c. 754; 2015, c. 727.

§ 20-88.54. Pleadings and accompanying documents.

A. In a proceeding under this chapter, a petitioner seeking to establish a support order, to determine parentage of a child, or to register and modify a support order of a tribunal of another state or a foreign country shall file a petition. Unless otherwise ordered under § 20-88.55, the petition or accompanying documents shall provide, so far as known, the name, residential address, and social security numbers of the obligor and the obligee or the parent and alleged parent, and the name, sex, residential address, social security number, and date of birth of each child for whose benefit support is sought or whose parentage is to be determined. Unless filed at the time of registration, the petition shall be accompanied by a copy of any support order known to have been issued by another tribunal. The petition may include any other information that may assist in locating or identifying the respondent.

B. The petition shall specify the relief sought. The petition and accompanying documents shall conform substantially with the requirements imposed by the forms mandated by federal law for use in cases filed by a support enforcement agency.

1994, c. 673; 2005, c. 754; 2015, c. 727.

§ 20-88.55. Nondisclosure of information in exceptional circumstances.

Upon a finding, which may be made ex parte, that the health, safety, or liberty of a party or child would be unreasonably put at risk by the disclosure of identifying information, or if an existing order so provides, a tribunal shall order that the address of the child or party or other identifying information not be disclosed in a pleading or other document filed in a proceeding under this chapter.

1994, c. 673.

§ 20-88.56. Costs and fees.

A. The petitioner may not be required to pay a filing fee or other costs.

B. If an obligee prevails, a responding tribunal of the Commonwealth may assess against an obligor filing fees, reasonable attorney's fees, other costs, and necessary travel and other reasonable expenses incurred by the obligee and the obligee's witnesses. The tribunal may not assess fees, costs, or expenses against the obligee or the support enforcement agency of either the initiating or the responding state or foreign country, except as provided by other law. Attorney's fees may be taxed as costs, and may be ordered paid directly to the attorney, who may enforce the order in the attorney's own name. Payment of support owed to the obligee has priority over fees, costs and expenses.

C. The tribunal shall order the payment of costs and reasonable attorney's fees if it determines that a hearing was requested primarily for delay. In a proceeding under Articles 8 (§ 20-88.66 et seq.) and 9 (§ 20-88.74 et seq.), a hearing is presumed to have been requested primarily for delay if a registered support order is confirmed or enforced without change.

1994, c. 673; 2005, c. 754; 2015, c. 727.

§ 20-88.57. Limited immunity of petitioner.

A. Participation by a petitioner in a proceeding under this chapter before a responding tribunal, whether in person, by private attorney, or through services provided by the support enforcement agency, does not confer personal jurisdiction over the petitioner in another proceeding.

B. A petitioner is not amenable to service of civil process while physically present in the Commonwealth to participate in a proceeding under this chapter.

C. The immunity granted by this section does not extend to civil litigation based on acts unrelated to a proceeding under this chapter committed by a party while present in the Commonwealth to participate in the proceeding.

1994, c. 673; 2005, c. 754.

§ 20-88.58. Nonparentage as defense.

A party whose parentage of a child has been previously determined by or pursuant to law may not plead nonparentage as a defense to a proceeding under this chapter.

1994, c. 673.

§ 20-88.59. Special rules of evidence and procedure.

A. The physical presence of a nonresident party who is an individual in a tribunal of the Commonwealth is not required for the establishment, enforcement, or modification of a support order or the rendition of a judgment determining parentage of a child.

B. An affidavit, a document substantially complying with federally mandated forms, or a document incorporated by reference in any of them that would not be excluded under the hearsay rule if given in person is admissible in evidence if given under penalty of perjury by a party or witness residing outside the Commonwealth.

C. A copy of the record of child support payments certified as a true copy of the original by the custodian of the record may be forwarded to a responding tribunal. The copy is evidence of facts asserted in it and is admissible to show whether payments were made.

D. Copies of bills for testing for parentage of a child, and for prenatal and postnatal health care of the mother and child, furnished to the adverse party at least 10 days before trial, are admissible in evidence to prove the amount of the charges billed and that the charges were reasonable, necessary, and customary.

E. Documentary evidence transmitted from outside the Commonwealth to a tribunal of the Commonwealth by telephone, telecopier, or other electronic means that does not provide an original record may not be excluded from evidence upon an objection based on the means of transmission.

F. In a proceeding under this chapter, a tribunal of the Commonwealth shall permit a party or witness residing outside the Commonwealth to be deposed or to testify under penalty of perjury by telephone,

audiovisual means, or other electronic means at a designated tribunal or other location. A tribunal of the Commonwealth shall cooperate with other tribunals in designating an appropriate location for the deposition or testimony.

G. If a party called to testify at a civil hearing refuses to answer on the ground that the testimony may be self-incriminating, the trier of fact may draw an adverse inference from the refusal.

H. A privilege against disclosure of communication between spouses does not apply in a proceeding under this chapter.

I. The defense of immunity based on the relationship between spouses or of parent and child does not apply in a proceeding under this chapter.

J. A voluntary acknowledgment of paternity, certified as a true copy, is admissible to establish parentage of the child.

1994, c. 673; 2005, c. 754; 2015, c. 727; 2020, c. 900.

§ 20-88.60. Communications between tribunals.

A tribunal of the Commonwealth may communicate with a tribunal outside the Commonwealth in a record, or by telephone, electronic mail, or other means, to obtain information concerning the laws, the legal effect of a judgment, decree, or order of that tribunal; and the status of a proceeding. A tribunal of the Commonwealth may furnish similar information by similar means to a tribunal outside the Commonwealth.

1994, c. 673; 2005, c. 754; 2015, c. 727.

§ 20-88.61. Assistance with discovery.

A tribunal of the Commonwealth may (i) request a tribunal outside the Commonwealth to assist in obtaining discovery and (ii) upon request, compel a person over which it has jurisdiction to respond to a discovery order issued by a tribunal outside the Commonwealth.

1994, c. 673; 2015, c. 727.

§ 20-88.62. Receipt and disbursement of payments.

A. A support enforcement agency or tribunal of the Commonwealth shall disburse promptly any amounts received pursuant to a support order, as directed by the order. The support enforcement agency or tribunal shall furnish to a requesting party or tribunal of another state or a foreign country a certified statement by the custodian of the record of the amounts and dates of all payments received.

B. If neither the obligor, nor the obligee who is an individual, nor the child resides in the Commonwealth, upon request from the support enforcement agency of the Commonwealth or another state, the support enforcement agency of the Commonwealth or a tribunal of the Commonwealth shall:

1. Order that the support payment be made to the support enforcement agency in the state in which the obligee is receiving services; and

2. Issue and send to the obligor's employer a conforming income-withholding order or an administrative notice of change of payee, reflecting the redirected payments.

C. The support enforcement agency of the Commonwealth receiving redirected payments from another state pursuant to a law similar to subsection B shall furnish to a requesting party or tribunal of the other state a certified statement by the custodian of the record of the amount and dates of all payments received.

1994, c. 673; 2005, c. 754; 2015, c. 727.

Article 6 - ESTABLISHMENT OF SUPPORT ORDER OR DETERMINATION OF PARENTAGE

§ 20-88.63. Establishment of support order.

A. If a support order entitled to recognition under this chapter has not been issued, a responding tribunal of the Commonwealth with personal jurisdiction over the parties may issue a support order if (i) the individual seeking the order resides outside the Commonwealth or (ii) the support enforcement agency seeking the order is located outside the Commonwealth.

B. The tribunal may issue a temporary child support order if the tribunal determines that such an order is appropriate and the individual ordered to pay is:

1. A presumed father of the child;

2. Petitioning to have his paternity adjudicated;

3. Identified as the father of the child through genetic testing;

4. An alleged father who has declined to submit to genetic testing;

5. Shown by clear and convincing evidence to be the father of the child;

6. An acknowledged father as provided by applicable state law;

7. The mother of the child; or

8. An individual who has been ordered to pay child support in a previous proceeding and the order has not been reversed or vacated.

C. Upon finding, after notice and opportunity to be heard, that an obligor owes a duty of support, the tribunal shall issue a support order directed to the obligor and may issue other orders pursuant to § 20-88.48.

1994, c. 673; 2005, c. 754; 2015, c. 727.

§ 20-88.63:1. Proceeding to determine parentage.

A tribunal of the Commonwealth authorized to determine parentage of a child may serve as a responding tribunal in a proceeding to determine parentage of a child brought under this chapter or a law or procedure substantially similar to this chapter.

2015, c. 727.

Article 7 - ENFORCEMENT OF ORDER WITHOUT REGISTRATION

§ 20-88.64. Employer's receipt of income-withholding order of another state.

An income-withholding order issued in another state may be sent by or on behalf of the obligee, or by the support enforcement agency, to the person or entity defined as the obligor's employer as defined in § 63.2-1900 under the income-withholding law of the Commonwealth without first filing a petition or comparable pleading or registering the order with a tribunal of the Commonwealth.

1994, c. 673; 1997, cc. 797, 897; 1998, c. 727; 2005, c. 754; 2015, c. 727.

§ 20-88.64:1. Employer's compliance with income-withholding order of another state.

A. Upon receipt of an income-withholding order, the obligor's employer shall immediately provide a copy of the order to the obligor. The employer shall treat an income-withholding order issued in another state which appears regular on its face as if it had been issued by a tribunal of the Commonwealth.

B. Except as provided in subsection C and § 20-88.64:2, the employer shall withhold and distribute the funds as directed in the withholding order by complying with the terms of the order, as applicable, that specify:

1. The duration and amount of periodic payments of current child support, stated as a sum certain;

2. The individual or support enforcement agency designated to receive payments and the address to which the payments are to be forwarded;

3. Medical support, whether in the form of periodic cash payments, stated as a sum certain or ordering the obligor to provide health insurance coverage for the child under a policy available through the obligor's employer;

4. The amount of periodic payments of fees and costs for a support enforcement agency, the issuing tribunal, and the obligee's attorney, stated as sums certain; and

5. The amount of periodic payments of arrearages and interest on arrearages, stated as sums certain.

C. An employer shall comply with the law of the state of the obligor's principal place of employment for withholding from income with respect to:

1. The employer's fee for processing an income-withholding order;

2. The maximum amount permitted to be withheld from the obligor's income; and

3. The times within which the employer shall implement the withholding order and forward the child support payment.

1997, cc. 797, 897; 2005, c. 754.

§ 20-88.64:2. Compliance with two or more income-withholding orders.

If an obligor's employer receives two or more income-withholding orders with respect to the earnings of the same obligor, the employer satisfies the terms of the orders if the employer complies with the law of the state of the obligor's principal place of employment to establish priorities for withholding and allocating income withheld for two or more child support obligees.

1997, cc. 797, 897; 2005, c. 754.

§ 20-88.64:3. Immunity from civil liability.

An employer that complies with an income-withholding order issued in another state in accordance with this article is not subject to civil liability to an individual or agency with regard to the employer's withholding child support from the obligor's income.

1997, cc. 797, 897; 2015, c. 727.

§ 20-88.64:4. Penalties for noncompliance.

An employer that willfully fails to comply with an income-withholding order issued in another state and received for enforcement is subject to the same penalties that may be imposed for noncompliance with an order issued by a tribunal of the Commonwealth.

1997, cc. 797, 897; 2015, c. 727.

§ 20-88.64:5. Contest by obligor.

A. An obligor may contest the validity or enforcement of an income-withholding order issued in another state and received directly by an employer in the Commonwealth by registering the order in a tribunal of the Commonwealth and filing a contest to that order as provided in this chapter or otherwise contesting the order in the same manner as if the order had been issued by a tribunal of the Commonwealth.

B. The obligor shall give notice of the contest to (i) a support enforcement agency providing services to the obligee, (ii) each employer that has directly received an income-withholding order relating to the obligor, and (iii) the support enforcement agency designated to receive payments in the income-withholding order.

1997, cc. 797, 897; 2005, c. 754.

§ 20-88.65. Administrative enforcement of orders.

A. A party or support enforcement agency seeking to enforce a foreign support order, or a support order or an income-withholding order, or both, issued in another state, may send the documents required for registering the order to a support enforcement agency of the Commonwealth.

B. Upon receipt of the documents, the support enforcement agency, without initially seeking to register the order, shall consider and, if appropriate, use any administrative procedure authorized by the law of the Commonwealth to enforce a support order or an income-withholding order, or both. If the obligor does not contest administrative enforcement, the order need not be registered. If the obligor contests the validity or administrative enforcement of the order, the support enforcement agency shall register the order pursuant to this chapter.

1994, c. 673; 2005, c. 754; 2015, c. 727.

Article 8 - ENFORCEMENT AND MODIFICATION OF SUPPORT ORDER AFTER REGISTRATION

§ 20-88.66. Registration of order for enforcement.

A foreign support order, or a support order or an income-withholding order issued in another state, may be registered in the Commonwealth for enforcement.

1994, c. 673; 2015, c. 727.

§ 20-88.67. Procedure to register order for enforcement.

A. Except as provided in § 20-88.88, a foreign support order or a support order or income-withholding order of another state may be registered in the Commonwealth by sending the following records to the appropriate tribunal in the Commonwealth:

1. A letter of transmittal to the tribunal requesting registration and enforcement;

2. Two copies, including one certified copy, of the order to be registered, including any modification of the order;

3. A sworn statement by the party requesting registration or a certified statement by the custodian of the records showing the amount of any arrearage;

4. The name of the obligor and, if known, (i) the obligor's address and social security number, (ii) the name and address of the obligor's employer and any other source of income of the obligor, and (iii) a description and the location of property of the obligor in the Commonwealth not exempt from execution; and

5. Except as otherwise provided in § 20-88.55, the name and address of the obligee and, if applicable, the support enforcement agency to whom support payments are to be remitted.

B. On receipt of a request for registration, the registering tribunal shall cause the order to be filed as an order of a tribunal of another state or a foreign support order, together with one copy of the documents and information, regardless of their form.

C. A petition or comparable pleading seeking a remedy that shall be affirmatively sought under other law of the Commonwealth may be filed at the same time as the request for registration or later. The pleading shall specify the grounds for the remedy sought.

D. If two or more orders are in effect, the individual or support enforcement agency requesting registration shall:

1. Furnish to the tribunal a copy of every support order asserted to be in effect in addition to the documents specified in this section;

2. Specify the order alleged to be the controlling order, if any; and

3. Specify the amount of consolidated arrears, if any.

E. A request for a determination of which is the controlling order may be filed separately or with a request for registration and enforcement or for registration and modification. The individual or support enforcement agency requesting registration shall give notice of the request to each party whose rights may be affected by the determination.

1994, c. 673; 1995, c. 484; 2005, c. 754; 2015, c. 727.

§ 20-88.68. Effect of registration for enforcement.

A. A support order or income-withholding order issued in another state or a foreign support order is registered when the order is filed in the registering tribunal of the Commonwealth.

B. A registered support order issued in another state or in a foreign country is enforceable in the same manner and is subject to the same procedures as an order issued by a tribunal of the Commonwealth.

C. Except as otherwise provided in this chapter, a tribunal of the Commonwealth shall recognize and enforce, but may not modify, a registered order if the issuing tribunal had jurisdiction.

1994, c. 673; 2015, c. 727.

§ 20-88.69. Choice of law; statute of limitations.

A. Except as otherwise provided in subsection D, the law of the issuing state or foreign country governs (i) the nature, extent, amount, and duration of current payments under a registered support order; (ii) the computation and payment of arrearages and accrual of interest on the arrearages under the support order; and (iii) the existence and satisfaction of other obligations under the support order.

B. In a proceeding for arrears under a registered support order, the statute of limitations of the Commonwealth or of the issuing state or foreign country, whichever is longer, applies.

C. A responding tribunal of the Commonwealth shall apply the procedures and remedies of the Commonwealth to enforce current support and collect arrears and interest due on a support order of another state or a foreign country registered in the Commonwealth.

D. After a tribunal of the Commonwealth or another state determines which is the controlling order and issues an order consolidating arrears, if any, a tribunal of the Commonwealth shall prospectively apply the law of the state or foreign country issuing the controlling order, including its law on interest on arrears, on current and future support, and on consolidated arrears.

1994, c. 673; 2005, c. 754; 2015, c. 727.

§ 20-88.70. Notice of registration of order; contest of validity or enforcement.

A. When a support order or income-withholding order issued in another state or a foreign support order is registered, the registering tribunal of the Commonwealth shall notify the nonregistering party. The notice shall be accompanied by a copy of the registered order and the documents and relevant information accompanying the order.

B. A notice shall inform the nonregistering party:

1. That a registered order is enforceable as of the date of registration in the same manner as an order issued by a tribunal of the Commonwealth;

2. That a hearing to contest the validity or enforcement of the registered order shall be requested within 20 days after the notice unless the registered order is under § 20-88.89;

3. That failure to contest the validity or enforcement of the registered order in a timely manner will result in confirmation of the order and enforcement of the order and the alleged arrearages and precludes further contest of that order with respect to any matter that could have been asserted; and

4. Of the amount of any alleged arrearages.

C. If the registering party asserts that two or more orders are in effect, a notice shall also:

1. Identify the two or more orders and the order alleged by the party to be the controlling order and the consolidated arrears, if any;

2. Notify the nonregistering party of the right to a determination of which is the controlling order;

3. State that the procedures provided in subsection B apply to the determination of which is the controlling order; and

4. State that failure to contest the validity or enforcement of the order alleged to be the controlling order in a timely manner may result in confirmation that the order is the controlling order.

D. Upon registration of an income-withholding order for enforcement, the support enforcement agency or the registering tribunal shall notify the obligor's employer pursuant to the income-withholding for support law of the Commonwealth.

1994, c. 673; 1997, cc. 797, 897; 2005, c. 754; 2015, c. 727.

§ 20-88.71. Procedure to contest validity or enforcement of registered support order.

A. A nonregistering party seeking to contest the validity or enforcement of a registered support order in the Commonwealth shall request a hearing within the time required by § 20-88.70. The nonregistering party may seek to vacate the registration, to assert any defense to an allegation of noncompliance with the registered order, or to contest the remedies being sought or the amount of any alleged arrearages pursuant to § 20-88.72.

B. If the nonregistering party fails to contest the validity or enforcement of the registered support order in a timely manner, the order is confirmed by operation of law.

C. If a nonregistering party requests a hearing to contest the validity or enforcement of the registered support order, the registering tribunal shall schedule the matter for hearing and give notice to the parties of the date, time, and place of the hearing.

1994, c. 673; 1997, cc. 797, 897; 2015, c. 727.

§ 20-88.72. Contest of registration or enforcement.

A. A party contesting the validity or enforcement of a registered support order or seeking to vacate the registration has the burden of proving one or more of the following defenses:

1. The issuing tribunal lacked personal jurisdiction over the contesting party;

2. The order was obtained by fraud;

3. The order has been vacated, suspended, or modified by a later order;

4. The issuing tribunal has stayed the order pending appeal;

5. There is a defense under the law of the Commonwealth to the remedy sought;

6. Full or partial payment has been made;

7. The statute of limitations under § 20-88.69 precludes enforcement of some or all of the alleged arrearages; or

8. The alleged controlling order is not the controlling order.

B. If a party presents evidence establishing a full or partial defense under subsection A, a tribunal may stay enforcement of a registered support order, continue the proceeding to permit production of additional relevant evidence, and issue other appropriate orders. An uncontested portion of the registered support order may be enforced by all remedies available under the law of the Commonwealth.

C. If the contesting party does not establish a defense under subsection A to the validity or enforcement of a registered support order, the registering tribunal shall issue an order confirming the order.

1994, c. 673; 2005, c. 754; 2015, c. 727.

§ 20-88.73. Confirmed order.

Confirmation of a registered support order, whether by operation of law or after notice and hearing, precludes further contest of the support order with respect to any matter that could have been asserted at the time of registration.

1994, c. 673; 2015, c. 727.

Article 9 - REGISTRATION AND MODIFICATION OF CHILD SUPPORT ORDER

§ 20-88.74. Procedure to register child support order of another state for modification.

A party or support enforcement agency seeking to modify, or to modify and enforce, a child support order issued in another state shall register that order in this Commonwealth in the same manner as provided in Article 8 (§ 20-88.66 et seq.) if the order has not been registered. A petition for modification may be filed at the same time as a request for registration, or later. The pleading must specify the grounds for modification.

1994, c. 673; 1997, c. 69.

§ 20-88.75. Effect of registration for modification.

A tribunal of the Commonwealth may enforce a child support order of another state, registered for purposes of modification, in the same manner as if the order had been issued by a tribunal of the Commonwealth, but the registered support order may be modified only if the requirements of § 20-88.76 or 20-88.77:1 have been met.

1994, c. 673; 2005, c. 754; 2015, c. 727.

§ 20-88.76. Modification of child support order of another state.

A. If § 20-88.77:1 does not apply, upon petition a tribunal of the Commonwealth may modify a child support order, issued in another state, that is registered in the Commonwealth if, after notice and hearing, the tribunal finds that:

1. The following requirements are met:

a. Neither the child, nor the obligee who is an individual, nor the obligor resides in the issuing state;

b. A petitioner who is a nonresident of the Commonwealth seeks modification; and

c. The respondent is subject to the personal jurisdiction of the tribunal of the Commonwealth; or

2. The Commonwealth is the residence of the child or a party who is an individual is subject to the personal jurisdiction of the tribunal of the Commonwealth and all of the individual parties who are individuals have filed consents in a record in the issuing tribunal for a tribunal of the Commonwealth to modify the support order and assume continuing, exclusive jurisdiction.

B. Modification of a registered child support order is subject to the same requirements, procedures, and defenses that apply to the modification of an order issued by a tribunal of the Commonwealth and the order may be enforced and satisfied in the same manner.

C. A tribunal of the Commonwealth may not modify any aspect of a child support order that may not be modified under the law of the issuing state, including the duration of the obligation of support. If two or more tribunals have issued child support orders for the same obligor and same child, the order that controls and shall be so recognized under § 20-88.41 establishes the aspects of the support order which are nonmodifiable.

D. In a proceeding to modify a child support order, the law of the state that is determined to have issued the initial controlling order governs the duration of the obligation of support. The obligor's fulfillment of the duty of support established by that order precludes imposition of a further obligation of support by a tribunal of the Commonwealth.

E. On issuance of an order by a tribunal of the Commonwealth modifying a child support order issued in another state, the tribunal of the Commonwealth becomes the tribunal having continuing, exclusive jurisdiction.

F. Notwithstanding subsections A through E and § 20-88.35, a tribunal of the Commonwealth retains jurisdiction to modify an order issued by a tribunal of the Commonwealth if one party resides in another state and the other party resides outside the United States.

1994, c. 673; 1997, cc. 797, 897; 2005, c. 754; 2015, c. 727.

§ 20-88.77. Recognition of order modified in another state.

If a child support order issued by a tribunal of the Commonwealth is modified by a tribunal of another state that assumed jurisdiction pursuant to the Uniform Interstate Family Support Act, a tribunal of the Commonwealth:

1. May enforce its order that was modified only as to arrears and interest accruing before the modification;

2. May provide appropriate relief for violations of its order that occurred before the effective date of the modification; and

3. Shall recognize the modifying order of the other state, upon registration, for the purpose of enforcement.

1994, c. 673; 1997, cc. 797, 897; 2005, c. 754.

§ 20-88.77:1. Jurisdiction to modify support order of another state when individual parties reside in this Commonwealth.

A. If all of the parties who are individuals reside in this Commonwealth and the child does not reside in the issuing state, a tribunal of this Commonwealth has jurisdiction to enforce and to modify the issuing state's child support order in a proceeding to register that order.

B. A tribunal of this Commonwealth exercising jurisdiction as provided in this section shall apply the provisions of Articles 1 (§ 20-88.32 et seq.) and 2 (§ 20-88.35 et seq.), this article and the procedural and substantive law of this Commonwealth to the enforcement or modification. Articles 3 through 5 (§ 20-88.37 et seq.) and Articles 7 (§ 20-88.64 et seq.) and 8 (§ 20-88.66 et seq.) do not apply.

1997, cc. 797, 897.

§ 20-88.77:2. Notice to issuing tribunal of modification.

Within thirty days after issuance of a modified child support order, the party obtaining the modification shall file a certified copy of the order with the issuing tribunal that had continuing, exclusive jurisdiction over the earlier order, and in each tribunal in which the party knows the earlier order has been registered. A party who obtains the order and fails to file a certified copy is subject to appropriate sanctions by a tribunal in which the issue of failure to file arises. The failure does not affect the validity or enforceability of the modified order of the new tribunal having continuing, exclusive jurisdiction.

1997, cc. 797, 897.

§ 20-88.77:3. Jurisdiction to modify child support order of foreign country.

A. Except as provided in § 20-88.93, if a foreign country lacks or refuses to exercise jurisdiction to modify its child support order pursuant to its laws, a tribunal of the Commonwealth may assume jurisdiction, for good cause shown as ordered, to modify the child support order and bind all individuals subject to the personal jurisdiction of the tribunal whether or not the consent to modification of a child

support order otherwise required of the individual pursuant to § 20-88.76 has been given or whether the individual seeking modification is a resident of the Commonwealth or of the foreign country.

B. An order issued by a tribunal of the Commonwealth modifying a foreign child support order pursuant to this section is the controlling order.

2005, c. 754; 2015, c. 727.

§ 20-88.77:4. Procedure to register child support order of foreign country for modification.

A party or support enforcement agency seeking to modify, or to modify and enforce, a foreign child support order not under the Convention may register that order in the Commonwealth under Article 8 (§ 20-88.66 et seq.) if the order has not been registered. A petition for modification may be filed at the same time as a request for registration or at another time. The petition must specify the grounds for modification.

2015, c. 727.

Article 10 - DETERMINATION OF PARENTAGE [Repealed]

§ 20-88.78. Repealed.

Repealed by Acts 2015, c. 727, cl. 2, effective April 15, 2015.

Article 11 - INTERSTATE RENDITION

§ 20-88.79. Grounds for rendition.

A. For purposes of this article, "governor" includes an individual performing the functions of governor or the executive authority of a state covered by this chapter.

B. The Governor of this Commonwealth may:

1. Demand that the governor of another state surrender an individual found in the other state who is charged criminally in this Commonwealth with having failed to provide for the support of an obligee; or

2. On the demand by the governor of another state, surrender an individual found in this Commonwealth who is charged criminally in another state with having failed to provide for the support of an obligee.

C. A provision for extradition of individuals not inconsistent with this chapter applies to the demand even if the individual whose surrender is demanded was not in the demanding state when the crime was allegedly committed and had not fled therefrom.

1994, c. 673.

§ 20-88.80. Conditions of rendition.

A. Before making a demand that the governor of another state surrender an individual charged criminally in the Commonwealth with having failed to provide for the support of an obligee, the Governor of the Commonwealth may require a prosecutor of the Commonwealth to demonstrate that at least 60

days previously the obligee had initiated proceedings for support pursuant to this chapter or that the proceeding would be of no avail.

B. If, under this chapter or a law substantially similar to this chapter, the governor of another state makes a demand that the Governor of the Commonwealth surrender an individual charged criminally in that state with having failed to provide for the support of a child or other individual to whom a duty of support is owed, the Governor may require a prosecutor to investigate the demand and report whether a proceeding for support has been initiated or would be effective. If it appears that a proceeding would be effective but has not been initiated, the Governor may delay honoring the demand for a reasonable time to permit the initiation of a proceeding.

C. If a proceeding for support has been initiated and the individual whose rendition is demanded prevails, the Governor may decline to honor the demand. If the petitioner prevails and the individual whose rendition is demanded is subject to a support order, the Governor may decline to honor the demand if the individual is complying with the support order.

1994, c. 673; 2005, c. 754.

Article 12 - MISCELLANEOUS PROVISIONS [Repealed]

§§ 20-88.81, 20-88.82. Repealed.

Repealed by Acts 2015, c. 727, cl. 2, effective April 15, 2015.

Article 13 - SUPPORT PROCEEDING UNDER HAGUE CONVENTION

§ 20-88.83. Definitions.

As used in this article:

"Application" means a request under the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance by an obligee or obligor, or on behalf of a child, made through a central authority for assistance from another central authority.

"Central authority" means the entity designated by the United States or a foreign country described in § 20-88.32 to perform the functions specified in the Convention.

"Convention support order" means a support order of a tribunal of a foreign country described in § 20-88.32.

"Direct request" means a petition or similar pleading filed by an individual in a tribunal of the Commonwealth in a proceeding involving an obligee, obligor, or child residing outside the United States.

"Foreign central authority" means the entity designated by a foreign country described in § 20-88.32 to perform the functions specified in the Convention.

"Foreign support agreement" means an agreement for support in a record that (i) is enforceable as a support order in the country of origin; (ii) has been formally drawn up or registered as an authentic instrument by a foreign tribunal or authenticated by or concluded, registered, or filed with a foreign

tribunal; and (iii) may be reviewed and modified by a foreign tribunal. "Foreign support agreement" includes a maintenance arrangement or authentic instrument under the Convention.

"United States central authority" means the Secretary of the U.S. Department of Health and Human Services.

2015, c. 727.

§ 20-88.84. Applicability.

This article applies only to a support proceeding under the Convention. In such a proceeding, if a provision of this article is inconsistent with Articles 1 through 9 (§ 20-88.32 et seq.), this article controls.

2015, c. 727.

§ 20-88.85. Relationship of Department of Social Services to United States central authority.

The Department of Social Services of the Commonwealth is recognized as the agency designated by the United States central authority to perform specific functions under the Convention.

2015, c. 727.

§ 20-88.86. Initiation by Department of Social Services of support proceeding under convention.

A. In a support proceeding under this chapter, the Department of Social Services of the Commonwealth shall:

1. Transmit and receive applications; and

2. Initiate or facilitate the institution of a proceeding regarding an application in a tribunal of the Commonwealth.

B. The following support proceedings are available to an obligee under the Convention:

1. Recognition or recognition and enforcement of a foreign support order;

2. Enforcement of a support order issued or recognized in the Commonwealth;

3. Establishment of a support order if there is no existing order, including, if necessary, determination of parentage of a child;

4. Establishment of a support order if recognition of a foreign support order is refused under subdivision B 2, 4, or 9 of § 20-88.90;

5. Modification of a support order of a tribunal of the Commonwealth; and

6. Modification of a support order of a tribunal of another state or a foreign country.

C. The following support proceedings are available under the Convention to an obligor against which there is an existing support order:

1. Recognition of an order suspending or limiting enforcement of an existing support order of a tribunal of the Commonwealth;

2. Modification of a support order of a tribunal of the Commonwealth; and

3. Modification of a support order of a tribunal of another state or a foreign country.

D. A tribunal of the Commonwealth may not require security, bond, or deposit, however described, to guarantee the payment of costs and expenses in proceedings under the Convention.

2015, c. 727.

§ 20-88.87. Direct request.

A. A petitioner may file a direct request seeking establishment or modification of a support order or determination of parentage of a child. In the proceeding, the law of the Commonwealth applies.

B. A petitioner may file a direct request seeking recognition and enforcement of a support order or support agreement. In the proceeding, §§ 20-88.88 through 20-88.95 apply.

C. In a direct request for recognition and enforcement of a Convention support order or foreign support agreement:

1. A security, bond, or deposit is not required to guarantee the payment of costs and expenses; and

2. An obligee or obligor that in the issuing country has benefited from free legal assistance is entitled to benefit, at least to the same extent, from any free legal assistance provided for by the law of the Commonwealth under the same circumstances.

D. A petitioner filing a direct request is not entitled to assistance from the Department of Social Services.

E. This chapter does not prevent the application of laws of the Commonwealth that provide simplified, more expeditious rules regarding a direct request for recognition and enforcement of a foreign support order or foreign support agreement.

2015, c. 727.

§ 20-88.88. Registration of Convention support order.

A. Except as otherwise provided in this chapter, a party who is an individual or a support enforcement agency seeking recognition of a Convention support order shall register the order in the Commonwealth as provided in Article 9 (§ 20-88.74 et seq.).

B. Notwithstanding § 20-88.54 and subsection A of § 20-88.67, a request for registration of a Convention support order must be accompanied by:

1. A complete text of the support order or an abstract or extract of the support order drawn up by the issuing foreign tribunal, which may be in the form recommended by the Hague Conference on Private International Law;

2. A record stating that the support order is enforceable in the issuing country;

3. If the respondent did not appear and was not represented in the proceedings in the issuing country, a record attesting, as appropriate, either that the respondent had proper notice of the proceedings and

an opportunity to be heard or that the respondent had proper notice of the support order and an opportunity to be heard in a challenge or appeal on fact or law before a tribunal;

4. A record showing the amount of arrears, if any, and the date the amount was calculated;

5. A record showing a requirement for automatic adjustment of the amount of support, if any, and the information necessary to make the appropriate calculations; and

6. If necessary, a record showing the extent to which the applicant received free legal assistance in the issuing country.

C. A request for registration of a Convention support order may seek recognition and partial enforcement of the order.

D. A tribunal of the Commonwealth may vacate the registration of a Convention support order without the filing of a contest under § 20-88.89 only if, acting on its own motion, the tribunal finds that recognition and enforcement of the order would be manifestly incompatible with public policy.

E. The tribunal shall promptly notify the parties of the registration or the order vacating the registration of a Convention support order.

2015, c. 727.

§ 20-88.89. Contest of registered convention support order.

A. Except as otherwise provided in this chapter, §§ 20-88.71, 20-88.72, and 20-88.73 apply to a contest of a registered Convention support order.

B. A party contesting a registered Convention support order shall file a contest not later than 30 days after notice of the registration, but if the contesting party does not reside in the United States, the contest must be filed not later than 60 days after notice of the registration.

C. If the non-registering party fails to contest the registered Convention support order within the time period specified in subsection B, the order is enforceable.

D. A contest of a registered Convention support order may be based only on grounds set forth in § 20-88.90. The contesting party bears the burden of proof.

E. In a contest of a registered Convention support order, a tribunal of the Commonwealth:

1. Is bound by the findings of fact on which the foreign tribunal based its jurisdiction; and

2. May not review the merits of the order.

F. A tribunal of the Commonwealth deciding a contest of a registered Convention support order shall promptly notify the parties of its decision.

G. A challenge or appeal, if any, does not stay the enforcement of a Convention support order unless there are exceptional circumstances.

2015, c. 727.

§ 20-88.90. Recognition and enforcement of registered convention support order.

A. Except as otherwise provided in subsection B, a tribunal of the Commonwealth shall recognize and enforce a registered Convention support order.

B. The following grounds are the only grounds on which a tribunal of the Commonwealth may refuse recognition and enforcement of a registered Convention support order:

1. Recognition and enforcement of the order is manifestly incompatible with public policy, including the failure of the issuing tribunal to observe minimum standards of due process, which include notice and an opportunity to be heard;

2. The issuing tribunal lacked personal jurisdiction consistent with § 20-88.35;

3. The order is not enforceable in the issuing country;

4. The order was obtained by fraud in connection with a matter of procedure;

5. A record transmitted in accordance with § 20-88.88 lacks authenticity or integrity;

6. A proceeding between the same parties and having the same purpose is pending before a tribunal of the Commonwealth and that proceeding was the first to be filed;

7. The order is incompatible with a more recent support order involving the same parties and having the same purpose if the more recent support order is entitled to recognition and enforcement under this chapter in the Commonwealth;

8. Payment, to the extent alleged arrears have been paid in whole or in part;

9. In a case in which the respondent neither appeared nor was represented in the proceeding in the issuing foreign country:

a. If the law of that country provides for prior notice of proceedings, the respondent did not have proper notice of the proceedings and an opportunity to be heard; or

b. If the law of that country does not provide for prior notice of the proceedings, the respondent did not have proper notice of the order and an opportunity to be heard in a challenge or appeal on fact or law before a tribunal; or

10. The order was made in violation of § 20-88.93.

C. If a tribunal of the Commonwealth does not recognize a Convention support order under sub-division B 2, 4, or 9:

1. The tribunal may not dismiss the proceeding without allowing a reasonable time for a party to request the establishment of a new Convention support order; and

2. The Department of Social Services shall take all appropriate measures to request a child support order for the obligee if the application for recognition and enforcement was received under § 20-88.86.

2015, c. 727.

§ 20-88.91. Partial enforcement.

If a tribunal of the Commonwealth does not recognize and enforce a Convention support order in its entirety, it shall enforce any severable part of the order. An application or direct request may seek recognition and partial enforcement of a Convention support order.

2015, c. 727.

§ 20-88.92. Foreign support agreement.

A. Except as otherwise provided in subsections C and D, a tribunal of the Commonwealth shall recognize and enforce a foreign support agreement registered in the Commonwealth.

B. An application or direct request for recognition and enforcement of a foreign support agreement must be accompanied by:

1. A complete text of the foreign support agreement; and

2. A record stating that the foreign support agreement is enforceable as an order of support in the issuing country.

C. A tribunal of the Commonwealth may vacate the registration of a foreign support agreement only if, acting on its own motion, the tribunal finds that recognition and enforcement would be manifestly incompatible with public policy.

D. In a contest of a foreign support agreement, a tribunal of the Commonwealth may refuse recognition and enforcement of the agreement if it finds that:

1. Recognition and enforcement of the agreement is manifestly incompatible with public policy;

2. The agreement was obtained by fraud or falsification;

3. The agreement is incompatible with a support order involving the same parties and having the same purpose in the Commonwealth, another state, or a foreign country if the support order is entitled to recognition and enforcement under this chapter in the Commonwealth; or

4. The record submitted under subsection B lacks authenticity or integrity.

E. A proceeding for recognition and enforcement of a foreign support agreement must be suspended during the pendency of a challenge to or appeal of the agreement before a tribunal of another state or a foreign country.

2015, c. 727.

§ 20-88.93. Modification of Convention child support order.

A. A tribunal of the Commonwealth may not modify a Convention child support order if the obligee remains a resident of the foreign country where the support order was issued unless:

1. The obligee submits to the jurisdiction of a tribunal of the Commonwealth, either expressly or by defending on the merits of the case without objecting to the jurisdiction at the first available opportunity; or

2. The foreign tribunal lacks or refuses to exercise jurisdiction to modify its support order or issue a new support order.

B. If a tribunal of the Commonwealth does not modify a Convention child support order because the order is not recognized in the Commonwealth, subsection C of § 20-88.90 applies.

2015, c. 727.

§ 20-88.94. Personal information; limit on use.

Personal information gathered or transmitted under this article may be used only for the purposes for which it was gathered or transmitted.

2015, c. 727.

§ 20-88.95. Record in original language; English translation.

A record filed with a tribunal of the Commonwealth under this article must be in the original language and, if not in English, must be accompanied by an English translation.

2015, c. 727.

Chapter 6 - DIVORCE, AFFIRMATION AND ANNULMENT

§ 20-89. Repealed.

Repealed by Acts 1975, c. 644.

§ 20-89.1. Suit to annul marriage.

A. When a marriage is alleged to be void or voidable for any of the causes mentioned in § 20-13, 20-38.1, or 20-45.1 or by virtue of fraud or duress, either party may institute a suit for annulling the same; and upon proof of the nullity of the marriage, it shall be decreed void by a decree of annulment.

B. In the case of natural or incurable impotency of body existing at the time of entering into the marriage contract, or when, prior to the marriage, either party, without the knowledge of the other, had been convicted of a felony, or when, at the time of the marriage, either spouse, without the knowledge of the other spouse, was with child by a person other than the other spouse or had conceived a child born to a person other than the other spouse within 10 months after the date of the solemnization of the marriage, or where, prior to the marriage, either party had been, without the knowledge of the other, a prostitute, a decree of annulment may be entered upon proof, on complaint of the party aggrieved.

C. No annulment for a marriage alleged to be void or voidable under subsection B of § 20-45.1 or subsection B of this section or by virtue of fraud or duress shall be decreed if it appears that the party applying for such annulment has cohabited with the other after knowledge of the facts giving rise to what otherwise would have been grounds for annulment, and in no event shall any such decree be entered if the parties had been married for a period of two years prior to the institution of such suit for annulment.

D. A party who, at the time of such marriage as is mentioned in § 20-48, was capable of consenting with a party not so capable shall not be permitted to institute a suit for the purpose of annulling such marriage.

1975, c. 644; 1976, c. 356; 2016, cc. 457, 543; 2020, c. 900.

§ 20-90. Suit to affirm marriage.

A. When the validity of any marriage shall be denied or doubted by either of the parties, the other party may institute a suit for affirmance of the marriage, and upon due proof of the validity thereof, it shall be decreed to be valid, and such decree shall be conclusive upon all persons concerned.

B. Notwithstanding § 20-13, a marriage of a couple where one of the parties was under the age of 18 at the time of solemnization may be decreed valid upon petition by the party who was under the age of 18 at the time of the solemnization that would otherwise be deemed voidable under subsection C of § 20-45.1 solely because of age, once such party has attained the age of 18. If both parties were under the age of 18 at the time of solemnization, such petition shall not be granted unless both parties have reached the age of 18 and join in the petition together.

Code 1919, § 5102; 2016, cc. 457, 543.

§ 20-91. Grounds for divorce from bond of matrimony; contents of decree.

A. A divorce from the bond of matrimony may be decreed:

(1) For adultery; or for sodomy or buggery committed outside the marriage;

(2) [Repealed.]

(3) Where either of the parties subsequent to the marriage has been convicted of a felony, sentenced to confinement for more than one year and confined for such felony subsequent to such conviction, and cohabitation has not been resumed after knowledge of such confinement (in which case no pardon granted to the party so sentenced shall restore such party to his conjugal rights);

(4), (5) [Repealed.]

(6) Where either party has been guilty of cruelty, caused reasonable apprehension of bodily hurt, or willfully deserted or abandoned the other, such divorce may be decreed to the innocent party after a period of one year from the date of such act; or

(7), (8) [Repealed.]

(9) (a) On the application of either party if and when they have lived separate and apart without any cohabitation and without interruption for one year. In any case where the parties have entered into a separation agreement and there are no minor children either born of the parties, born of either party and adopted by the other or adopted by both parties, a divorce may be decreed on application if and when they have lived separately and apart without cohabitation and without interruption for six months. A plea of res adjudicata or of recrimination with respect to any other provision of this section shall not be a bar to either party obtaining a divorce on this ground; nor shall it be a bar that either

party has been adjudged insane, either before or after such separation has commenced, but at the expiration of one year or six months, whichever is applicable, from the commencement of such separation, the grounds for divorce shall be deemed to be complete, and the committee of the insane defendant, if there be one, shall be made a party to the cause, or if there be no committee, then the court shall appoint a guardian ad litem to represent the insane defendant.

(b) This subdivision (9) shall apply whether the separation commenced prior to its enactment or shall commence thereafter. Where otherwise valid, any decree of divorce hereinbefore entered by any court having equity jurisdiction pursuant to this subdivision (9), not appealed to the Supreme Court of Virginia, is hereby declared valid according to the terms of said decree notwithstanding the insanity of a party thereto.

(c) A decree of divorce granted pursuant to this subdivision (9) shall in no way lessen any obligation any party may otherwise have to support the spouse unless such party shall prove that there exists in the favor of such party some other ground of divorce under this section or § 20-95.

B. A decree of divorce shall include each party's social security number or other control number issued by the Department of Motor Vehicles pursuant to § 46.2-342.

Code 1919, § 5103; 1926, p. 868; 1934, p. 20; 1952, c. 100; 1960, c. 108; 1962, c. 288; 1964, cc. 363, 648; 1970, c. 311; 1975, c. 644; 1982, c. 308; 1986, c. 397; 1988, c. 404; 1997, cc. 794, 898; 2020, cc. 270, 900.

§ 20-92. Repealed.

Repealed by Acts 1975, c. 644.

§ 20-93. Insanity of guilty party after commencement of desertion no defense.

When the suit is for divorce from the bond of matrimony for willful desertion or abandonment, it shall be no defense that the guilty party has, since the commencement of such desertion, and within one year thereafter, become and has been adjudged insane, but at the expiration of one year from the commencement of such desertion the ground for divorce shall be deemed to be complete, and the committee of the insane defendant, if there be one, shall be made a party to the cause, or if there be no committee, then the court shall appoint a guardian ad litem to represent the insane defendant. This section shall apply whether the desertion or abandonment commenced heretofore or shall commence hereafter.

Code 1919, § 5103; 1926, p. 869; 1934, p. 20; 1954, c. 389; 1975, c. 644.

§ 20-94. Effect of cohabitation after knowledge of adultery, sodomy or buggery; lapse of five years.

When the suit is for divorce for adultery, sodomy, or buggery, the divorce shall not be granted, if it appear that the parties voluntarily cohabited after the knowledge of the fact of adultery, sodomy or buggery, or that it occurred more than five years before the institution of the suit, or that it was committed by the procurement or connivance of the party alleging such act.

Code 1919, § 5110; 1975, c. 644.

§ 20-95. Grounds for divorces from bed and board.

A divorce from bed and board may be decreed for cruelty, reasonable apprehension of bodily hurt, willful desertion or abandonment.

Code 1919, § 5104; 1975, c. 644.

§ 20-96. Jurisdiction of suits for annulment, affirmance or divorce.

The circuit court shall have jurisdiction of suits for annulling or affirming marriage and for divorces, and claims for separate maintenance, and such suits shall be heard by the judge as equitable claims.

Code 1919, § 5105; 1922, p. 589; 1966, c. 449; 1975, c. 644; 1977, c. 624; 1979, c. 488; 1987, c. 171; 1989, c. 556; 2005, c. 681.

§§ 20-96.1, 20-96.2. Repealed.

Repealed by Acts 1999, c. 161.

§ 20-97. Domicile and residential requirements for suits for annulment, affirmance, or divorce.

No suit for annulling a marriage or for divorce shall be maintainable, unless one of the parties was at the time of the filing of the suit and had been for at least six months preceding the filing of the suit an actual bona fide resident and domiciliary of the Commonwealth, nor shall any suit for affirming a marriage be maintainable, unless one of the parties be domiciled in, and is and has been an actual bona fide resident of, the Commonwealth at the time of filing such suit.

For the purposes of this section only:

1. If a member of the Armed Forces of the United States has been stationed or resided in the Commonwealth and has lived for a period of six months or more in the Commonwealth next preceding the filing of the suit, then such person shall be presumed to be domiciled in and to have been a bona fide resident of the Commonwealth during such period of time.

2. Being stationed or residing in the Commonwealth includes, but is not limited to, a member of the armed forces being stationed or residing upon a ship having its home port in the Commonwealth or at an air, naval, or military base located within the Commonwealth over which the United States enjoys exclusive federal jurisdiction.

3. Any member of the Armed Forces of the United States or any civilian employee of the United States, including any foreign service officer, who (i) at the time the suit is filed is, or immediately preceding such suit was, stationed in any territory or foreign country and (ii) was domiciled in the Commonwealth for the six-month period immediately preceding his being stationed in such territory or country shall be deemed to have been domiciled in and to have been a bona fide resident of the Commonwealth during the six months preceding the filing of a suit for annulment or divorce.

4. Upon separation of a married couple, either spouse may establish his own and separate domicile, though the separation may have been caused under such circumstances as would entitle such spouse to a divorce or annulment.

Code 1919, § 5105; 1922, p. 589; 1958, c. 169; 1968, c. 455; 1974, c. 278; 1978, c. 412; 1985, c. 304; 1987, c. 35; 1988, c. 448; 1991, c. 259; 2009, c. 582; 2015, c. 315; 2017, c. 480; 2020, c. 900.

§ 20-98. Repealed.

Repealed by Acts 1977, c. 624.

§ 20-99. How such suits instituted and conducted; costs.

Such suit shall be instituted and conducted as other suits in equity, except as otherwise provided in this section:

1. Except for a divorce granted on the grounds set forth in subdivision A (9) of § 20-91, no divorce, annulment, or affirmation of a marriage shall be granted on the uncorroborated testimony of the parties or either of them.

2. Whether the defendant answers or not, the cause shall be heard independently of the admissions of either party in the pleadings or otherwise.

3. Process or notice in such proceedings shall be served in the Commonwealth by any of the methods prescribed in § 8.01-296 by any person authorized to serve process under § 8.01-293. Service may be made on a nonresident by any of the methods prescribed in § 8.01-296 by any person authorized to serve process under § 8.01-320.

4. In cases where such suits have been commenced and an appearance has been made on behalf of the defendant by counsel, then notices to take depositions and of hearings, motions, and other proceedings except contempt proceedings, may be served by delivering or mailing a copy to counsel for opposing party, the foot of such notices bearing either acceptance of service or a certificate of counsel in compliance with the Rules of Supreme Court of Virginia. "Counsel for opposing party" shall include a pro se party who (i) has entered a general appearance in person or by filing a pleading or endorsing an order of withdrawal of that party's counsel or (ii) has signed a pleading in the case or who has notified the other parties and the clerk that he appears in the case.

5. In cases where such suits have been commenced, the defendant has been served pursuant to the provisions of subdivision 1 of § 8.01-296, and the defendant has failed to file an answer to the suit or otherwise appear within the time allowed by law, no further notice to take depositions or conduct an ore tenus hearing is required to be served on the defendant and the court may enter any order or final decree without further notice to the defendant.

6. Costs may be awarded to either party as equity and justice may require.

Code 1919, § 5106; 1920, p. 503; 1928, p. 535; 1938, p. 202; 1968, c. 484; 1975, c. 644; 1977, c. 60; 1984, cc. 609, 616; 1987, c. 594; 1991, c. 244; 1992, c. 563; 2012, cc. 78, 84; 2013, cc. 81, 100; 2021, Sp. Sess. I, c. 194.

§ 20-99.1. Repealed.

Repealed by Acts 1988, c. 583.

§ 20-99.1:1. How defendant may accept service; waive service.

A. A defendant in such suits may accept service of process by signing the proof of service before any officer authorized to administer oaths. This proof of service shall, when filed with the papers in the suit, have the same effect as if it had been served upon the defendant by a person authorized to serve process. In addition, service of process may be accepted or waived by any party, upon voluntary execution of a notarized writing specifying an intent to accept or waive any particular process, or by a defendant by filing an answer in the suit. Such notarized writing may be provided in the clerk's office of any circuit court and may be signed by such party to the proceedings before any clerk or deputy clerk of any circuit court, under oath, or may be drafted and filed by counsel or a pro se party in the proceeding, and shall, when filed with the papers in the suit, have the same effect as if the process specified had been personally served upon the defendant by a person authorized to serve process. For a suit for a no-fault divorce under subdivision A (9) of § 20-91, any such waiver may occur within a reasonable time prior to or after the suit is filed, provided that a copy of the complaint is attached to such waiver, or is otherwise provided to the defendant, and the final decree of divorce as proposed by the complainant is signed by the defendant. The court may enter any order or decree without further notice unless a defendant has filed an answer in the suit.

B. When service is accepted pursuant to this section by a nonresident person out of the Commonwealth, such service shall have the same effect as an order of publication duly executed.

C. Any process served outside the Commonwealth executed in such manner as provided for in this section is validated.

1988, c. 583; 1989, c. 562; 1992, c. 563; 2019, cc. 133, 237.

§ 20-99.2. Service in divorce and annulment cases.

A. In any suit for divorce or annulment or affirmation of a marriage, process may be served in any manner authorized under § 8.01-296 or 8.01-320.

B. Any such process served prior to July 1, 1984, shall not be invalidated solely because service was made as prescribed under § 8.01-296.

1984, c. 611; 2012, cc. 78, 84.

§ 20-100. Repealed.

Repealed by Acts 1974, c. 123.

§ 20-101. Repealed.

Repealed by Acts 1975, c. 644.

§ 20-102. When not necessary to allege or prove offer of reconciliation.

It shall not be necessary, in any suit for divorce from the bond of matrimony or from bed and board upon the ground of willful desertion or abandonment, to allege or prove an offer of reconciliation.

1938, p. 382; Michie Code 1942, § 5106a; 1975, c. 644.

§ 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 (a) an order that the other spouse provide health care coverage for the petitioning spouse, unless it is shown that such coverage cannot be obtained, or (b) an order that a party pay secured or unsecured debts incurred jointly or by either party, (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 or both parties provide health care coverage or cash medical support, or both, 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 pay or continue to pay support for 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, (viii) to compel either spouse to give security to abide such decree, or (ix)(a) to compel a party to maintain any existing policy owned by that party insuring the life of either party or to require a party to name as a beneficiary of the policy the other party or an appropriate person for the exclusive use and benefit of the minor children of the parties and (b) to allocate the premium cost of such life insurance between the parties, provided that all premiums are billed to the policyholder. Nothing in clause (ix) shall be construed to create an independent cause of action on the part of any beneficiary against the insurer or to require an insurer to provide information relating to such policy to any person other than the policyholder without the written consent of the policyholder. 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 Office of the Executive Secretary of the Supreme Court of Virginia, 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.

A1. Any award or order made by the court pursuant to subsection A shall be paid from the post-separation income of the obligor unless the court, for good cause shown, orders otherwise. Upon the request of either party, the court may identify and state in such order or award the specific source from which the financial obligation imposed is to be paid.

A2. In any case in which the jurisdiction of the juvenile and domestic relations district court has been divested pursuant to § 16.1-244 and no final support order has been entered, any award for child support or spousal support in the circuit court pursuant to subsection A shall be retroactive to the date on which the proceeding was commenced by the filing of the action in the juvenile and domestic relations district court, provided that the petitioner exercised due diligence in the service of the respondent.

B. In addition to the terms provided in subsection A, upon a showing by a party of reasonable apprehension of physical harm to that party by such party's family or household member as that term is defined in § 16.1-228, and consistent with rules of the Supreme Court of Virginia, the court may enter an order excluding that party's family or household member 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 family or household member from the family dwelling for a period in excess of 15 days from the date the order is served, in person, upon the person so excluded. The order may provide for an extension of time beyond the 15 days, to become effective automatically. The person 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 subsection for such longer period of time as is deemed appropriate, after a hearing on notice to the parties. If the party subject to the order fails to appear at this hearing, the court may extend the order for a period not to exceed six months.

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.). Orders entered pursuant to subsection B shall be certified by the clerk and forwarded as soon as possible to the local police department or sheriff's office which shall, on the date of receipt, enter the name of the person subject to the order and other appropriate information required by the Department of State Police into the Virginia crime information network system established and maintained by the Department of State Police pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52. If the order is later dissolved or modified, a copy of the dissolution or modification shall also be certified, forwarded and entered in the system as described above.

E. There shall be a presumption in any judicial proceeding for pendente lite spousal support and maintenance under this section that the amount of the award that would result from the application of the formula set forth in this section is the correct amount of spousal support to be awarded. The court may deviate from the presumptive amount as provided in subsection H.

F. If the court is determining both an award of pendente lite spousal support and maintenance and an award of child support, the court shall first make a determination of the amount of the award of pendente lite spousal support, if any, owed by one party to the other under this section.

G. If the parties have minor children in common, the presumptive amount of an award of pendente lite spousal support and maintenance shall be the difference between 26 percent of the payor spouse's monthly gross income and 58 percent of the payee spouse's monthly gross income. If the parties have no minor children in common, the presumptive amount of the award shall be the difference between 27 percent of the payor spouse's monthly gross income and 50 percent of the payee spouse's monthly gross income. For the purposes of this section, monthly gross income shall have the same meaning as it does in section § 20-108.2.

H. The court may deviate from the presumptive amount for good cause shown, including any relevant evidence relating to the parties' current financial circumstances or the impact of any tax exemption and any credits resulting from such exemptions that indicates the presumptive amount is inappropriate.

I. The presumptive formula set forth in this section shall only apply to cases where the parties' combined monthly gross income does not exceed $10,000.

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

Code 1919, § 5107; 1975, c. 644; 1982, c. 306; 1983, c. 253; 1989, c. 740; 1991, c. 60; 1994, cc. 518, 769; 1995, c. 674; 1996, cc. 767, 866, 879, 884; 1997, c. 605; 1998, c. 616; 2000, c. 586; 2003, cc. 31, 45; 2004, c. 732; 2007, c. 205; 2009, c. 713; 2011, c. 687; 2014, c. 55; 2015, cc. 653, 654; 2016, c. 352; 2020, c. 651; 2022, c. 527; 2023, c. 17.

§ 20-104. Order of publication against nonresident defendant.

In any suit for annulment, for divorce, either a vinculo matrimonii or a mensa et thoro, or for affirmance of a marriage, an affidavit shall be filed that the defendant is not a resident of the Commonwealth of Virginia, or that diligence has been used by or on behalf of the plaintiff to ascertain in what county or city such defendant is, without effect, an order of publication shall be entered against such defendant by the court, or by the clerk of the court wherein such suit is pending, either in term time or vacation, which order shall state the object of the suit and the grounds thereof, and the order of publication shall be published as required by law. If the plaintiff in the suit has been determined to be indigent by the court pursuant to § 19.2-159, the order stating the object of the suit and the grounds thereof shall be mailed to the defendant at his last known address and posted on the main entrance to the circuit courthouse of the city or county wherein the suit is filed, and no order of publication shall be required. No

depositions in the suit shall be commenced until at least 10 days shall have elapsed after the order has been duly published or mailed and posted as required by law.

All annulments or divorces heretofore granted in suits in which the defendant was proceeded against by an order of publication or of mailing and posting which required the defendant to appear within 10 days after due publication or mailing and posting thereof, and in which depositions were taken less than 15 days, but not less than 10 days, after such due publication or mailing and posting and in suits in which the defendant was proceeded against by an order of publication or of mailing and posting issued on an affidavit that diligence had been used by or on behalf of the plaintiff to ascertain in what county or city such defendant was, without effect, or wherein the order of publication or of mailing and posting was entered by the court, are hereby validated and declared to be binding upon the parties to such suit, when the other proceedings therein were regular and the annulment or divorce otherwise valid.

The cost of such publication or of such mailing and posting shall be paid by the petitioner or applicant.

Code 1919, § 5108; 1938, p. 111; 1940, p. 642; 1942, p. 202; 1950, p. 72; 1975, c. 644; 1996, c. 352; 2008, c. 699.

§ 20-104.1. Orders of publication may be combined.

Orders of publication as provided for in § 20-104 in any two or more suits for annulment or divorce may be combined into a single order to be published as required by law; provided that, at such time as the clerk may direct the plaintiff in each case shall pay to the clerk a pro rata share of the expense of such publication. Payments made by any plaintiff shall be subject to the provisions of § 20-99 as to costs.

1974, c. 581.

§ 20-105. Permissible form for orders of publication.

Any orders of publication under the provisions of § 20-104 may be substantially in the form following:

Virginia: In the _____ Court of _____,

_____, 20_____

(Here set forth Style of Cause)

The object of this suit is to obtain (an annulment of marriage) (a divorce from bed and board) (a divorce from the bond of matrimony) from the defendant on the ground of _____,

(here set forth grounds)

_____

(here set forth other relief prayed for, if any)

_____

(here set forth the styles and objects of the suits for divorce or annulment combined)

It appearing from an affidavit (that the defendant(s) is not a resident (are not residents) of this Commonwealth,) (or) (that diligence has been used by or on behalf of plaintiff(s) to ascertain in what county or city the defendant(s) is (are), without effect,) it is ordered that the defendant appear before this court (within ten days after due publication of this notice) (before _____, 20_____) and protect (his) (her) (their) interests herein.

An Extract-Teste:

_____ p.q.

_____ (Clerk)

1946, p. 272; Michie Suppl. 1946, § 5108a; 1974, c. 581.

§ 20-105.1. Alternative procedures.

The provisions of Title 8.01 for orders of publication shall be construed as alternatives to the procedures set forth in §§ 20-104 through 20-105 and not in conflict therewith.

1978, c. 46.

§ 20-106. Testimony may be required to be given orally; evidence by affidavit.

A. In any suit for divorce, the trial court may require the whole or any part of the testimony to be given orally in open court, and if either party desires it, such testimony and the rulings of the court on the exceptions thereto, if any, shall be reduced to writing, and the judge shall certify that such evidence was given before him and such rulings made. When so certified the same shall stand on the same footing as a deposition regularly taken in the cause, provided, however, that no such oral evidence shall be given or heard unless and until after such notice to the adverse party as is required by law to be given of the taking of depositions, or when there has been no service of process within the Commonwealth upon, or appearance by the defendant against whom such testimony is sought to be introduced. However, a party may proceed to take evidence in support of a divorce by deposition or affidavit without leave of court only in support of a divorce on the grounds set forth in subdivision A (9) of § 20-91, where (i) the parties have resolved all issues by a written settlement agreement, (ii) there are no issues other than the grounds of the divorce itself to be adjudicated, or (iii) the adverse party has been personally served with the complaint and has failed to file a responsive pleading or to make an appearance as required by law.

B. The affidavit of a party submitted as evidence shall be based on the personal knowledge of the affiant, contain only facts that would be admissible in court, give factual support to the grounds for divorce stated in the complaint or counterclaim, and establish that the affiant is competent to testify to the contents of the affidavit. If either party is incarcerated, neither party shall submit evidence by affidavit without leave of court or the consent in writing of the guardian ad litem for the incarcerated party, or of the incarcerated party if a guardian ad litem is not required pursuant to § 8.01-9. The affidavit shall:

1. Give factual support to the grounds for divorce stated in the complaint or counterclaim, including that the parties are over the age of 18 and not suffering from any condition that renders either party legally incompetent;

2. Verify whether either party is incarcerated;

3. Verify the military status of the opposing party and advise whether the opposing party has filed an answer or a waiver of his rights under the federal Servicemembers Civil Relief Act (50 U.S.C. § 3901 et seq.);

4. Affirm that at least one party to the suit was at the time of the filing of the suit, and had been for a period in excess of six months immediately preceding the filing of the suit, a bona fide resident and domiciliary of the Commonwealth;

5. Affirm that the parties have lived separate and apart, continuously, without interruption and without cohabitation, and with the intent to remain separate and apart permanently, for the statutory period required by subdivision A (9) of § 20-91;

6. Affirm the affiant's desire to be awarded a divorce pursuant to subdivision A (9) of § 20-91; and

7. State whether there were minor children either born of the parties, born of either party and adopted by the other, or adopted by both parties, and affirm that neither party is known to be pregnant from the marriage.

C. If a party moves for a divorce pursuant to § 20-121.02, an affidavit may be submitted in support of the grounds for divorce set forth in subdivision A (9) of § 20-91.

D. A verified complaint shall not be deemed an affidavit for purposes of this section.

E. Either party may submit the deposition or affidavit required by this section in support of the grounds for divorce requested by either party pursuant to the terms of this section.

F. In contemplation of or in a suit for a no-fault divorce under subdivision A (9) of § 20-91, the plaintiff or his attorney may take and file, as applicable, the complaint, the affidavit or deposition, any other associated documents, and the proposed decree contemporaneously, and a divorce may be granted solely on those documents where the defendant has waived service and, where applicable, notice.

Code 1919, § 5109; 1932, p. 388; 2012, c. 72; 2014, cc. 288, 521; 2015, c. 315; 2016, c. 238; 2019, cc. 133, 237; 2020, c. 900; 2021, Sp. Sess. I, c. 194; 2023, c. 114.

§ 20-107. Repealed.

Repealed by Acts 1982, c. 309.

§ 20-107.1. Court may decree as to maintenance and support of spouses.

A. Pursuant to any proceeding arising under subsection L of § 16.1-241 or upon the entry of a decree providing (i) for the dissolution of a marriage, (ii) for a divorce, whether from the bond of matrimony or from bed and board, (iii) that neither party is entitled to a divorce, or (iv) for separate maintenance, the court may make such further decree as it shall deem expedient concerning the maintenance and

support of the spouses, notwithstanding a party's failure to prove his grounds for divorce, provided that a claim for support has been properly pled by the party seeking support. However, the court shall have no authority to decree maintenance and support payable by the estate of a deceased spouse.

B. Any maintenance and support shall be subject to the provisions of § 20-109, and no permanent maintenance and support shall be awarded from a spouse if there exists in such spouse's favor a ground of divorce under the provisions of subdivision A (1) of § 20-91. However, the court may make such an award notwithstanding the existence of such ground if the court determines from clear and convincing evidence, that a denial of support and maintenance would constitute a manifest injustice, based upon the respective degrees of fault during the marriage and the relative economic circumstances of the parties.

C. The court, in its discretion, may decree that maintenance and support of a spouse be made in periodic payments for a defined duration, or in periodic payments for an undefined duration, or in a lump sum award, or in any combination thereof.

D. In addition to or in lieu of an award pursuant to subsection C, the court may reserve the right of a party to receive support in the future. In any case in which the right to support is so reserved, there shall be a rebuttable presumption that the reservation will continue for a period equal to 50 percent of the length of time between the date of the marriage and the date of separation. Once granted, the duration of such a reservation shall not be subject to modification. Unless otherwise provided by stipulation or contract executed on or after July 1, 2020, or unless otherwise ordered by the court on or after July 1, 2020, a party seeking to exercise his right to support so reserved shall be required to prove a material change of circumstances as a prerequisite for the court to consider exercise of such reservation.

E. The court, in determining whether to award support and maintenance for a spouse, shall consider the circumstances and factors which contributed to the dissolution of the marriage, specifically including adultery and any other ground for divorce under the provisions of subdivision A (3) or (6) of § 20-91 or § 20-95. In determining the nature, amount and duration of an award pursuant to this section, the court shall consider the following:

1. The obligations, needs and financial resources of the parties, including but not limited to income from all pension, profit sharing or retirement plans, of whatever nature;

2. The standard of living established during the marriage;

3. The duration of the marriage;

4. The age and physical and mental condition of the parties and any special circumstances of the family;

5. The extent to which the age, physical or mental condition or special circumstances of any child of the parties would make it appropriate that a party not seek employment outside of the home;

6. The contributions, monetary and nonmonetary, of each party to the well-being of the family;

7. The property interests of the parties, both real and personal, tangible and intangible;

8. The provisions made with regard to the marital property under § 20-107.3;

9. The earning capacity, including the skills, education and training of the parties and the present employment opportunities for persons possessing such earning capacity;

10. The opportunity for, ability of, and the time and costs involved for a party to acquire the appropriate education, training and employment to obtain the skills needed to enhance his earning ability;

11. The decisions regarding employment, career, economics, education and parenting arrangements made by the parties during the marriage and their effect on present and future earning potential, including the length of time one or both of the parties have been absent from the job market;

12. The extent to which either party has contributed to the attainment of education, training, career position or profession of the other party; and

13. Such other factors, including the tax consequences to each party and the circumstances and factors that contributed to the dissolution, specifically including any ground for divorce, as are necessary to consider the equities between the parties.

F. In contested cases in the circuit courts, any order granting, reserving or denying a request for spousal support shall be accompanied by written findings and conclusions of the court identifying the factors in subsection E which support the court's order. Any order granting or reserving any request for spousal support shall state whether the retirement of either party was contemplated by the court and specifically considered by the court in making its award, and, if so, the order shall state the facts the court contemplated and specifically considered as to the retirement of the party. If the court awards periodic support for a defined duration, such findings shall identify the basis for the nature, amount and duration of the award and, if appropriate, a specification of the events and circumstances reasonably contemplated by the court which support the award.

G. For purposes of this section and § 20-109, "date of separation" means the earliest date at which the parties are physically separated and at least one party intends such separation to be permanent provided the separation is continuous thereafter and "defined duration" means a period of time (i) with a specific beginning and ending date or (ii) specified in relation to the occurrence or cessation of an event or condition other than death or termination pursuant to § 20-110.

H. Where there are no minor children whom the parties have a mutual duty to support, an order directing the payment of spousal support, including those orders confirming separation agreements, entered on or after October 1, 1985, whether they are original orders or modifications of existing orders, shall contain the following:

1. If known, the name, date of birth, and social security number of each party and, unless otherwise ordered, each party's residential and, if different, mailing address, residential and employer telephone number, and number appearing on a driver's license or other document issued under Chapter 3 (§ 46.2-300 et seq.) of Title 46.2 or the comparable law of another jurisdiction, and the name and

address of each party's employer; however, when a protective order has been issued or the court otherwise finds reason to believe that a party is at risk of physical or emotional harm from the other party, information other than the name of the party at risk shall not be included in the order;

2. The amount of periodic spousal support expressed in fixed sums, together with the payment interval, the date payments are due, and the date the first payment is due;

3. A statement as to whether there is an order for health care coverage for a party;

4. If support arrearages exist, (i) to whom an arrearage is owed and the amount of the arrearage, (ii) the period of time for which such arrearage is calculated, and (iii) a direction that all payments are to be credited to current spousal support obligations first, with any payment in excess of the current obligation applied to arrearages;

5. If spousal support payments are ordered to be paid directly to the obligee, and unless the court for good cause shown orders otherwise, the parties shall give each other and the court at least 30 days' written notice, in advance, of any change of address and any change of telephone number within 30 days after the change; and

6. Notice that in determination of a spousal support obligation, the support obligation as it becomes due and unpaid creates a judgment by operation of law.

1982, c. 309; 1984, c. 456; 1988, c. 620; 1994, c. 518; 1998, c. 604; 2003, c. 625; 2016, cc. 477, 615; 2018, c. 583; 2020, cc. 196, 1227, 1246.

§ 20-107.1:1. Court may decree as to maintenance of life insurance policy.

A. Upon entry of a decree providing for (i) the dissolution of a marriage, (ii) a divorce, whether from the bond of matrimony or from bed and board, or (iii) separate maintenance, where an order for spousal support or separate maintenance has been entered by the court, the court may order a party to (a) maintain any existing life insurance policy on the insured party's life that was purchased during the marriage, is issued through the insured's employment, or is within effective control of the insured, provided that the party so ordered has the right to designate a beneficiary and that the payee has been designated as a beneficiary of such policy during the marriage and the payee is a party with an insurable interest pursuant to subsection B of § 38.2-301; (b) designate the other party as beneficiary of all or a portion of the death benefit of such life insurance for so long as the insured party so ordered has an obligation to pay spousal support to the other party, provided that the party so ordered has the right to designate a beneficiary and that the payee has been designated as a beneficiary of such policy during the marriage and the payee is a party with an insurable interest pursuant to subsection B of § 38.2-301 in accordance with the terms of the policy; (c) allocate the premium cost of such life insurance between the parties, provided that all premiums shall be billed to the policyholder; and (d) order the insured party to execute all appropriate forms or written consents to require the insurer to provide information to the party beneficiary as to the good standing of the policy and the maintenance of that party as beneficiary to the extent required by the order entered pursuant to this section. Any obligation

or requirement under such an order shall cease upon the termination of the party's obligation to pay spousal support or separate maintenance.

B. In making a determination under subsection A, the court shall consider:

1. The age, health, and insurability of the insured party;

2. The age and health of the payee spouse;

3. The cost of the life insurance policy;

4. The amount and term of the award of spousal support or separate maintenance;

5. The prevailing insurance rates at the time of the order;

6. The ability of either spouse to pay the premium cost of the life insurance; and

7. Such other factors as the court deems necessary or appropriate to consider in order to arrive at a fair order.

C. Upon motion of either party, any order entered pursuant to this section may be modified upon a material change of circumstances, including a change in marital status of the payor spouse, and in consideration of the factors set forth in subsection B. This provision shall not permit the change in marital status of the payor spouse to be considered as a factor under § 20-107.1 or considered a material change in circumstances in any proceeding related to the modification of spousal support.

D. Nothing in this section shall be construed to create an independent cause of action on the part of any beneficiary against the insurer or to require an insurer to provide information relating to such policy to any person other than the policyholder without the written consent of the policyholder or unless ordered by the court.

E. Nothing in this section shall be construed to require an insurance company to renew or reinstate any insurance policy other than as provided in such insurance policy.

F. In the event a group policy issued by an employer that is subject to a court order pursuant to this section is terminated or canceled by the employer or there is an involuntary change in employment by the payor causing the policy to no longer be in effect, such circumstances shall not be the basis of any finding of contempt against the payor arising out of an order entered pursuant to this section.

G. This section shall not apply to any second to die insurance policies on the lives of the payor and payee.

H. In the case of a term life insurance policy that has the ability to convert to a permanent policy, the court shall not impose an obligation to pay for such a conversion.

2017, c. 797.

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

Upon entry of a decree providing (i) for the dissolution of a marriage, (ii) for a divorce, whether from the bond of matrimony or from bed and board, (iii) that neither party is entitled to a divorce, or (iv) for

separate maintenance, the court may make such further decree as it shall deem expedient concerning the (a) custody or visitation and support of the minor children of the parties as provided in Chapter 6.1 (§ 20-124.1 et seq.) or (b) support of a child over the age of 18 who meets the requirements set forth in subsection C of § 20-124.2, including an order that either party or both parties provide health care coverage or cash medical support, or both.

1982, c. 309; 1984, c. 651; 1986, c. 421; 1987, c. 597; 1988, cc. 794, 887; 1989, c. 740; 1991, cc. 60, 545, 588; 1992, cc. 585, 716, 742; 1993, cc. 573, 599, 633; 1994, cc. 719, 769; 1996, c. 331; 2009, c. 713; 2015, cc. 653, 654.

§ 20-107.3. Court may decree as to property and debts of the parties.

A. Upon decreeing the dissolution of a marriage, and also upon decreeing a divorce from the bond of matrimony, or upon the filing with the court as provided in subsection J of a certified copy of a final divorce decree obtained without the Commonwealth, the court, upon request of either party, (i) shall determine the legal title as between the parties, and the ownership and value of all property, real or personal, tangible or intangible, of the parties and shall consider which of such property is separate property, which is marital property, and which is part separate and part marital property in accordance with subdivision 3 and (ii) shall determine the nature of all debts of the parties, or either of them, and shall consider which of such debts is separate debt and which is marital debt. The court shall determine the value of any such property as of the date of the evidentiary hearing on the evaluation issue. The court shall determine the amount of any such debt as of the date of the last separation of the parties, if at such time or thereafter at least one of the parties intends that the separation be permanent, and the extent to which such debt has increased or decreased from the date of separation until the date of the evidentiary hearing. Upon motion of either party made no less than 21 days before the evidentiary hearing the court may, for good cause shown, in order to attain the ends of justice, order that a different valuation date be used. The court, on the motion of either party, may retain jurisdiction in the final decree of divorce to adjudicate the remedy provided by this section when the court determines that such action is clearly necessary, and all decrees heretofore entered retaining such jurisdiction are validated.

1. Separate property is (i) all property, real and personal, acquired by either party before the marriage; (ii) all property acquired during the marriage by bequest, devise, descent, survivorship or gift from a source other than the other party; (iii) all property acquired during the marriage in exchange for or from the proceeds of sale of separate property, provided that such property acquired during the marriage is maintained as separate property; and (iv) that part of any property classified as separate pursuant to subdivision 3. Income received from separate property during the marriage is separate property if not attributable to the personal effort of either party. The increase in value of separate property during the marriage is separate property, unless marital property or the personal efforts of either party have contributed to such increases and then only to the extent of the increases in value attributable to such contributions. The personal efforts of either party must be significant and result in substantial appreciation

of the separate property if any increase in value attributable thereto is to be considered marital property.

2. Marital property is (i) all property titled in the names of both parties, whether as joint tenants, tenants by the entirety or otherwise, except as provided by subdivision 3, (ii) that part of any property classified as marital pursuant to subdivision 3, or (iii) all other property acquired by each party during the marriage which is not separate property as defined above. All property including that portion of pensions, profit-sharing or deferred compensation or retirement plans of whatever nature, acquired by either spouse during the marriage, and before the last separation of the parties, if at such time or thereafter at least one of the parties intends that the separation be permanent, is presumed to be marital property in the absence of satisfactory evidence that it is separate property. For purposes of this section marital property is presumed to be jointly owned unless there is a deed, title or other clear indicia that it is not jointly owned.

3. The court shall classify property as part marital property and part separate property as follows:

a. In the case of income received from separate property during the marriage, such income shall be marital property only to the extent it is attributable to the personal efforts of either party. In the case of the increase in value of separate property during the marriage, such increase in value shall be marital property only to the extent that marital property or the personal efforts of either party have contributed to such increases, provided that any such personal efforts must be significant and result in substantial appreciation of the separate property.

For purposes of this subdivision, the nonowning spouse shall bear the burden of proving that (i) contributions of marital property or personal effort were made and (ii) the separate property increased in value. Once this burden of proof is met, the owning spouse shall bear the burden of proving that the increase in value or some portion thereof was not caused by contributions of marital property or personal effort.

"Personal effort" of a party shall be deemed to be labor, effort, inventiveness, physical or intellectual skill, creativity, or managerial, promotional or marketing activity applied directly to the separate property of either party.

b. In the case of any pension, profit-sharing, or deferred compensation plan or retirement benefit, the marital share as defined in subsection G shall be marital property.

c. In the case of any personal injury or workers' compensation recovery of either party, the marital share as defined in subsection H shall be marital property.

d. When marital property and separate property are commingled by contributing one category of property to another, resulting in the loss of identity of the contributed property, the classification of the contributed property shall be transmuted to the category of property receiving the contribution. However, to the extent the contributed property is retraceable by a preponderance of the evidence and was not a gift, such contributed property shall retain its original classification.

e. When marital property and separate property are commingled into newly acquired property resulting in the loss of identity of the contributing properties, the commingled property shall be deemed transmuted to marital property. However, to the extent the contributed property is retraceable by a preponderance of the evidence and was not a gift, the contributed property shall retain its original classification.

f. When separate property is retitled in the joint names of the parties, the retitled property shall be deemed transmuted to marital property. However, to the extent the property is retraceable by a preponderance of the evidence and was not a gift, the retitled property shall retain its original classification.

g. When the separate property of one party is commingled into the separate property of the other party, or the separate property of each party is commingled into newly acquired property, to the extent the contributed property is retraceable by a preponderance of the evidence and was not a gift, each party shall be reimbursed the value of the contributed property in any award made pursuant to this section.

h. Subdivisions 3 d, e and f shall apply to jointly owned property. No presumption of gift shall arise under this section where (i) separate property is commingled with jointly owned property; (ii) newly acquired property is conveyed into joint ownership; or (iii) existing property is conveyed or retitled into joint ownership. For purposes of this subdivision 3, property is jointly owned when it is titled in the name of both parties, whether as joint tenants, tenants by the entireties, or otherwise.

4. Separate debt is (i) all debt incurred by either party before the marriage, (ii) all debt incurred by either party after the date of the last separation of the parties, if at such time or thereafter at least one of the parties intends that the separation be permanent, and (iii) that part of any debt classified as separate pursuant to subdivision 5. However, to the extent that a party can show by a preponderance of the evidence that the debt was incurred for the benefit of the marriage or family, the court may designate the debt as marital.

5. Marital debt is (i) all debt incurred in the joint names of the parties before the date of the last separation of the parties, if at such time or thereafter at least one of the parties intends that the separation be permanent, whether incurred before or after the date of the marriage, and (ii) all debt incurred in either party's name after the date of the marriage and before the date of the last separation of the parties, if at such time or thereafter at least one of the parties intends that the separation be permanent. However, to the extent that a party can show by a preponderance of the evidence that the debt, or a portion thereof, was incurred, or the proceeds secured by incurring the debt were used, in whole or in part, for a nonmarital purpose, the court may designate the entire debt as separate or a portion of the debt as marital and a portion of the debt as separate.

B. For the purposes of this section only, both parties shall be deemed to have rights and interests in the marital property. However, such interests and rights shall not attach to the legal title of such property and are only to be used as a consideration in determining a monetary award, if any, as provided in this section.

C. Except as provided in subsection G, the court shall have no authority to order the division or transfer of separate property or marital property, or separate or marital debt, which is not jointly owned or owed. However, upon a finding that separate property of one party is in the possession or control of the other party, the court may order that the property be transferred to the party whose separate property it is. The court may, based upon the factors listed in subsection E, divide or transfer or order the division or transfer, or both, of jointly owned marital property, jointly owed marital debt, or any part thereof. The court shall also have the authority to apportion and order the payment of the debts of the parties, or either of them, that are incurred prior to the dissolution of the marriage, based upon the factors listed in subsection E.

As a means of dividing or transferring the jointly owned marital property, the court may transfer or order the transfer of real or personal property or any interest therein to one of the parties, permit either party to purchase the interest of the other and direct the allocation of the proceeds, provided the party purchasing the interest of the other agrees to assume any indebtedness secured by the property, or order its sale by private sale by the parties, through such agent as the court shall direct, or by public sale as the court shall direct without the necessity for partition. All decrees entered prior to July 1, 1991, which are final and not subject to further proceedings on appeal as of that date, which divide or transfer or order the division or transfer of property directly between the parties are hereby validated and deemed self-executing. All orders or decrees which divide or transfer or order division or transfer of real property between the parties shall be recorded and indexed in the names of the parties in the appropriate grantor and grantee indexes in the land records in the clerk's office of the circuit court of the county or city in which the property is located.

D. In addition, based upon (i) the equities and the rights and interests of each party in the marital property, and (ii) the factors listed in subsection E, the court has the power to grant a monetary award, payable either in a lump sum or over a period of time in fixed amounts, to either party. The party against whom a monetary award is made may satisfy the award, in whole or in part, by conveyance of property, subject to the approval of the court. An award entered pursuant to this subsection shall constitute a judgment within the meaning of § 8.01-426 and shall not be docketed by the clerk unless the decree so directs. An award entered pursuant to this subsection may be enforceable in the same manner as any other money judgment. The provisions of § 8.01-382, relating to interest on judgments, shall apply unless the court orders otherwise.

Any marital property, which has been considered or ordered transferred in granting the monetary award under this section, shall not thereafter be the subject of a suit between the same parties to transfer title or possession of such property.

E. The amount of any division or transfer of jointly owned marital property, and the amount of any monetary award, the apportionment of marital debts, and the method of payment shall be determined by the court after consideration of the following factors:

1. The contributions, monetary and nonmonetary, of each party to the well-being of the family;

2. The contributions, monetary and nonmonetary, of each party in the acquisition and care and maintenance of such marital property of the parties;

3. The duration of the marriage;

4. The ages and physical and mental condition of the parties;

5. The circumstances and factors which contributed to the dissolution of the marriage, specifically including any ground for divorce under the provisions of subdivision A (1), (3) or (6) of § 20-91 or § 20-95;

6. How and when specific items of such marital property were acquired;

7. The debts and liabilities of each spouse, the basis for such debts and liabilities, and the property which may serve as security for such debts and liabilities;

8. The liquid or nonliquid character of all marital property;

9. The tax consequences to each party;

10. The use or expenditure of marital property by either of the parties for a nonmarital separate purpose or the dissipation of such funds, when such was done in anticipation of divorce or separation or after the last separation of the parties; and

11. Such other factors as the court deems necessary or appropriate to consider in order to arrive at a fair and equitable monetary award.

F. The court shall determine the amount of any such monetary award without regard to maintenance and support awarded for either party or support for the minor children of both parties and shall, after or at the time of such determination and upon motion of either party, consider whether an order for support and maintenance of a spouse or children shall be entered or, if previously entered, whether such order shall be modified or vacated.

G. In addition to the monetary award made pursuant to subsection D, and upon consideration of the factors set forth in subsection E:

1. The court may direct payment of a percentage of the marital share of any pension, profit-sharing or deferred compensation plan, or retirement benefits, whether vested or nonvested, that constitutes marital property and whether payable in a lump sum or over a period of time. The court may order direct payment of such percentage of the marital share by direct assignment to a party from the employer trustee, plan administrator, or other holder of the benefits. However, the court shall only direct that payment be made as such benefits are payable. No such payment shall exceed 50 percent of the marital share of the cash benefits actually received by the party against whom such award is made. "Marital share" means that portion of the total interest, the right to which was earned during the marriage and before the last separation of the parties, if at such time or thereafter at least one of the parties intended that the separation be permanent. Any determination of military retirement benefits shall be in accordance with the federal Uniformed Services Former Spouses' Protection Act (10 U.S.C. 1408 et seq.). If

the court enters an order to distribute any Virginia Retirement System managed defined contribution plan, the Virginia Retirement System shall, if ordered by the court, calculate and include in such distribution gains and losses from the valuation date specified in the order through the date of distribution of the benefits, but only to the extent possible based on the information available to the Virginia Retirement System.

2. To the extent permitted by federal or other applicable law, the court may order a party to designate a spouse or former spouse as irrevocable beneficiary during the lifetime of the beneficiary of all or a portion of any survivor benefit or annuity plan of whatsoever nature, but not to include a life insurance policy except to the extent permitted by § 20-107.1:1. The court, in its discretion, shall determine as between the parties, who shall bear the costs of maintaining such plan.

H. In addition to the monetary award made pursuant to subsection D, and upon consideration of the factors set forth in subsection E, the court may direct payment of a percentage of the marital share of any personal injury or workers' compensation recovery of either party, whether such recovery is payable in a lump sum or over a period of time. However, the court shall only direct that payment be made as such recovery is payable, whether by settlement, jury award, court award, or otherwise. "Marital share" means that part of the total personal injury or workers' compensation recovery attributable to lost wages or medical expenses to the extent not covered by health insurance accruing during the marriage and before the last separation of the parties, if at such time or thereafter at least one of the parties intended that the separation be permanent.

I. Nothing in this section shall be construed to prevent the affirmation, ratification and incorporation in a decree of an agreement between the parties pursuant to §§ 20-109 and 20-109.1. Agreements, otherwise valid as contracts, entered into between spouses prior to the marriage shall be recognized and enforceable.

J. A court of proper jurisdiction under § 20-96 may exercise the powers conferred by this section after a court of a foreign jurisdiction has decreed a dissolution of a marriage or a divorce from the bond of matrimony, if (i) one of the parties was domiciled in this Commonwealth when the foreign proceedings were commenced, (ii) the foreign court did not have personal jurisdiction over the party domiciled in the Commonwealth, (iii) the proceeding is initiated within two years of receipt of notice of the foreign decree by the party domiciled in the Commonwealth, and (iv) the court obtains personal jurisdiction over the parties pursuant to subdivision A 9 of § 8.01-328.1, or in any other manner permitted by law.

K. 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, including the authority to:

1. Order a date certain for transfer or division of any jointly owned property under subsection C or payment of any monetary award under subsection D;

2. Punish as contempt of court any willful failure of a party to comply with the provisions of any order made by the court under this section;

3. Appoint a special commissioner to transfer any property under subsection C where a party refuses to comply with the order of the court to transfer such property; and

4. Modify any order entered in a case filed on or after July 1, 1982, intended to affect or divide any pension, profit-sharing or deferred compensation plan or retirement benefits pursuant to the United States Internal Revenue Code or other applicable federal laws, only for the purpose of establishing or maintaining the order as a qualified domestic relations order or to revise or conform its terms so as to effectuate the expressed intent of the order.

L. If it appears upon or after the entry of a final decree of divorce from the bond of matrimony that neither party resides in the city or county of the circuit court that entered the decree, the court may, on the motion of any party or on its own motion, transfer to the circuit court for the city or county where either party resides the authority to make additional orders pursuant to subsection K or to carry out or enforce any stipulation, contract, or agreement between the parties that has been affirmed, ratified, and incorporated by reference pursuant to § 20-109.1.

1982, c. 309; 1984, c. 649; 1985, cc. 4, 442; 1986, cc. 533, 537; 1988, cc. 745, 746, 747, 825, 880; 1989, c. 70; 1990, cc. 636, 764; 1991, cc. 632, 640, 698; 1992, c. 88; 1993, c. 79; 2004, cc. 654, 757; 2006, c. 260; 2010, c. 506; 2011, c. 655; 2012, c. 144; 2016, c. 559; 2017, c. 797; 2019, c. 304; 2022, c. 438.

§ 20-108. Revision and alteration of such decrees.

The court may, from time to time after decreeing as provided in § 20-107.2, on petition of either of the parents, or on its own motion or upon petition of any probation officer or the Department of Social Services, which petition shall set forth the reasons for the relief sought, revise and alter such decree concerning the care, custody, and maintenance of the children and make a new decree concerning the same, as the circumstances of the parents and the benefit of the children may require. The intentional withholding of visitation of a child from the other parent without just cause may constitute a material change of circumstances justifying a change of custody in the discretion of the court.

No support order may be retroactively modified, but may be modified with respect to any period during which there is a pending petition for modification in any court, but only from the date that notice of such petition has been given to the responding party.

Any member of the United States Army, Navy, Air Force, Marine Corps, Coast Guard, National Guard, or any other reserve component thereof, who files a petition or is a party to a petition requesting the adjudication of the custody, visitation or support of a child based on a change of circumstances due to one of the parent's deployment, as that term is defined in § 20-124.7, shall be entitled to have such a petition expedited on the docket of the court.

Code 1919, § 5111; 1926, p. 105; 1927, p. 184; 1934, p. 515; 1938, p. 784; 1944, p. 397; 1948, p. 593; 1986, c. 537; 1987, c. 649; 1991, c. 438; 2002, c. 747; 2004, c. 204; 2006, c. 371; 2011, c. 351.

§ 20-108.1. Determination of child or spousal support.

A. In any proceeding on the issue of determining spousal support, the court shall consider all evidence presented relevant to any issues joined in that proceeding. The court's decision shall be rendered based upon the evidence relevant to each individual case.

B. In any proceeding on the issue of determining child support under this title, Title 16.1, or Title 63.2, the court shall consider all evidence presented relevant to any issues joined in that proceeding. The court's decision in any such proceeding shall be rendered upon the evidence relevant to each individual case. However, there shall be a rebuttable presumption in any judicial or administrative proceeding for child support, including cases involving split custody or shared custody, that the amount of the award that would result from the application of the guidelines set out in § 20-108.2 is the correct amount of child support to be awarded. Liability for support shall be determined retroactively for the period measured from the date that the proceeding was commenced by the filing of an action with any court provided the complainant exercised due diligence in the service of the respondent or, if earlier, the date an order of the Department of Social Services entered pursuant to Title 63.2 and directing payment of support was delivered to the sheriff or process server for service on the obligor.

In any case in which the jurisdiction of the juvenile and domestic relations district court has been divested pursuant to § 16.1-244 and no final child support order has been entered, any award for child support in the circuit court shall be retroactive to the date on which the proceeding was commenced by the filing of the action in the juvenile and domestic relations district court, provided that the petitioner exercised due diligence in the service of the respondent.

In order to rebut the presumption, the court shall make written findings in the order, which findings may be incorporated by reference, that the application of such guidelines would be unjust or inappropriate in a particular case. The finding that rebuts the guidelines shall state the amount of support that would have been required under the guidelines, shall give a justification of why the order varies from the guidelines, and shall be determined by relevant evidence pertaining to the following factors affecting the obligation, the ability of each party to provide child support, and the best interests of the child:

1. Actual monetary support for other family members or former family members;

2. Arrangements regarding custody of the children, including the cost of visitation travel;

3. Imputed income to a party who is voluntarily unemployed or voluntarily underemployed, provided that (i) income may not be imputed to a custodial parent when a child is not in school, child care services are not available, and the cost of such child care services are not included in the computation; (ii) any consideration of imputed income based on a change in a party's employment shall be evaluated with consideration of the good faith and reasonableness of employment decisions made by the party, including to attend and complete an educational or vocational program likely to maintain or increase the party's earning potential; and (iii) a party's current incarceration, as defined in § 8.01-195.10, for 180 or more consecutive days shall not be deemed voluntary unemployment or voluntary underemployment. In addition, notwithstanding subsection F, a party's incarceration for 180 or more

consecutive days shall be a material change in circumstances upon which a modification of child support may be based;

4. Any child care costs incurred on behalf of the child or children due to the attendance of a custodial parent in an educational or vocational program likely to maintain or increase the party's earning potential;

5. Debts of either party arising during the marriage for the benefit of the child;

6. Direct payments ordered by the court for maintaining life insurance coverage pursuant to subsection D, education expenses, or other court-ordered direct payments for the benefit of the child;

7. Extraordinary capital gains such as capital gains resulting from the sale of the marital abode;

8. Any special needs of a child resulting from any physical, emotional, or medical condition;

9. Independent financial resources of the child or children;

10. Standard of living for the child or children established during the marriage;

11. Earning capacity, obligations, financial resources, and special needs of each parent;

12. Provisions made with regard to the marital property under § 20-107.3, where said property earns income or has an income-earning potential;

13. Tax consequences to the parties including claims for exemptions, child tax credit, and child care credit for dependent children;

14. A written agreement, stipulation, consent order, or decree between the parties that includes the amount of child support; and

15. Such other factors as are necessary to consider the equities for the parents and children.

C. In any proceeding under this title, Title 16.1, or Title 63.2 on the issue of determining child support, the court shall have the authority to order either party or both parties to provide health care coverage or cash medical support, as defined in § 63.2-1900, or both, for dependent children if reasonable under all the circumstances and health care coverage for a spouse or former spouse.

D. In any proceeding under this title, Title 16.1, or Title 63.2 on the issue of determining child support, the court shall have the authority to order a party to (i) maintain any existing life insurance policy on the life of either party provided the party so ordered has the right to designate a beneficiary and (ii) designate a child or children of the parties as the beneficiary of all or a portion of such life insurance for so long as the party so ordered has a statutory obligation to pay child support for the child or children.

E. Except when the parties have otherwise agreed, in any proceeding under this title, Title 16.1, or Title 63.2 on the issue of determining child support, the court shall have the authority to and may, in its discretion, order one party to execute all appropriate tax forms or waivers to grant to the other party the right to take the income tax dependency exemption and any credits resulting from such exemption for

any tax year or future years, for any child or children of the parties for federal and state income tax purposes.

F. Notwithstanding any other provision of law, any amendments to this section shall not be retroactive to a date before the effective date of the amendment and shall not be the basis for a material change in circumstances upon which a modification of child support may be based.

G. Child support payments, whether current or arrears, received by a parent for the benefit of and owed to a child in the parent's custody, whether the payments were ordered under this title, Title 16.1, or Title 63.2, shall not be subject to garnishment. A depository wherein child support payments have been deposited on behalf of and traceable to an individual shall not be required to determine the portion of deposits that are subject to garnishment.

H. In any proceeding on the issue of determining child or spousal support or an action for separate maintenance under this title, Title 16.1, or Title 63.2, when the earning capacity, voluntary unemployment, or voluntary underemployment of a party is in controversy, the court in which the action is pending, upon the motion of any party and for good cause shown, may order a party to submit to a vocational evaluation by a vocational expert employed by the moving party, including, but not limited to, any interviews and testing as requested by the expert. The order may permit the attendance of the vocational expert at the deposition of the person to be evaluated. The order shall specify the name and address of the expert and the scope of the evaluation and shall fix the time for filing the report with the court and furnishing copies to the parties. The court may award costs or fees for the evaluation and the services of the expert at any time during the proceedings. The provisions of this section shall not preclude the applicability of any other rule or law.

1986, c. 461; 1988, c. 907; 1989, c. 599; 1990, c. 567; 1991, cc. 545, 588; 1992, cc. 543, 716, 860; 1993, cc. 520, 534; 1994, c. 764; 1995, c. 261; 1996, c. 491; 1998, cc. 592, 612; 2001, c. 809; 2004, cc. 204, 1008; 2006, cc. 785, 798; 2007, c. 872; 2009, c. 713; 2010, c. 176; 2013, cc. 276, 522; 2020, c. 192; 2022, c. 527.

§ 20-108.2. Guideline for determination of child support; quadrennial review by Child Support Guidelines Review Panel; executive summary.

A. There shall be a rebuttable presumption in any judicial or administrative proceeding for child support under this title or Title 16.1 or 63.2, including cases involving split custody, shared custody, or multiple custody arrangements pursuant to subdivisions G 4, 5, and 6, that the amount of the award which would result from the application of the guidelines set forth in this section is the correct amount of child support to be awarded. In order to rebut the presumption, the court shall make written findings in the order as set out in § 20-108.1, which findings may be incorporated by reference, that the application of the guidelines would be unjust or inappropriate in a particular case as determined by relevant evidence pertaining to the factors set out in § 20-108.1. The Department of Social Services shall set child support at the amount resulting from computations using the guidelines set out in this section pursuant

to the authority granted to it in Chapter 19 (§ 63.2-1900 et seq.) of Title 63.2 and subject to the provisions of § 63.2-1918.

B. For purposes of application of the guideline, a basic child support obligation shall be computed using the schedule set out below. For combined monthly gross income amounts falling between amounts shown in the schedule, basic child support obligation amounts shall be extrapolated. However, unless one of the following exemptions applies where the sole custody child support obligation as computed pursuant to subdivision G 1 is less than the statutory minimum per month, there shall be a presumptive minimum child support obligation of the statutory minimum per month payable by the payor parent. If the gross income of the obligor is equal to or less than 150 percent of the federal poverty level promulgated by the U.S. Department of Health and Human Services from time to time, then the court, upon hearing evidence that there is no ability to pay the presumptive statutory minimum, may set an obligation below the presumptive statutory minimum provided doing so does not create or reduce a support obligation to an amount which seriously impairs the custodial parent's ability to maintain minimal adequate housing and provide other basic necessities for the child. Exemptions from this presumptive minimum monthly child support obligation shall include: parents unable to pay child support because they lack sufficient assets from which to pay child support and who, in addition, are institutionalized in a psychiatric facility; are imprisoned for life with no chance of parole; are medically verified to be totally and permanently disabled with no evidence of potential for paying child support, including recipients of Supplemental Security Income (SSI); or are otherwise involuntarily unable to produce income. "Number of children" means the number of children for whom the parents share joint legal responsibility and for whom support is being sought. The guidelines worksheet relied upon by the court or the Department of Social Services to compute a child support obligation for a support order issued by such court or the Department shall be placed in the court's file or the Department's file, and a copy of such guidelines worksheet shall be provided to the parties.

SCHEDULE OF MONTHLY BASIC CHILD SUPPORT OBLIGATIONS

0-350	68	104	126	141	155	169
400	78	119	144	161	177	192
450	88	133	162	181	199	216
500	97	148	179	200	220	239
550	107	162	197	220	242	263
600	116	177	215	240	264	287
650	126	191	232	259	285	310
700	135	206	250	279	307	333
750	145	220	267	298	328	357
800	154	234	284	317	349	379
850	163	248	300	336	369	401
900	171	260	316	353	388	422

950	179	273	331	369	406	442
1000	187	285	346	386	425	462
1050	196	298	361	403	443	482
1100	204	310	375	419	461	501
1150	212	323	390	436	480	521
1200	220	335	405	453	498	541
1250	228	347	420	469	516	561
1300	237	360	435	486	535	581
1350	245	372	450	503	553	601
1400	253	385	465	519	571	621
1450	261	397	480	536	589	641
1500	269	410	495	552	608	661
1550	278	422	509	569	626	680
1600	286	434	524	585	644	700
1650	293	446	538	601	661	718
1700	301	457	552	616	678	737
1750	309	469	566	632	695	756
1800	316	481	579	647	712	774
1850	324	492	593	663	729	792
1900	331	504	607	678	746	811
1950	339	515	621	693	763	829
2000	347	527	635	709	780	848
2050	354	538	648	724	797	866
2100	362	550	662	740	814	884
2150	369	561	676	755	830	903
2200	377	573	690	770	847	921
2250	385	584	703	786	864	940
2300	392	596	717	801	881	958
2350	400	607	731	817	898	976
2400	407	619	745	832	915	995
2450	415	630	759	847	932	1013
2500	423	642	772	863	949	1032
2550	430	653	786	878	966	1050
2600	438	665	800	894	983	1068
2650	445	676	814	909	1000	1087
2700	453	688	828	924	1017	1105
2750	460	699	841	940	1034	1124

2800	468	711	855	955	1051	1142
2850	476	722	869	971	1068	1160
2900	483	734	883	986	1084	1179
2950	491	745	896	1001	1101	1197
3000	498	757	910	1017	1118	1216
3050	506	768	924	1032	1135	1234
3100	514	780	938	1047	1152	1252
3150	521	791	952	1063	1169	1271
3200	529	803	965	1078	1186	1289
3250	536	814	979	1094	1203	1308
3300	544	826	993	1109	1220	1326
3350	551	837	1006	1123	1236	1343
3400	559	848	1019	1138	1252	1361
3450	566	859	1032	1152	1268	1378
3500	574	870	1045	1167	1283	1395
3550	581	881	1057	1181	1299	1412
3600	588	892	1070	1196	1315	1430
3650	596	903	1083	1210	1331	1447
3700	603	914	1096	1224	1347	1464
3750	611	925	1109	1239	1363	1481
3800	618	936	1122	1253	1379	1499
3850	626	947	1135	1268	1395	1516
3900	632	956	1146	1280	1408	1531
3950	638	966	1157	1293	1422	1546
4000	645	975	1168	1305	1436	1561
4050	651	985	1180	1318	1449	1575
4100	658	994	1191	1330	1463	1590
4150	664	1004	1202	1342	1477	1605
4200	670	1013	1213	1355	1490	1620
4250	677	1023	1224	1367	1504	1635
4300	682	1030	1233	1377	1515	1647
4350	687	1038	1242	1387	1526	1658
4400	693	1046	1251	1397	1537	1670
4450	698	1054	1260	1407	1548	1682
4500	704	1062	1268	1417	1559	1694
4550	709	1069	1277	1427	1569	1706
4600	714	1077	1286	1437	1580	1718

4650	720	1085	1295	1447	1591	1730
4700	725	1093	1304	1457	1602	1742
4750	731	1100	1313	1466	1613	1753
4800	736	1108	1322	1476	1624	1765
4850	741	1116	1331	1486	1635	1777
4900	747	1124	1339	1496	1646	1789
4950	752	1131	1348	1506	1656	1800
5000	755	1136	1353	1511	1662	1807
5050	759	1141	1358	1516	1668	1813
5100	762	1145	1362	1522	1674	1820
5150	766	1150	1367	1527	1680	1826
5200	769	1155	1372	1533	1686	1833
5250	773	1159	1377	1538	1692	1839
5300	776	1164	1382	1544	1698	1846
5350	780	1169	1387	1549	1704	1852
5400	783	1173	1392	1554	1710	1859
5450	787	1178	1397	1560	1716	1865
5500	790	1183	1401	1565	1722	1872
5550	794	1187	1406	1571	1728	1878
5600	797	1192	1411	1576	1734	1885
5650	800	1196	1416	1582	1740	1891
5700	803	1201	1421	1587	1746	1897
5750	806	1205	1425	1592	1751	1904
5800	809	1209	1430	1598	1757	1910
5850	812	1213	1435	1603	1763	1917
5900	815	1217	1440	1608	1769	1923
5950	818	1221	1444	1613	1775	1929
6000	821	1226	1449	1619	1781	1936
6050	823	1230	1454	1624	1787	1942
6100	826	1234	1459	1629	1792	1948
6150	829	1238	1464	1635	1798	1955
6200	832	1242	1468	1640	1804	1961
6250	835	1246	1473	1645	1810	1967
6300	838	1251	1478	1651	1816	1974
6350	841	1255	1483	1656	1822	1980
6400	844	1259	1487	1661	1827	1986
6450	847	1263	1492	1667	1833	1993

6500	849	1267	1497	1672	1839	1999
6550	852	1271	1502	1677	1845	2005
6600	855	1276	1506	1683	1851	2012
6650	858	1280	1511	1688	1857	2018
6700	861	1285	1517	1694	1864	2026
6750	865	1291	1524	1703	1873	2036
6800	869	1297	1532	1711	1882	2046
6850	873	1303	1539	1719	1891	2056
6900	877	1309	1547	1728	1900	2066
6950	881	1315	1554	1736	1909	2076
7000	885	1321	1561	1744	1919	2085
7050	889	1328	1569	1752	1928	2095
7100	893	1334	1576	1761	1937	2105
7150	897	1340	1584	1769	1946	2115
7200	901	1346	1591	1777	1955	2125
7250	905	1352	1599	1786	1964	2135
7300	909	1358	1606	1794	1973	2145
7350	913	1364	1613	1802	1982	2155
7400	917	1370	1621	1810	1991	2165
7450	921	1376	1628	1819	2001	2175
7500	925	1382	1636	1827	2010	2185
7550	929	1389	1643	1835	2019	2194
7600	933	1395	1650	1844	2028	2204
7650	937	1401	1658	1852	2037	2214
7700	941	1407	1665	1860	2046	2224
7750	944	1411	1670	1865	2051	2230
7800	946	1413	1672	1867	2054	2233
7850	948	1416	1674	1870	2057	2236
7900	950	1419	1676	1873	2060	2239
7950	953	1421	1679	1875	2063	2242
8000	955	1424	1681	1878	2065	2245
8050	957	1426	1683	1880	2068	2248
8100	959	1429	1685	1883	2071	2251
8150	961	1432	1688	1885	2074	2254
8200	963	1434	1690	1888	2076	2257
8250	965	1436	1692	1890	2079	2260
8300	967	1439	1694	1892	2082	2263

8350	969	1441	1696	1895	2084	2266
8400	971	1444	1699	1897	2087	2269
8450	973	1446	1701	1899	2089	2271
8500	974	1447	1702	1901	2091	2273
8550	975	1449	1704	1903	2093	2276
8600	976	1450	1705	1905	2096	2278
8650	977	1452	1707	1907	2098	2280
8700	978	1453	1709	1909	2100	2282
8750	979	1455	1710	1911	2102	2284
8800	980	1456	1712	1912	2104	2287
8850	981	1457	1714	1914	2106	2289
8900	982	1459	1715	1916	2108	2291
8950	983	1460	1717	1918	2110	2293
9000	984	1462	1719	1920	2112	2295
9050	985	1463	1720	1922	2114	2298
9100	986	1465	1722	1923	2116	2300
9150	987	1466	1724	1925	2118	2302
9200	991	1471	1730	1932	2125	2310
9250	994	1477	1737	1940	2134	2319
9300	998	1483	1743	1947	2142	2328
9350	1002	1488	1750	1955	2150	2337
9400	1005	1494	1757	1962	2159	2346
9450	1009	1499	1764	1970	2167	2355
9500	1013	1505	1771	1978	2176	2365
9550	1017	1511	1778	1986	2185	2375
9600	1021	1518	1786	1995	2194	2385
9650	1025	1524	1793	2003	2203	2395
9700	1029	1530	1801	2011	2212	2405
9750	1033	1536	1808	2020	2222	2415
9800	1037	1543	1816	2028	2231	2425
9850	1041	1549	1823	2036	2240	2435
9900	1046	1555	1831	2045	2249	2445
9950	1050	1561	1838	2053	2258	2455
10000	1054	1567	1845	2061	2268	2465
10050	1058	1574	1853	2070	2277	2475
10100	1062	1580	1860	2078	2286	2485
10150	1066	1586	1868	2086	2295	2495

10200	1070	1592	1875	2095	2304	2505
10250	1074	1599	1883	2103	2314	2515
10300	1079	1605	1891	2112	2323	2525
10350	1083	1611	1898	2121	2333	2536
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10450	1091	1624	1914	2138	2351	2556
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10700	1112	1656	1952	2180	2398	2607
10750	1117	1662	1960	2189	2408	2617
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10850	1125	1675	1975	2206	2427	2638
10900	1129	1682	1983	2214	2436	2648
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11000	1138	1694	1998	2232	2455	2668
11050	1142	1701	2005	2240	2464	2678
11100	1146	1707	2013	2249	2474	2689
11150	1150	1714	2021	2257	2483	2699
11200	1154	1718	2026	2263	2489	2706
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11300	1159	1726	2034	2272	2499	2717
11350	1162	1730	2038	2276	2504	2722
11400	1165	1733	2042	2281	2509	2727
11450	1168	1737	2046	2285	2514	2733
11500	1171	1741	2050	2290	2519	2738
11550	1173	1745	2054	2294	2524	2743
11600	1176	1749	2058	2299	2529	2749
11650	1179	1752	2062	2303	2534	2754
11700	1182	1756	2066	2308	2538	2759
11750	1185	1760	2070	2312	2543	2765
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11850	1190	1768	2078	2321	2553	2775
11900	1193	1771	2082	2326	2558	2781
11950	1196	1775	2086	2330	2563	2786
12000	1199	1779	2090	2335	2568	2791

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12450	1226	1818	2135	2384	2623	2851
12500	1229	1823	2140	2391	2630	2858
12550	1232	1828	2146	2397	2636	2866
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12800	1248	1851	2173	2427	2670	2902
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12950	1257	1865	2189	2446	2690	2924
13000	1261	1870	2195	2452	2697	2931
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13100	1267	1879	2206	2464	2710	2946
13150	1270	1884	2211	2470	2717	2953
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13250	1276	1893	2222	2482	2730	2968
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13350	1283	1902	2233	2494	2744	2983
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13750	1306	1939	2280	2546	2801	3045
13800	1308	1944	2286	2553	2808	3053
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14050	1322	1967	2316	2586	2845	3093
14100	1325	1971	2322	2593	2852	3101
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14300	1336	1990	2345	2620	2882	3133
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14450	1345	2003	2363	2640	2904	3157
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14550	1350	2013	2375	2653	2919	3172
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14650	1356	2022	2387	2667	2933	3188
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14850	1368	2040	2410	2692	2961	3219
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14950	1375	2050	2420	2703	2974	3232
15000	1378	2055	2425	2709	2980	3239
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15200	1392	2074	2445	2731	3004	3266
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15350	1403	2088	2460	2748	3023	3286
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16000	1449	2150	2525	2821	3103	3373
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16100	1456	2159	2535	2832	3115	3386
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16200	1459	2164	2541	2838	3122	3394
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16350	1464	2171	2549	2847	3132	3404
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16450	1466	2175	2554	2853	3138	3411
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16550	1469	2179	2559	2859	3144	3418
16600	1471	2182	2562	2862	3148	3422
16650	1472	2184	2564	2864	3151	3425
16700	1473	2186	2567	2867	3154	3428
16750	1475	2188	2570	2870	3157	3432
16800	1476	2190	2572	2873	3160	3435
16850	1477	2192	2575	2876	3164	3439
16900	1479	2194	2577	2879	3167	3442
16950	1480	2196	2580	2882	3170	3446
17000	1481	2198	2582	2885	3173	3449
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17100	1484	2203	2588	2890	3179	3456
17150	1486	2205	2590	2893	3182	3459
17200	1487	2207	2593	2896	3186	3463
17250	1488	2209	2595	2899	3189	3466
17300	1490	2211	2598	2902	3192	3470
17350	1491	2213	2600	2905	3195	3473
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17450	1494	2217	2605	2910	3201	3480
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17550	1497	2222	2611	2916	3208	3487

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18000	1509	2240	2634	2942	3236	3518
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18150	1513	2247	2641	2950	3245	3528
18200	1514	2249	2644	2953	3249	3531
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18300	1517	2253	2649	2959	3255	3538
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18650	1532	2274	2671	2983	3282	3567
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18750	1537	2280	2677	2990	3289	3575
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19300	1560	2312	2711	3028	3331	3621
19350	1563	2315	2714	3031	3335	3625
19400	1565	2318	2717	3035	3338	3629

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19550	1571	2326	2726	3045	3350	3641
19600	1573	2329	2729	3049	3353	3645
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19750	1580	2338	2738	3059	3365	3658
19800	1582	2341	2742	3062	3369	3662
19850	1584	2344	2745	3066	3372	3666
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20000	1591	2353	2754	3076	3384	3678
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20100	1595	2358	2760	3083	3391	3686
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21450	1653	2437	2843	3176	3493	3797
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21800	1667	2458	2868	3204	3524	3831
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21900	1670	2464	2876	3213	3534	3841
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22000	1674	2470	2884	3221	3543	3852
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22150	1680	2479	2895	3234	3557	3867
22200	1681	2482	2899	3238	3562	3872
22250	1683	2485	2903	3243	3567	3877
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22650	1698	2509	2934	3277	3604	3918
22700	1700	2512	2937	3281	3609	3923
22750	1702	2515	2941	3285	3614	3928
22800	1704	2518	2945	3290	3619	3933
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22900	1707	2524	2953	3298	3628	3944
22950	1709	2527	2957	3302	3633	3949
23000	1711	2530	2960	3307	3637	3954
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23100	1715	2536	2968	3315	3647	3964

23150	1717	2539	2972	3320	3651	3969
23200	1718	2542	2976	3324	3656	3974
23250	1720	2545	2979	3328	3661	3979
23300	1722	2548	2983	3332	3666	3984
23350	1724	2551	2987	3337	3670	3990
23400	1726	2554	2991	3341	3675	3995
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23850	1742	2581	3025	3379	3717	4041
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23950	1746	2587	3033	3388	3727	4051
24000	1748	2590	3037	3392	3731	4056
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24200	1755	2602	3052	3409	3750	4077
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24300	1759	2608	3060	3418	3760	4087
24350	1761	2611	3064	3422	3764	4092
24400	1763	2614	3068	3426	3769	4097
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24500	1767	2620	3075	3435	3779	4107
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24650	1772	2629	3087	3448	3793	4123
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24800	1778	2638	3098	3461	3807	4138
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24950	1783	2647	3110	3474	3821	4153

25000	1785	2650	3114	3478	3826	4158
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25100	1789	2656	3121	3486	3835	4169
25150	1791	2659	3125	3491	3840	4174
25200	1792	2662	3129	3495	3844	4179
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25550	1805	2682	3156	3525	3877	4215
25600	1807	2685	3159	3529	3882	4220
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25700	1811	2691	3167	3538	3891	4230
25750	1813	2694	3171	3542	3896	4235
25800	1815	2697	3175	3546	3901	4240
25850	1817	2700	3179	3550	3906	4245
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26000	1822	2709	3190	3563	3920	4261
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26100	1826	2715	3198	3572	3929	4271
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26200	1830	2721	3205	3580	3938	4281
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26300	1833	2727	3213	3589	3948	4291
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26400	1837	2733	3221	3598	3957	4302
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26550	1842	2742	3232	3610	3971	4317
26600	1844	2745	3236	3615	3976	4322
26650	1846	2748	3240	3619	3981	4327
26700	1848	2751	3244	3623	3986	4332
26750	1850	2754	3248	3627	3990	4337
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27100	1863	2775	3274	3657	4023	4373
27150	1865	2778	3278	3662	4028	4378
27200	1867	2781	3282	3666	4033	4383
27250	1868	2784	3286	3670	4037	4389
27300	1870	2787	3290	3675	4042	4394
27350	1872	2790	3293	3679	4047	4399
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27500	1878	2799	3305	3692	4061	4414
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27600	1881	2805	3313	3700	4070	4424
27650	1883	2808	3316	3704	4075	4429
27700	1885	2811	3320	3709	4080	4435
27750	1887	2814	3324	3713	4084	4440
27800	1889	2817	3328	3717	4089	4445
27850	1891	2820	3332	3722	4094	4450
27900	1892	2823	3336	3726	4098	4455
27950	1894	2826	3339	3730	4103	4460
28000	1896	2829	3343	3734	4108	4465
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28100	1899	2833	3348	3740	4114	4472
28150	1900	2834	3349	3741	4115	4473
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28250	1901	2836	3350	3742	4116	4474
28300	1902	2836	3350	3742	4116	4474
28350	1902	2837	3351	3743	4117	4475
28400	1903	2838	3351	3743	4117	4476
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28500	1904	2839	3352	3744	4118	4477
28550	1905	2840	3352	3745	4119	4477
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28800	1908	2843	3354	3747	4122	4480
28850	1909	2844	3355	3747	4122	4481
28900	1909	2844	3355	3748	4123	4481
28950	1910	2845	3356	3748	4123	4482
29000	1911	2846	3356	3749	4124	4483
29050	1911	2846	3357	3749	4124	4483
29100	1912	2847	3357	3750	4125	4484
29150	1913	2848	3358	3750	4125	4484
29200	1913	2848	3358	3751	4126	4485
29250	1914	2849	3358	3751	4126	4485
29300	1915	2850	3359	3752	4127	4486
29350	1915	2850	3359	3752	4128	4487
29400	1916	2851	3360	3753	4128	4487
29450	1917	2852	3360	3753	4129	4488
29500	1917	2852	3361	3754	4129	4488
29550	1918	2853	3361	3754	4130	4489
29600	1919	2854	3361	3755	4130	4490
29650	1919	2855	3362	3755	4131	4490
29700	1920	2855	3362	3756	4131	4491
29750	1921	2856	3363	3756	4132	4491
29800	1921	2857	3363	3757	4132	4492
29850	1922	2857	3364	3757	4133	4492
29900	1923	2858	3364	3758	4133	4493
29950	1923	2859	3365	3758	4134	4494
30000	1924	2859	3365	3759	4135	4494
30050	1925	2860	3365	3759	4135	4495
30100	1925	2861	3366	3760	4136	4495
30150	1926	2861	3366	3760	4136	4496
30200	1926	2862	3367	3761	4137	4497
30250	1927	2863	3367	3761	4137	4497
30300	1928	2863	3368	3762	4138	4498
30350	1928	2864	3368	3762	4138	4498
30400	1929	2865	3368	3763	4139	4499
30450	1930	2865	3369	3763	4139	4499
30500	1930	2866	3369	3764	4140	4500

30550	1931	2867	3370	3764	4140	4501
30600	1932	2867	3370	3765	4141	4501
30650	1932	2868	3371	3765	4141	4502
30700	1933	2869	3371	3765	4142	4502
30750	1934	2869	3371	3766	4143	4503
30800	1934	2870	3372	3766	4143	4504
30850	1935	2871	3372	3767	4144	4504
30900	1936	2871	3373	3767	4144	4505
30950	1936	2872	3373	3768	4145	4505
31000	1937	2873	3374	3768	4145	4506
31050	1938	2874	3374	3769	4146	4506
31100	1938	2874	3375	3769	4146	4507
31150	1939	2875	3375	3770	4147	4508
31200	1940	2876	3375	3770	4147	4508
31250	1940	2876	3376	3771	4148	4509
31300	1941	2877	3376	3771	4148	4509
31350	1942	2878	3377	3772	4149	4510
31400	1942	2878	3377	3772	4150	4511
31450	1943	2879	3378	3773	4150	4511
31500	1943	2880	3378	3773	4151	4512
31550	1944	2880	3378	3774	4151	4512
31600	1945	2881	3379	3774	4152	4513
31650	1945	2882	3379	3775	4152	4513
31700	1946	2882	3380	3775	4153	4514
31750	1947	2883	3380	3776	4153	4515
31800	1947	2884	3381	3776	4154	4515
31850	1948	2884	3381	3777	4154	4516
31900	1949	2885	3382	3777	4155	4516
31950	1949	2886	3382	3778	4155	4517
32000	1950	2886	3382	3778	4156	4518
32050	1951	2887	3383	3779	4156	4518
32100	1951	2888	3383	3779	4157	4519
32150	1952	2888	3384	3780	4158	4519
32200	1953	2889	3384	3780	4158	4520
32250	1953	2890	3385	3781	4159	4520
32300	1954	2890	3385	3781	4159	4521
32350	1955	2891	3385	3782	4160	4522

32400	1955	2892	3386	3782	4160	4522
32450	1956	2893	3386	3783	4161	4523
32500	1957	2893	3387	3783	4161	4523
32550	1957	2894	3387	3784	4162	4524
32600	1958	2895	3388	3784	4162	4525
32650	1959	2895	3388	3784	4163	4525
32700	1959	2896	3389	3785	4163	4526
32750	1960	2897	3389	3785	4164	4526
32800	1960	2897	3389	3786	4165	4527
32850	1961	2898	3390	3786	4165	4527
32900	1962	2899	3390	3787	4166	4528
32950	1962	2899	3391	3787	4166	4529
33000	1963	2900	3391	3788	4167	4529
33050	1964	2901	3392	3788	4167	4530
33100	1964	2901	3392	3789	4168	4530
33150	1965	2902	3392	3789	4168	4531
33200	1966	2903	3393	3790	4169	4532
33250	1966	2903	3393	3790	4169	4532
33300	1967	2904	3394	3791	4170	4533
33350	1968	2905	3394	3791	4170	4533
33400	1968	2905	3395	3792	4171	4534
33450	1969	2906	3395	3792	4172	4534
33500	1970	2907	3395	3793	4172	4535
33550	1970	2907	3396	3793	4173	4536
33600	1971	2908	3396	3794	4173	4536
33650	1972	2909	3397	3794	4174	4537
33700	1972	2909	3397	3795	4174	4537
33750	1973	2910	3398	3795	4175	4538
33800	1974	2911	3398	3796	4175	4539
33850	1974	2912	3399	3796	4176	4539
33900	1975	2912	3399	3797	4176	4540
33950	1976	2913	3399	3797	4177	4540
34000	1976	2914	3400	3798	4177	4541
34050	1977	2914	3400	3798	4178	4541
34100	1977	2915	3401	3799	4178	4542
34150	1978	2916	3401	3799	4179	4543
34200	1979	2916	3402	3800	4179	4543

34250	1979	2917	3402	3800	4180	4544
34300	1980	2917	3402	3800	4181	4544
34350	1981	2918	3403	3801	4181	4545
34400	1981	2919	3403	3801	4182	4545
34450	1982	2919	3404	3802	4182	4546
34500	1983	2920	3404	3802	4183	4546
34550	1983	2921	3405	3803	4183	4547
34600	1984	2921	3405	3803	4184	4548
34650	1984	2922	3405	3804	4184	4548
34700	1985	2923	3406	3804	4185	4549
34750	1986	2923	3406	3805	4185	4549
34800	1986	2924	3407	3805	4186	4550
34850	1987	2925	3407	3806	4186	4550
34900	1988	2925	3407	3806	4187	4551
34950	1988	2926	3408	3807	4187	4552
35000	1989	2927	3408	3807	4188	4552

For gross monthly incomes above $35,000, add the amount of child support for $35,000 to the following percentages of gross income above $35,000.

ONE CHILD	TWO CHILDREN	THREE CHILDREN	FOUR CHILDREN	FIVE CHILDREN	SIX CHILDREN
2.6%	3.4%	3.8%	4.2%	4.6%	5.0%

C. For purposes of this section, "gross income" means all income from all sources, and shall include, but not be limited to, income from salaries, wages, commissions, royalties, bonuses, dividends, severance pay, pensions, interest, trust income, annuities, capital gains, social security benefits except as listed below, workers' compensation benefits, unemployment insurance benefits, disability insurance benefits, veterans' benefits, spousal support, rental income except as listed below, gifts, prizes, or awards.

If a parent's gross income includes disability insurance benefits, it shall also include any amounts paid to or for the child who is the subject of the order and derived by the child from the parent's entitlement to disability insurance benefits. To the extent that such derivative benefits are included in a parent's gross income, that parent shall be entitled to a credit against his or her ongoing basic child support obligation for any such amounts, and, if the amount of the credit exceeds the parent's basic child support obligations, the credit may be used to reduce arrearages.

Gross income shall be subject to deduction of reasonable business expenses for persons with income from self-employment, a partnership, or a closely held business. Gross rental income from any property owned individually, jointly, or by any entity shall be subject to deduction of reasonable expenses; however, the deduction shall not include the cost of acquisition, depreciation, or the principal portion

of any mortgage payment. The party claiming any deduction for reasonable business expenses or reasonable expenses for rental property shall have the burden of proof to establish such expenses by a preponderance of the evidence.

"Gross income" shall not include:

1. Benefits from public assistance and social services programs as defined in § 63.2-100;

2. Federal supplemental security income benefits;

3. Child support received; or

4. Income received by the payor from secondary employment income not previously included in "gross income," where the payor obtained the income to discharge a child support arrearage established by a court or administrative order and the payor is paying the arrearage pursuant to the order. "Secondary employment income" includes but is not limited to income from an additional job, from self-employment, or from overtime employment. The cessation of such secondary income upon the payment of the arrearage shall not be the basis for a material change in circumstances upon which a modification of child support may be based.

For purposes of this subsection: (i) spousal support received shall be included in gross income and spousal support paid shall be deducted from gross income when paid pursuant to an order or written agreement and (ii) one-half of any self-employment tax paid shall be deducted from gross income.

Where there is an existing court or administrative order or written agreement relating to the child or children of a party to the proceeding, who are not the child or children who are the subject of the present proceeding, then there is a presumption that there shall be deducted from the gross income of the party subject to such order or written agreement, the amount that the party is actually paying for the support of a child or children pursuant to such order or agreement.

Where a party to the proceeding has a natural or adopted child or children in the party's household or primary physical custody, and the child or children are not the subject of the present proceeding, there is a presumption that there shall be deducted from the gross income of that party the amount as shown on the Schedule of Monthly Basic Child Support Obligations contained in subsection B that represents that party's support obligation based solely on that party's income as being the total income available for the natural or adopted child or children in the party's household or primary physical custody, who are not the subject of the present proceeding. Provided, however, that the existence of a party's financial responsibility for such a child or children shall not of itself constitute a material change in circumstances for modifying a previous order of child support in any modification proceeding. Any adjustment to gross income under this subsection shall not create or reduce a support obligation to an amount which seriously impairs the custodial parent's ability to maintain minimal adequate housing and provide other basic necessities for the child, as determined by the court.

In cases in which retroactive liability for support is being determined, the court or administrative agency may use the gross monthly income of the parties averaged over the period of retroactivity.

D. Except for good cause shown or the agreement of the parties, in addition to any other child support obligations established pursuant to this section, any child support order shall provide that the parents pay in proportion to their gross incomes, as used for calculating the monthly support obligation, any reasonable and necessary unreimbursed medical or dental expenses. The method of payment of those expenses shall be contained in the support order. Each parent shall pay his respective share of expenses as those expenses are incurred. Any amount paid under this subsection shall not be adjusted by, nor added to, the child support calculated in accordance with subsection G. For the purposes of this section, medical or dental expenses shall include but not be limited to eyeglasses, prescription medication, prosthetics, orthodontics, and mental health or developmental disabilities services, including but not limited to services provided by a social worker, psychologist, psychiatrist, counselor, or therapist.

D1. In any initial child support proceeding commenced within six months of the birth of a child, except for good cause shown or the agreement of the parties, in addition to any other child support obligations established pursuant to this section, the child support order shall provide that the parents pay in proportion to their gross incomes, as used for calculating the monthly support obligation, any reasonable and necessary unpaid expenses of the mother's pregnancy and the delivery of such child. Any amount paid under this subsection shall not be adjusted by, nor added to, the child support calculated in accordance with subsection G.

E. The costs for health care coverage as defined in § 63.2-1900, vision care coverage, and dental care coverage for the child or children who are the subject of the child support order that are being paid by a parent or that parent's spouse shall be added to the basic child support obligation. To determine the cost to be added to the basic child support obligation, the cost per person shall be applied to the child or children who are subject of the child support order. If the per child cost is provided by the insurer, that is the cost per person. Otherwise, to determine the cost per person, the cost of individual coverage for the policy holder shall be subtracted from the total cost of the coverage, and the remaining amount shall be divided by the number of remaining covered persons.

F. Any child-care costs incurred on behalf of the child or children due to employment of the custodial parent shall be added to the basic child support obligation. Child-care costs shall not exceed the amount required to provide quality care from a licensed source. When requested by the noncustodial parent, the court may require the custodial parent to present documentation to verify the costs incurred for child care under this subsection. Where appropriate, the court shall consider the willingness and availability of the noncustodial parent to provide child care personally in determining whether child-care costs are necessary or excessive. Upon the request of either party, and upon a showing of the tax savings a party derives from child-care cost deductions or credits, the court shall factor actual tax consequences into its calculation of the child-care costs to be added to the basic child support obligation.

G. 1. Sole custody support. The sole custody total monthly child support obligation shall be established by adding (i) the monthly basic child support obligation, as determined from the schedule contained in subsection B, (ii) costs for health care coverage to the extent allowable by subsection E, and

(iii) work-related child-care costs and taking into consideration all the factors set forth in subsection B of § 20-108.1. The total monthly child support obligation shall be divided between the parents in the same proportion as their monthly gross incomes bear to their monthly combined gross income. The monthly obligation of each parent shall be computed by multiplying each parent's percentage of the parents' monthly combined gross income by the total monthly child support obligation.

However, the monthly obligation of the noncustodial parent shall be reduced by the cost for health care coverage to the extent allowable by subsection E when paid directly by the noncustodial parent or that parent's spouse. Unreimbursed medical and dental expenses shall be calculated and allocated in accordance with subsection D.

2. Split custody support. In cases involving split custody, the amount of child support to be paid shall be the difference between the amounts owed by each parent as a noncustodial parent, computed in accordance with subdivision 1, with the noncustodial parent owing the larger amount paying the difference to the other parent. Unreimbursed medical and dental expenses shall be calculated and allocated in accordance with subsection D.

For the purpose of this section and § 20-108.1, split custody shall be limited to those situations where each parent has physical custody of a child or children born of the parents, born of either parent and adopted by the other parent or adopted by both parents. For the purposes of calculating a child support obligation where split custody exists, a separate family unit exists for each parent, and child support for that family unit shall be calculated upon the number of children in that family unit who are born of the parents, born of either parent and adopted by the other parent or adopted by both parents. Where split custody exists, a parent is a custodial parent to the children in that parent's family unit and is a noncustodial parent to the children in the other parent's family unit.

3. Shared custody support.

(a) Where a party has custody or visitation of a child or children for more than 90 days of the year, as such days are defined in subdivision G 3 (c), a shared custody child support amount based on the ratio in which the parents share the custody and visitation of any child or children shall be calculated in accordance with this subdivision. The presumptive support to be paid shall be the shared custody support amount, unless a party affirmatively shows that the sole custody support amount calculated as provided in subdivision G 1 is less than the shared custody support amount. If so, the lesser amount shall be the support to be paid. For the purposes of this subsection, the following shall apply:

(i) Income share. "Income share" means a parent's percentage of the combined monthly gross income of both parents. The income share of a parent is that parent's gross income divided by the combined gross incomes of the parties.

(ii) Custody share. "Custody share" means the number of days that a parent has physical custody, whether by sole custody, joint legal or joint residential custody, or visitation, of a shared child per year divided by the number of days in the year. The actual or anticipated "custody share" of the parent who has or will have fewer days of physical custody shall be calculated for a one-year period. The

"custody share" of the other parent shall be presumed to be the number of days in the year less the number of days calculated as the first parent's "custody share." For purposes of this calculation, the year may begin on such date as is determined in the discretion of the court, and the day may begin at such time as is determined in the discretion of the court. For purposes of this calculation, a day shall be as defined in subdivision G 3 (c).

(iii) Shared support need. "Shared support need" means the presumptive guideline amount of needed support for the shared child or children calculated pursuant to subsection B of this section, for the combined gross income of the parties and the number of shared children, multiplied by 1.4.

(iv) Sole custody support. "Sole custody support" means the support amount determined in accordance with subdivision G 1.

(b) Support to be paid. The shared support need of the shared child or children shall be calculated pursuant to subdivision G 3 (a) (iii). This amount shall then be multiplied by the other parent's custody share. To that sum for each parent shall be added the other parent's or that parent's spouse's cost of health care coverage to the extent allowable by subsection E, plus the other parent's work-related child-care costs to the extent allowable by subsection F. This total for each parent shall be multiplied by that parent's income share. The support amounts thereby calculated that each parent owes the other shall be subtracted one from the other and the difference shall be the shared custody support one parent owes to the other, with the payor parent being the one whose shared support is the larger. Unreimbursed medical and dental expenses shall be calculated and allocated in accordance with subsection D.

(c) Definition of a day. For the purposes of this section, "day" means a period of 24 hours; however, where the parent who has the fewer number of overnight periods during the year has an overnight period with a child, but has physical custody of the shared child for less than 24 hours during such overnight period, there is a presumption that each parent shall be allocated one-half of a day of custody for that period.

(d) Minimum standards. Any calculation under this subdivision shall not create or reduce a support obligation to an amount which seriously impairs the custodial parent's ability to maintain minimal adequate housing and provide other basic necessities for the child. If the gross income of either party is equal to or less than 150 percent of the federal poverty level promulgated by the U.S. Department of Health and Human Services from time to time, then the shared custody support calculated pursuant to this subsection shall not be the presumptively correct support and the court may consider whether the sole custody support or the shared custody support is more just and appropriate.

(e) Support modification. When there has been an award of child support based on the shared custody formula and one parent consistently fails to exercise custody or visitation in accordance with the parent's custody share upon which the award was based, there shall be a rebuttable presumption that the support award should be modified.

(f) In the event that the shared custody support calculation indicates that the net support is to be paid to the parent who would not be the parent receiving support pursuant to the sole custody calculation, then the shared support shall be deemed to be the lesser support.

4. Multiple shared custody support. In cases with different shared custody arrangements for two or more minor children of the parties, the procedures in subdivision G 3 shall apply, except that one shared guideline shall be used to determine the total amount of child support owed by one parent to the other by:

(a) Calculating each parent's custody share by adding the total number of days, as defined in subdivision G 3 (c), that each parent has with each child and dividing such total number of days by the number of children of the parties to determine the average number of shared custody days; and

(b) Using each parent's custody share as determined in subdivision G 4 (a) for each parent to calculate the child support owed, in accordance with the provisions of subdivision G 3.

5. Sole and shared custody support. In cases where one parent has sole custody of one or more minor children of the parties, and the parties share custody of one or more other minor children of the parties, the procedures in subdivisions G 1 and 3 shall apply, except that one sole custody support guideline calculation and one shared custody support guideline calculation shall be used to determine the total amount of child support owed by one parent to the other by:

(a) Calculating the sole custody support obligation by:

(i) Calculating the per child monthly basic child support obligation by determining, for the number of children of the parties, the scheduled monthly basic child support obligation and dividing that amount by the number of children of the parties;

(ii) Calculating the sole custody pro rata monthly basic child support obligation by multiplying the per child monthly basic child support obligation determined in subdivision G 5 (a) (i) by the number of children subject to the sole custody support obligation; and

(iii) Applying the sole custody pro rata monthly basic child support obligation determined in subdivision G 5 (a) (ii) to the procedures in subdivision G 1.

(b) Calculating the shared custody child support obligation by:

(i) Calculating the per child monthly basic child support obligation by determining, for the number of children of the parties, the scheduled monthly basic child support obligation and dividing that amount by the number of children of the parties;

(ii) Calculating the shared custody pro rata monthly basic child support obligation by multiplying the per child monthly basic child support obligation determined in subdivision G 5 (b) (i) by the number of children subject to the shared custody support obligation; and

(iii) Applying the shared custody pro rata monthly basic child support obligation determined in subdivision G 5 (b) (ii) to the procedures in subdivision G 3.

(c) Determining the total amount of child support owed by one parent to the other. Where one parent owes both the sole custody support obligation and the shared custody support obligation to the other parent, the total of both such obligations calculated pursuant to subdivisions G 5 (a) and G 5 (b) shall be added to determine the total amount of child support owed by one parent to the other. Where one parent owes one such obligation to the other parent, and such other parent owes the other such obligation to the other such parent, the parent owing the greater obligation amount to the other parent shall pay the difference between the obligations to such other parent.

6. Split and shared custody support. In cases where the parents have split custody of two or more children, and there is a shared custody arrangement with one or more other minor children of the parties, the procedures set forth in subdivisions G 2 and G 3 shall apply, except that one split custody child support guideline calculation and one shared custody child support guideline calculation shall be used to calculate the total amount of child support owed by one parent to the other by:

(a) Calculating the split custody child support obligation by:

(i) Calculating the per child monthly basic child custody support obligation by determining, for the number of children of the parties, the scheduled monthly basic child support obligation and dividing that amount by the number of children of the parties;

(ii) Calculating the split custody pro rata monthly basic child support obligation by multiplying the per child monthly basic child support obligation determined in subdivision G 6 (a) (i) by the number of children subject to the split custody support obligation; and

(iii) Applying the split custody pro rata monthly basic child support obligation determined in subdivision G 6 (a) (ii) for each parent to the procedures in subdivision G 2.

(b) Calculating the shared custody child support obligation by:

(i) Calculating the per child monthly basic child custody support obligation by determining, for the number of children of the parties, the scheduled monthly basic child support obligation and dividing that amount by the number of children of the parties;

(ii) Calculating the shared custody pro rata monthly basic child custody support obligation by multiplying the per child monthly basic child support obligation determined in subdivision G 6 (b) (i) by the number of children subject to the shared custody support obligation; and

(iii) Applying the shared custody pro rata monthly basic child support obligation determined in subdivision G 6 (b) (ii) to the procedures in subdivision G 3.

(c) Determining the total amount of child support owed by one parent to the other. Where one parent owes both the split custody support obligation and the shared custody support obligation to the other parent, the total of both such obligations calculated pursuant to subdivisions G 6 (a) and G 6 (b) shall be added to determine the total amount of child support owed by one parent to the other. Where one parent owes one such obligation to the other parent, and such other parent owes the other such oblig-

ation to the other such parent, the parent owing the greater obligation amount to the other parent shall pay the difference between the obligations to such other parent.

H. The Secretary of Health and Human Resources shall ensure that the guideline set out in this section is reviewed by October 31, 2001, and every four years thereafter, by the Child Support Guidelines Review Panel, consisting of 15 members comprised of four legislative members and 11 nonlegislative citizen members. Members shall be appointed as follows: three members of the House Committee for Courts of Justice, upon the recommendation of the chairman of such committee, to be appointed by the Speaker of the House of Delegates in accordance with the principles of proportional representation contained in the Rules of the House of Delegates; one member of the Senate Committee on the Judiciary, upon the recommendation of the chairman of such committee, to be appointed by the Senate Committee on Rules; and one representative of a juvenile and domestic relations district court, one representative of a circuit court, one representative of the Department of Social Services' Division of Child Support Enforcement, three members of the Virginia State Bar, two custodial parents, two noncustodial parents, and one child advocate, upon the recommendation of the Secretary of Health and Human Resources, to be appointed by the Governor. The Panel shall determine the adequacy of the guideline for the determination of appropriate awards for the support of children by considering current research and data on the cost of and expenditures necessary for rearing children, and any other resources it deems relevant to such review. The Panel shall report its findings to the General Assembly as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports before the General Assembly next convenes following such review.

Legislative members shall serve terms coincident with their terms of office. Nonlegislative citizen members shall serve at the pleasure of the Governor. All members may be reappointed. Appointments to fill vacancies, other than by expiration of a term, shall be made for the unexpired terms. Vacancies shall be filled in the same manner as the original appointments.

Legislative members shall receive such compensation as provided in § 30-19.12, and nonlegislative citizen members shall receive such compensation for the performance of their duties as provided in § 2.2-2813. All members shall be reimbursed for all reasonable and necessary expenses incurred in the performance of their duties as provided in §§ 2.2-2813 and 2.2-2825. Funding for the costs of compensation and expenses of the members shall be provided by the Department of Social Services.

The Department of Social Services shall provide staff support to the Panel. All agencies of the Commonwealth shall provide assistance to the Panel, upon request.

The chairman of the Panel shall submit to the Governor and the General Assembly a quadrennial executive summary of the interim activity and work of the Panel no later than the first day of 2006 regular session of the General Assembly and every four years thereafter. The executive summary shall be submitted as provided in the procedures of the Division of Legislative Automated Systems for the

processing of legislative documents and reports and shall be posted on the General Assembly's website.

1988, c. 907; 1989, cc. 578, 579, 599; 1991, cc. 545, 588; 1992, cc. 79, 716, 860; 1995, cc. 1, 481; 1996, cc. 491, 947, 1029; 1998, c. 618; 1999, cc. 690, 808, 836; 2000, cc. 219, 305, 376, 384, 461; 2001, cc. 193, 809; 2002, cc. 650, 747; 2003, c. 885; 2004, cc. 907, 1008; 2005, c. 758; 2006, cc. 785, 798; 2008, c. 697; 2009, c. 713; 2010, c. 243; 2014, c. 667; 2015, c. 510; 2018, cc. 21, 22, 110, 191; 2020, c. 177; 2022, c. 427.

§ 20-109. Changing maintenance and support for a spouse; effect of stipulations as to maintenance and support for a spouse; cessation upon cohabitation, remarriage, or death; effect of retirement. A. Upon petition of either party the court may increase, decrease, or terminate the amount or duration of any spousal support and maintenance that may thereafter accrue, whether previously or hereafter awarded, as the circumstances may make proper. Upon order of the court based upon clear and convincing evidence that the spouse receiving support has been habitually cohabiting with another person in a relationship analogous to a marriage for one year or more commencing on or after July 1, 1997, the court shall terminate spousal support and maintenance unless (i) otherwise provided by stipulation or contract or (ii) the spouse receiving support proves by a preponderance of the evidence that termination of such support would be unconscionable. The provisions of this subsection shall apply to all orders and decrees for spousal support, regardless of the date of the suit for initial setting of support, the date of entry of any such order or decree, or the date of any petition for modification of support.

B. The court may consider a modification of an award of spousal support for a defined duration upon petition of either party filed within the time covered by the duration of the award. Upon consideration of the factors set forth in subsection E of § 20-107.1, the court may increase, decrease or terminate the amount or duration of the award upon finding that (i) there has been a material change in the circumstances of the parties, not reasonably in the contemplation of the parties when the award was made or (ii) an event which the court anticipated would occur during the duration of the award and which was significant in the making of the award, does not in fact occur through no fault of the party seeking the modification. The provisions of this subsection shall apply only to suits for initial spousal support orders filed on or after July 1, 1998, and suits for modification of spousal support orders arising from suits for initial support orders filed on or after July 1, 1998.

C. In suits for divorce, annulment and separate maintenance, and in proceedings arising under subdivision A 3 or subsection L of § 16.1-241, if a stipulation or contract signed by the party to whom such relief might otherwise be awarded is filed before entry of a final decree, no decree or order directing the payment of support and maintenance for the spouse, suit money, or counsel fee or establishing or imposing any other condition or consideration, monetary or nonmonetary, shall be entered except in accordance with that stipulation or contract. If such a stipulation or contract is filed after entry of a final decree and if any party so moves, the court shall modify its decree to conform to such stipulation or contract. No request for modification of spousal support based on a material change in circumstances

or the terms of stipulation or contract shall be denied solely on the basis of the terms of any stipulation or contract that is executed on or after July 1, 2018, unless such stipulation or contract expressly states that the amount or duration of spousal support is non-modifiable.

D. Unless otherwise provided by stipulation or contract, spousal support and maintenance shall terminate upon the death of either party or remarriage of the spouse receiving support. The spouse entitled to support shall have an affirmative duty to notify the payor spouse immediately of remarriage at the last known address of the payor spouse.

E. For purposes of the modification of an award of spousal support, and without precluding the ability of a party to otherwise file for a modification of spousal support based upon any other material change in circumstances, the payor spouse's attainment of full retirement age shall be considered a material change in circumstances. For the purposes of this subsection, "full retirement age" means the normal retirement age at which a person is eligible to receive full retirement benefits under the federal Social Security Act, but "full retirement age" does not mean "early retirement age" as defined under the federal Social Security Act (42 U.S.C. § 416, as amended).

F. In an action for the increase, decrease, or termination of spousal support based on the retirement of the payor spouse pursuant to subsection E, where the court finds that there has been a material change in circumstances, the court shall determine whether any modification or termination of such spousal support should be granted. In making such determination, the court may consider the factors set forth in subsection E of § 20-107.1 and shall consider the following factors:

1. Whether retirement was contemplated by the court and specifically considered by the court when the spousal support was awarded;

2. Whether the retirement is mandatory or voluntary, and the terms and conditions related to such retirement;

3. Whether the retirement would result in a change in the income of either the payor or the payee spouse;

4. The age and health of the parties;

5. The duration and amount of spousal support already paid; and

6. The assets or property interest of each of the parties during the period from the date of the support order and up to the date of the hearing on modification or termination.

The provisions of this subsection (i) shall be subject to the provisions regarding stipulations or contracts as set forth in subsection C, and (ii) shall not apply to a contract or stipulation that is non-modifiable.

The provisions of this subsection and subsection E shall apply to suits for modification or termination of spousal support orders regardless of the date of the suit for initial setting of support or the date of entry of any such order or decree.

G. In any action for the increase, decrease, or termination of spousal support, if the court finds that there has been a material change in circumstances, the court may consider the factors set forth in subsection E of § 20-107.1 and subsection F of this section in making its determination as to whether any modification or termination of such support should be granted. The court shall further consider the assets or property interest of each of the parties from the date of the support order and up to the time of the hearing on modification or termination, and any income generated from the asset or property interest. Any order granting or denying a request for the modification or termination of spousal support shall be accompanied by written findings and conclusions of the court identifying the factors set forth in subsection E of § 20-107.1 and subsection F of this section that support the court's order.

Code 1919, § 5111; 1934, p. 516; 1938, p. 784; 1944, p. 397; 1948, p. 593; 1972, c. 482; 1975, c. 644; 1977, c. 222; 1978, c. 746; 1987, c. 694; 1994, c. 518; 1997, c. 241; 1998, c. 604; 2000, cc. 218, 221; 2001, cc. 725, 740; 2018, cc. 583, 701; 2020, c. 585.

§ 20-109.1. Affirmation, ratification and incorporation by reference in decree of agreement between parties.

Any court may affirm, ratify and incorporate by reference in its decree dissolving a marriage or decree of divorce whether from the bond of matrimony or from bed and board, or by a separate decree prior to or subsequent to such decree, or in a decree entered in a suit for annulment or separate maintenance, and in a proceeding arising under subsection A 3 or L of § 16.1-241, any valid agreement between the parties, or provisions thereof, concerning the conditions of the maintenance of the parties, or either of them and the care, custody and maintenance of their minor children, or establishing or imposing any other condition or consideration, monetary or nonmonetary. Provisions in such agreements for the modification of child support shall be valid and enforceable. Unless otherwise provided for in such agreement or decree incorporating such agreement, such future modifications shall not require a subsequent court decree. This section shall be subject to the provisions of § 20-108. Where the court affirms, ratifies and incorporates by reference in its decree such agreement or provision thereof, it shall be deemed for all purposes to be a term of the decree, and enforceable in the same manner as any provision of such decree. The provisions of this section shall apply to any decree hereinbefore or hereinafter entered affirming, ratifying and incorporating an agreement as provided herein. Upon the death or remarriage of the spouse receiving support, spousal support shall terminate unless otherwise provided by stipulation or contract. In any case where jurisdiction is obtained over a nonresident defendant by order of publication or by acceptance of service pursuant to § 20-99.1:1, any properly acknowledged and otherwise valid agreement entered into between the parties may be affirmed, ratified and incorporated as provided in this section.

1970, c. 501; 1972, c. 482; 1978, c. 746; 1979, c. 659; 1982, c. 312; 1987, c. 424; 1996, c. 331; 2003, c. 260.

§ 20-110. Maintenance and support for a spouse to cease on remarriage.

If any former spouse to whom support and maintenance has been awarded shall thereafter marry, such support and maintenance shall cease as of the date of such marriage. The spouse entitled to

current support shall have an affirmative duty to notify the payor spouse immediately of such remarriage. Failure of such spouse to notify the payor shall entitle the payor to restitution equal to the amount of any current support and maintenance paid after the date of the remarriage, together with interest from the date of the remarriage and reasonable attorney's fees and costs.

Code 1919, § 5111; 1944, p. 397; 1948, p. 593; 1975, c. 644; 2000, c. 221.

§ 20-111. Decree of divorce from bond of matrimony extinguishes contingent property rights.

Upon the entry of a decree of divorce from the bond of matrimony, all contingent rights of either consort in the real and personal property of the other then existing, or thereafter acquired, including the right of survivorship in real or personal property title to which is vested in the parties as joint tenants or as tenants by the entirety, with survivorship as at common law, shall be extinguished, and such estate by the entirety shall thereupon be converted into a tenancy in common.

Code 1919, § 5111; 1926, p. 105; 1927, p. 184; 1934, p. 516; 1938, p. 784; 1944, p. 397; 1948, p. 593.

§ 20-111.1. Revocation of death benefits by divorce or annulment.

A. Except as otherwise provided under federal law or law of this Commonwealth, upon the entry of a decree of annulment or divorce from the bond of matrimony on and after July 1, 1993, any revocable beneficiary designation contained in a then existing written contract owned by one party that provides for the payment of any death benefit to the other party is revoked. A death benefit prevented from passing to a former spouse by this section shall be paid as if the former spouse had predeceased the decedent. The payor of any death benefit shall be discharged from all liability upon payment in accordance with the terms of the contract providing for the death benefit, unless the payor receives written notice of a revocation under this section prior to payment.

B. The term "death benefit" includes any payments under a life insurance contract, annuity, retirement arrangement, compensation agreement or other contract designating a beneficiary of any right, property or money in the form of a death benefit.

C. This section shall not apply (i) to the extent a decree of annulment or divorce from the bond of matrimony, or a written agreement of the parties provides for a contrary result as to specific death benefits, or (ii) to any trust or any death benefit payable to or under any trust.

D. If this section is preempted by federal law with respect to the payment of any death benefit, a former spouse who, not for value, receives the payment of any death benefit that the former spouse is not entitled to under this section is personally liable for the amount of the payment to the person who would have been entitled to it were this section not preempted.

E. Every decree of annulment or divorce from the bond of matrimony entered on or after July 1, 2012, shall contain the following notice in conspicuous, bold print:

Beneficiary designations for any death benefit, as defined in subsection B of § 20-111.1 of the Code of Virginia, made payable to a former spouse may or may not be automatically revoked by operation of law upon the entry of a final decree of annulment or divorce. If a party intends to revoke any

beneficiary designation made payable to a former spouse following the annulment or divorce, the party is responsible for following any and all instructions to change such beneficiary designation given by the provider of the death benefit. Otherwise, existing beneficiary designations may remain in full force and effect after the entry of a final decree of annulment or divorce.

1993, c. 417; 2007, c. 306; 2012, c. 493.

§ 20-112. Notice when proceedings reopened.

When the proceedings are reopened to increase, decrease or terminate maintenance and support for a spouse or for a child, or to request additional orders to effectuate previous orders entered pursuant to § 20-107.3, the petitioning party shall give such notice to the other party by service of process or by order of publication as is required by law. Except as provided by § 20-110, no support order may be retroactively modified, but may be modified with respect to any period during which there is a pending petition for modification in any court, but only from the date that notice of such petition has been given to the responding party.

Code 1919, § 5111; 1944, p. 397; 1948, p. 593; 1975, c. 644; 1987, c. 649; 1991, c. 698; 2000, c. 221; 2004, c. 204.

§ 20-113. Procedure when respondent fails to perform order for support and maintenance of child or spouse or owes support and maintenance or additional support and maintenance.

The court, when it finds the respondent has failed to perform the order of the court concerning the custody or the maintenance and support of the child or support and maintenance of the spouse, or under the existing circumstances is under the duty to render support or additional support to the child or to pay for the support and maintenance of the spouse, may proceed to deal with the respondent as provided in §§ 20-79.1, 20-114, and 20-115. In addition, the court may enter a qualified domestic relations order or other order for the purpose of enforcing a support order by attaching or garnishing any pension, profit-sharing, or deferred compensation plan or retirement benefits pursuant to the United States Internal Revenue Code or other applicable federal laws. The court may revise and alter its decree as to the child or support and maintenance of the spouse, and grant leave to the petitioner to proceed in the appropriate juvenile and domestic relations district court in conformity with any applicable law; or it may, at the application of any party or on its own motion certify its final order granting support of the child or support and maintenance of the spouse to such juvenile and domestic relations district court for enforcement of collection as though such order had been made in such juvenile and domestic relations district court, in accordance with § 20-79 (c).

When the petitioner has been granted leave to proceed in a juvenile and domestic relations district court all proceedings thereafter shall conform to the provisions of Chapter 5 (§ 20-61 et seq.).

Code 1919, § 5111; 1944, p. 398; 1948, p. 593; 1964, c. 273; 1968, c. 483; 1970, c. 761; 1975, c. 644; 1982, c. 298; 2012, c. 39.

§ 20-114. Recognizance for compliance with order or decree.

Upon the entry, or thereafter, of any order or decree for support and maintenance for a spouse or a child or children in a pending or concluded divorce suit, a mensa et thoro or a vinculo matrimonii or suit for separate maintenance, the court in its discretion may require the giving of a recognizance, with or without surety, for compliance therewith, by the party against whom such order or decree is entered.

1942, p. 639; Michie Code 1942, § 5111a; 1975, c. 644.

§ 20-115. Commitment and sentence for failure to comply with order or decree.

Upon failure or refusal to give the recognizance provided for in § 20-114, or upon conviction of any party for contempt of court in (i) failing or refusing to comply with any order or decree for support and maintenance for a spouse or for a child or children or (ii) willfully failing or refusing to comply with any order entered pursuant to § 20-103 or § 20-107.3, the court (i) may commit and sentence such party to a local correctional facility as provided for in § 20-61 and (ii) may assign the party to a work release program pursuant to § 53.1-131 or to perform public service work; in either event the assignment shall be for a fixed or indeterminate period or until the further order of the court. However, in no event shall commitment or work assignment be for more than twelve months. The sum or sums as provided for in § 20-63, shall be paid as therein set forth, to be used for the support and maintenance of the spouse or the child or children for whose benefit such order or decree provided.

1942, p. 639; Michie Code 1942, § 5111a; 1975, c. 644; 1991, c. 698; 1995, c. 428.

§ 20-116. Effect of divorce from bed and board and what court may decree.

In granting a divorce from bed and board, the court may decree that the parties be perpetually separated and protected in their persons and property. Such decree shall operate upon property thereafter acquired, and upon the personal rights and legal capacities of the parties, as a decree for a divorce from the bond of matrimony, except that neither party shall marry again during the life of the other.

Code 1919, § 5112.

§ 20-117. Divorce from bond of matrimony after divorce from bed and board.

The granting of a divorce from bed and board shall not be a bar to either party obtaining a divorce from the bonds of matrimony on any ground which would justify a divorce from the bonds of matrimony if no divorce from bed and board had been granted, unless the cause for absolute divorce was existing and known to the party applying for the divorce from the bonds of matrimony before the decree of divorce from bed and board was entered.

1934, p. 504; Michie Code 1942, § 5112a.

§ 20-118. Prohibition of remarriage pending appeal from divorce decree; certain marriages validated.

On the dissolution of the bond of matrimony for any cause arising subsequent to the date of the marriage, if objections or exceptions are noted or filed to the final decree and a bond is given staying the execution thereof, the court shall decree that neither party shall remarry pending the perfecting of an appeal from said final judgment of the trial court.

Marriages heretofore celebrated in violation of any prohibition against remarriage shall not hereafter be deemed to be invalid because of the violation of such prohibition, provided that the parties to such a marriage have continued to reside together as husband and wife until the first day of July, 1960, or until such time as one of the parties dies prior to July 1, 1960.

Code 1919, § 5113; 1934, p. 445; 1944, p. 181; 1960, c. 399; 1962, c. 290.

§ 20-119. Repealed.

Repealed by Acts 1975, c. 644.

§ 20-120. Revocation of decree from bed and board.

A decree of divorce from bed and board entered in a suit pursuant to § 20-95 shall at any time thereafter, upon submission of an order endorsed by both parties or counsel, be revoked by the same court which entered such decree of divorce.

Code 1919, § 5115; 1926, p. 859; 1934, p. 21; 1942, p. 158; 1946, p. 264; 1948, p. 539; 1975, c. 644; 1984, c. 537.

§ 20-121. Merger of decree for divorce from bed and board with decree for divorce from bond of matrimony.

In any case where a decree of divorce from bed and board has been granted, and the court shall determine that one year has elapsed since the event which gave rise to such divorce or, in any case where the parties have entered into a separation agreement and there are no minor children either born of the parties, born of either party and adopted by the other or adopted by both parties, that six months has elapsed since such event, and the parties have been separated without interruption since such divorce was granted and no reconciliation is probable, it may merge such decree into a decree for divorce from the bond of matrimony upon application of either party. The injured party need not give the guilty party notice of his application to the court if such application is limited to such merger nor of the taking of depositions in support thereof, but shall give due notice if he raises new matters. If the guilty party initiates proceedings for such merger he shall give the other party ten days' notice thereof. No final decree for divorce entered in such a case shall terminate or otherwise affect any restraining order, or order for the payment of costs, counsel fees, support and maintenance for a spouse or child or children except as specifically provided in such decree. The provisions of this section shall apply to the divorces from bed and board, which have been heretofore granted.

Code 1919, § 5115; 1926, p. 859; 1934, p. 21; 1942, p. 158; 1946, p. 264; 1948, p. 539; 1950, p. 634; 1952, c. 100; 1960, c. 19; 1968, c. 326; 1975, c. 644; 1979, c. 1; 1987, c. 38; 1988, c. 404.

§ 20-121.01. Decree of divorce from bonds of matrimony without decree from bed and board.

In any case where willful desertion or cruelty is the ground for divorce and the bill of complaint prays for a divorce from bed and board the court may enter a decree of divorce from the bonds of matrimony without the entry of a decree from bed and board if the statutory period, as set out in § 20-121, has elapsed prior to the entry of said decree and if the court shall be of the opinion that no reconciliation has taken place, or is probable.

1956, c. 93; 1970, c. 538; 1975, c. 644.

§ 20-121.02. Decree of divorce without amended bill or amended cross-bill.

In any divorce suit wherein a bill of complaint or cross-bill prays for a divorce from the bonds of matrimony under § 20-91 or prays for a divorce from bed and board under § 20-95, at such time as there exists in either party's favor grounds for a divorce from the bonds of matrimony under § 20-91 A (9), either party may move the court wherein such divorce suit is pending for a divorce from the bonds of matrimony on the grounds set out in § 20-91 A (9) without amending the bill of complaint or cross-bill.

1977, c. 283; 1984, c. 633; 1986, c. 252; 1988, c. 362; 1989, c. 207.

§ 20-121.03. Identifying information confidential; separate addendum.

Any petition, pleading, motion, order, or decree filed under this chapter, including any agreements of the parties or transcripts, shall not contain the social security number of any party or of any minor child of any party, or any financial information of any party that provides identifying account numbers for specific assets, liabilities, accounts, or credit cards. Such information if required by law to be provided to a governmental agency or required to be recorded for the benefit or convenience of the parties, shall be contained in a separate addendum filed by the attorney or party. Such separate addendum shall be used to distribute the information only as required by law. Such addendum shall otherwise be made available only to the parties, their attorneys, and to such other persons as the court in its discretion may allow. The attorney or party who prepares or submits a petition, pleading, motion, agreement, order, or decree shall ensure that any information protected pursuant to this section is removed prior to filing with the clerk and that any separate addendum is incorporated by reference into the petition, pleading, motion, agreement, order or decree. The clerk has the authority to reject any petition, pleading, motion, agreement, order, or decree for recordation as a land record that does not comply with the provisions of this section.

2005, c. 500; 2006, c. 734; 2007, cc. 548, 626.

§ 20-121.1. Reinstatement of suit.

In any suit which has been stricken from the docket, and in which complete relief has not been obtained, upon the motion or application of either party to the original proceedings, the same shall be reinstated upon the docket for such purposes as may be necessary to grant full relief to all parties.

1948, p. 540; Michie Suppl. 1948, § 5115.

§ 20-121.2. Validation of absolute divorce granted where no decree from bed and board.

Any absolute divorce granted in this Commonwealth under circumstances in which the bill of complaint prayed for a divorce from bed and board with leave to merger the same into an absolute divorce at the end of the statutory period and in which the decree of absolute divorce was entered with no decree from bed and board because the statutory period elapsed prior to the entry of said decree, is hereby validated, provided such divorce proceeding was otherwise conducted according to law.

1956, c. 136.

§ 20-121.3. Validation of certain divorces granted prior to April 23, 1962.

Every divorce granted by any court of record of this Commonwealth prior to April 23, 1962, and otherwise valid shall be valid notwithstanding the fact that depositions were taken, and not continued or adjourned, on a date other than that specified in the notice to take depositions.

1970, c. 414.

§ 20-121.4. Restoration of former name.

Upon decreeing a divorce from the bond of matrimony the court shall, on motion of a party who changed his or her name by reason of the marriage, restore such party's former name or maiden name by separate order meeting the requirements of § 8.01-217.

1979, c. 1; 1990, c. 569; 2003, c. 258.

§ 20-122. Advertising offer to obtain divorces.

Whosoever prints, publishes, distributes, or circulates, or causes to be printed, published, distributed, or circulated, any circular, pamphlet, card, handbill, advertisement, printed paper, book, newspaper, or notice of any kind, offering to procure, or aid in procuring, any divorce, or the severance, dissolution, or annulment of any marriage, either in this Commonwealth or elsewhere, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined not less than $190 nor more than $300, provided that the provisions of this section shall not apply to a duly licensed attorney-at-law, partnership composed of duly licensed attorneys-at-law or a professional corporation incorporated for the practice of law so long as such attorney, partnership or professional corporation conducts such advertisement in accordance with the Rules of Court promulgated by the Supreme Court of Virginia. This section shall not apply to the printing or publishing of any notice or advertisement required or authorized by any law of this Commonwealth or orders of any court.

Code 1919, § 5116; 1975, c. 644; 1979, c. 438.

§ 20-123. Repealed.

Repealed by Acts 1964, c. 99.

§ 20-124. Sequestration of record.

Upon motion of a party to any suit under this chapter, the court may order the record thereof or any agreement of the parties, filed therein, to be sealed and withheld from public inspection and thereafter the same shall only be opened to the parties, their respective attorneys, and to such other persons as the judge of such court at his discretion decides have a proper interest therein.

1978, c. 484; 1990, c. 623.

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, step-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, subsection B of § 18.2-366, or an equivalent offense of another state, the United States, or any foreign jurisdiction, 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.

1994, c. 769; 1997, c. 690; 1999, c. 1028; 2000, c. 830; 2003, c. 229; 2005, c. 890; 2014, c. 653.

§ 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. 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 determining custody, the court shall give primary consideration to the best interests of the child. The court shall consider and may award joint legal, joint physical, or sole custody, and there shall be no presumption in favor of any form of custody. 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.

B1. In any case or proceeding involving the custody or visitation of a child, as to a parent, the court may, in its discretion, use the phrase "parenting time" to be synonymous with the term "visitation."

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

C. The court may order that support be paid for any child of the parties. Upon request of either party, the court may order that such support payments be made to a special needs trust or an ABLE savings trust account as defined in § 23.1-700. 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 that support be paid or continue to be paid for any child over the age of 18 who is (a) severely and permanently mentally or physically disabled, and such disability existed prior to the child reaching the age of 18 or the age of 19 if the child met the requirements of clauses (i), (ii), and (iii); (b) unable to live independently and support himself; and (c) residing 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 either party or both parties provide health care coverage or cash medical support, or both.

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 authority to punish as contempt of court any willful failure of a party to comply with the provisions of the order. A parent or other person having legal custody of a child may petition the court to enjoin and the court may enter an order to enjoin a parent of the child from filing a petition relating to custody and

visitation of that child for any period of time up to 10 years if doing so is in the best interests of the child and such parent has been convicted of an offense under the laws of the Commonwealth or a substantially similar law of another state, the United States, or any foreign jurisdiction which constitutes (i) murder or voluntary manslaughter, or a felony attempt, conspiracy or solicitation to commit any such offense, if the victim of the offense was a child of the parent, a child with whom the parent resided at the time the offense occurred, or the other parent of the child, or (ii) felony assault resulting in serious bodily injury, felony bodily wounding resulting in serious bodily injury, or felony sexual assault, if the victim of the offense was a child of the parent or a child with whom the parent resided at the time of the offense. When such a petition to enjoin the filing of a petition for custody and visitation is filed, the court shall appoint a guardian ad litem for the child pursuant to § 16.1-266.

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

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

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

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

1994, c. 769; 1996, cc. 767, 879, 884; 1999, c. 574; 2003, c. 520; 2006, c. 665; 2009, c. 713; 2015, cc. 653, 654; 2017, cc. 46, 95, 509; 2018, c. 857; 2021, Sp. Sess. I, c. 253.

§ 20-124.2:1. In camera interviews of child; record.

In any proceeding in a court of record to determine custody or visitation, when the court conducts an in camera interview of a minor child whose custody or visitation is at issue without the presence of the parties or their counsel, a record of the interview shall be prepared, unless the parties otherwise agree. The record of the interview shall be made a part of the record in the case unless a decision is made by the court that doing so would endanger the safety of the child. The cost of creating the record shall be taxed as costs to the parties to the proceeding.

2003, c. 1024.

§ 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 (i) family abuse as that term is defined in § 16.1-228; (ii) sexual abuse; (iii) child abuse; or (iv) an act of violence, force, or threat as defined in § 19.2-152.7:1 that occurred no earlier than 10 years prior to the date a petition is filed. If the court finds such a history or act, 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. At the request of either party, the court may order that the exchange of a child shall take place at an appropriate meeting place.

1994, c. 769; 1999, c. 634; 2000, c. 466; 2004, c. 221; 2009, c. 684; 2012, c. 358; 2019, c. 378; 2020, cc. 1074, 1075.

§ 20-124.3:1. Repealed.

Repealed by Acts 2008, c. 809, cl. 1.

§ 20-124.4. Mediation.

A. In any appropriate case the court shall refer the parents or persons with a legitimate interest to a dispute resolution orientation session to be conducted by a mediator certified pursuant to guidelines promulgated by the Judicial Council at no cost and in accordance with the procedures set out in Chapter 20.2 (§ 8.01-576.4 et seq.) of Title 8.01. 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.

B. The fee of the mediator shall be $100 per appointment mediated and shall be paid by the Commonwealth from the funds appropriated for payment of appointments made pursuant to subsection B of § 16.1-267. Any referral that includes both (i) custody or visitation and (ii) child or spousal support shall be considered two separate appointments.

1994, c. 769; 2000, c. 768; 2016, c. 507.

§ 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.

1994, c. 769.

§ 20-124.6. Access to minor's records.

A. Notwithstanding any other provision of law, neither parent, regardless of whether such parent has custody, shall be denied access to the academic or health records or records of a child day center or family day home of that parent's minor child unless otherwise ordered by the court for good cause shown or pursuant to subsection B.

B. In the case of health records, access may also be denied if the minor's treating physician, clinical psychologist, clinical social worker, or licensed professional counselor has made a part of the minor's record a written statement that, in the exercise of his professional judgment, the furnishing to or review by the requesting parent of such health records would be reasonably likely to cause substantial harm to the minor or another person. If a health care entity denies a parental request for access to, or copies of, a minor's health record, the health care entity denying the request shall comply with the provisions of subsection F of § 32.1-127.1:03. The minor or his parent, either or both, shall have the right to have the denial reviewed as specified in subsection F of § 32.1-127.1:03 to determine whether to make the minor's health record available to the requesting parent.

C. For the purposes of this section, the terms "health record" or the plural thereof and "health care entity" mean the same as those terms are defined in subsection B of § 32.1-127.1:03. The terms "child day center" and "family day home" mean the same as those terms are defined in § 63.2-100.

1994, c. 769; 2000, c. 485; 2005, cc. 181, 227; 2020, cc. 178, 945; 2022, c. 509.

Chapter 6.2 - VIRGINIA MILITARY PARENTS EQUAL PROTECTION ACT

§ 20-124.7. Definitions.

For purposes of this chapter:

"Deploying parent or guardian" means a parent of a child under the age of 18 whose parental rights have not been terminated by a court of competent jurisdiction or a guardian of a child under the age of 18 who is deployed or who has received written orders to deploy with the United States Army, Navy, Air Force, Marine Corps, Coast Guard, National Guard, or any other reserve component thereof.

"Deployment" means compliance with military orders received by a member of the United States Army, Navy, Air Force, Marine Corps, Coast Guard, National Guard, or any other reserve component thereof to report for combat operations or other active service for which the deploying parent or guardian is required to report unaccompanied by any family member.

2008, c. 750.

§ 20-124.8. Deployment; temporary order.

A. Any court order limiting previously ordered custodial or visitation rights of a deploying parent or guardian due to the parent's or guardian's deployment shall specify the deployment as the basis for the order and shall be entered by the court as a temporary order. Any such order shall further require the nondeploying parent or guardian to provide the court with 30 days advance written notice of any change of address and any change of telephone number.

B. The court, on motion of the deploying parent or guardian to delegate visitation to a family member, including a stepparent, with whom the child has a close and substantial relationship and upon finding that such delegation is in the best interests of the child, may enter an order delegating visitation that:

1. Delegates all or a portion of the deploying parent's or guardian's visitation rights to such family member, if the deploying parent or guardian had visitation rights with the child prior to the deployment; or

2. Provides visitation rights to such family member, if the deploying parent or guardian had physical custody of the child prior to the deployment and the nondeploying parent or guardian, or a family member of the nondeploying parent or guardian, is awarded physical custody during the deployment.

An order delegating or providing visitation rights to a family member pursuant to this subsection does not create a separate right to visitation in the family member to whom visitation rights are delegated or provided. The deploying parent or guardian may at any time, and the nondeploying parent or guardian may upon a showing of a material change in circumstances, file a motion to rescind the order delegating or providing visitation rights to a family member and such order shall terminate by operation of law upon the return of the deploying parent or guardian from deployment. Written notice of the return of the deployed parent or guardian and the termination of the delegated visitation shall be provided by the previously deployed parent or guardian to any family member whose visitation is thereby terminated.

C. The court, on motion of the deploying parent or guardian returning from deployment seeking to amend or review the custody or visitation order entered based upon the deployment, shall set a hearing on the matter that shall take precedence on the court's docket, and shall be set within 30 days of the filing of the motion. For purposes of this hearing, the nondeploying parent or guardian shall bear the burden of showing that reentry of the custody or visitation order in effect before the deployment is no longer in the child's best interests.

D. This section shall not otherwise preclude a parent or guardian from petitioning for a modification of a custody or visitation order based upon a change in circumstances.

2008, c. 750; 2011, c. 351.

§ 20-124.9. When no order is in place; expedited hearing; conduct of hearing.

A. If no court order exists as to the custody, visitation, or support of a child of a deploying parent or guardian, any petition filed to establish custody, visitation, or support for a child of a deploying parent or guardian shall be so identified at the time of filing by the deploying parent or guardian to ensure that the deploying parent or guardian has access to the child, and that reasonable support and other orders are in place for the protection of the parent-child or guardian-child relationship, consistent with the other provisions of this chapter. Such petition shall be expedited on the court's docket in accordance with § 20-108.

B. In any proceeding under this chapter where a deploying parent or guardian is reasonably unable to appear as a result of his deployment, the court, upon motion of the deploying parent or guardian and for good cause shown, may conduct any hearing using a telephonic communication system or an electronic audio and video communication system to provide for the appearance of any parties and witnesses.

2008, c. 750; 2011, c. 351.

§ 20-124.10. Contents of temporary custody or visitation order.

Any order entered pursuant to § 20-124.8 shall provide that (i) the nondeploying parent or guardian shall reasonably accommodate the leave schedule of the deploying parent or guardian, (ii) the nondeploying parent shall facilitate opportunities for telephonic and electronic mail contact between the deploying parent or guardian and the child during the deployment period, and (iii) the deploying parent or guardian shall provide timely information regarding his leave schedule to the nondeploying parent or guardian.

2008, c. 750.

Chapter 7 - UNIFORM CHILD CUSTODY JURISDICTION ACT [Repealed]

§§ 20-125 through 20-146. Repealed.

Repealed by Acts 2001, c. 305.

Chapter 7.1 - UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT

Article 1 - General Provisions

§ 20-146.1. Definitions.

In this act:

"Child" means an individual who has not attained eighteen years of age.

"Child custody determination" means a judgment, decree, or other order of a court providing for the legal custody, physical custody, or visitation with respect to a child. The term includes a permanent, temporary, initial, or modification order. The term does not include an order relating to child support or other monetary obligation of an individual.

"Child custody proceeding" means a proceeding in which legal custody, physical custody, or visitation with respect to a child is an issue. The term includes a proceeding for divorce, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights, and protection from domestic violence, in which the issue may appear. The term does not include a proceeding involving juvenile delinquency, contractual emancipation, or enforcement under Article 3 (§ 20-146.22 et seq.) of this chapter.

"Commencement" means the filing of the first pleading in a proceeding.

"Court" means a court of competent jurisdiction as determined by otherwise applicable Virginia law to establish, enforce, or modify a child custody determination or an entity authorized under the law of another state to establish, enforce or modify a child custody determination.

"Home state" means the state in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately before the commencement of a child custody proceeding. In the case of a child less than six months of age, the term means the state in which the child lived from birth with any of the persons mentioned. A period of temporary absence of any of the mentioned persons is part of the period.

"Initial determination" means the first child custody determination concerning a particular child.

"Issuing court" means the court that makes a child custody determination for which enforcement is sought under this act.

"Issuing state" means the state in which a child custody determination is made.

"Modification" means a child custody determination that changes, replaces, supersedes, or is otherwise made after a previous determination concerning the same child, whether or not it is made by the court that made the previous determination.

"Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity.

"Person acting as a parent" means a person, other than a parent, who has (i) physical custody of the child or has had physical custody for a period of six consecutive months, including any temporary absence, within one year immediately before the commencement of a child custody proceeding and (ii) been awarded legal custody by a court or claims a right to legal custody under the laws of this Commonwealth.

"Physical custody" means the physical care and supervision of a child.

"State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

"Tribe" means an Indian tribe or band, or Alaskan Native village, which is recognized by federal law or formally acknowledged by a state.

1979, c. 229, § 20-125; 2001, c. 305.

§ 20-146.2. Proceedings governed by other law.

This act does not govern an adoption proceeding or a proceeding pertaining to the authorization of emergency medical care for a child.

2001, c. 305.

§ 20-146.3. Application to Indian tribes.

A. A child custody proceeding that pertains to an Indian child as defined in the Indian Child Welfare Act, 25 U.S.C. § 1901 et seq., is not subject to this act to the extent that it is governed by the Indian Child Welfare Act.

B. A court of this Commonwealth shall treat a tribe as if it were a state of the United States for the purpose of applying this article and Article 2 (§ 20-146.12 et seq.) of this chapter.

C. A child custody determination made by a tribe under factual circumstances in substantial conformity with the jurisdictional standards of this act must be recognized and enforced under Article 3 (§ 20-146.22 et seq.) of this chapter.

2001, c. 305.

§ 20-146.4. International application.

A. A court of this Commonwealth shall treat a foreign country as if it were a state of the United States for purposes of applying this article and Article 2 (§ 20-146.12 et seq.) of this chapter.

B. Except as otherwise provided in subsection C, a child custody determination made in a foreign country under factual circumstances in substantial conformity with the jurisdictional standards of this act must be recognized and enforced under Article 3 (§ 20-146.22 et seq.) of this chapter.

C. A court of this Commonwealth need not apply this act if the child custody law of a foreign country violates fundamental principles of human rights.

1979, c. 229, § 20-146; 2001, c. 305.

§ 20-146.5. Effect of child custody determination.

A child custody determination made by a court of this Commonwealth that had jurisdiction under this act binds all persons who have been served in accordance with the laws of this Commonwealth or notified in accordance with § 20-146.7 or who have submitted to the jurisdiction of the court, and who have been given an opportunity to be heard. As to those persons, the determination is conclusive as to all decided issues of law and fact except to the extent the determination is modified by a court properly having jurisdiction.

1979, c. 229, § 20-135; 2001, c. 305.

§ 20-146.6. Priority.

If a question of existence or exercise of jurisdiction under this act is raised in a child custody proceeding, the question, upon request of a party, must be given priority on the calendar and handled expeditiously.

2001, c. 305.

§ 20-146.7. Notice to persons outside state.

A. Notice required for the exercise of jurisdiction when a person is outside this Commonwealth may be given in a manner prescribed by the law of this Commonwealth for service of process or by the law of the state in which the service is attempted or made. Notice may also be by certified or registered mail, return receipt requested, addressed to the last known address of the person to be served. Notice must be given in a manner reasonably calculated to give actual notice and an opportunity to be heard but may be by publication pursuant to §§ 8.01-316 and 8.01-317 if other means are not effective.

B. Proof of service may be made in the manner prescribed by the law of this Commonwealth or by the law of the state in which the service is made.

C. Notice is not required for the exercise of jurisdiction with respect to a person who submits to the jurisdiction of the court.

1979, c. 229; 1982, c. 483, § 20-128; 2001, c. 305.

§ 20-146.8. Appearance and limited immunity.

A. A party to a child custody proceeding, including a modification proceeding, or a petitioner or respondent in a proceeding to enforce or register a child custody determination is not subject to personal jurisdiction in this Commonwealth for another proceeding or purpose solely by reason of having participated, or having been physically present for the purpose of participating, in the proceeding.

B. A person who is subject to personal jurisdiction in this Commonwealth on a basis other than physical presence is not immune from service of process in this Commonwealth. A party present in this

Commonwealth who is subject to the jurisdiction of another state is not immune from service of process allowable under the laws of that state.

C. The immunity granted by subsection A does not extend to civil litigation based on acts unrelated to the participation in a proceeding under this act committed by an individual while present in this Commonwealth.

2001, c. 305.

§ 20-146.9. Communication between courts.

A. Before finding and exercising jurisdiction, a court of this Commonwealth shall communicate with the court appearing to have jurisdiction in any other state concerning a proceeding arising under this act.

B. The court may allow the parties to participate in the communication. If the parties are not able to participate in the communication, they must be given the opportunity to present facts and legal arguments before a decision on jurisdiction is made.

C. Communication between courts on schedules, calendars, court records, and similar matters may occur without informing the parties. A record need not be made of the communication.

D. Except as otherwise provided in subsection C, a record must be made of a communication under this section. The parties must be informed promptly of the communication and granted access to the record.

E. For the purposes of this section, "record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

2001, c. 305.

§ 20-146.10. Taking testimony in another state.

A. In addition to other procedures available to a party, a party to a child custody proceeding may offer testimony of witnesses who are located in another state, including testimony of the parties and the child, by deposition or other means allowable in this Commonwealth for testimony taken in another state. The court on its own motion may order that the testimony of a person be taken in another state and may prescribe the manner in which and the terms upon which the testimony is taken.

B. A court of this Commonwealth may permit an individual residing in another state to be deposed or to testify by telephone, audiovisual means, or other electronic means before a designated court or at another location in that state. A court of this Commonwealth shall cooperate with courts of other states in designating an appropriate location for the deposition or testimony.

C. Documentary evidence transmitted from another state to a court of this Commonwealth by technological means that do not produce an original writing may not be excluded from evidence on an objection based on the means of transmission.

1979, c. 229, § 20-141; 2001, c. 305.

§ 20-146.11. Cooperation between courts; preservation of records.

A. A court of this Commonwealth may request the appropriate court of another state to:

1. Hold an evidentiary hearing;

2. Order a person to produce or give evidence pursuant to procedures of that state;

3. Order that an evaluation be made with respect to the custody of a child involved in a pending proceeding;

4. Forward to the court of this Commonwealth a certified copy of the transcript of the record of the hearing, the evidence otherwise presented, and any evaluation prepared in compliance with the request; and

5. Order a party to a child custody proceeding or any person having physical custody of the child to appear in the proceeding with or without the child.

B. Upon request of a court of another state, a court of this Commonwealth may hold a hearing or enter an order described in subsection A.

C. Travel and other necessary and reasonable expenses incurred under subsections A and B may be assessed against the parties according to the law of this Commonwealth.

D. A court of this Commonwealth shall preserve the pleadings, orders, decrees, records of hearings, evaluations, and other pertinent records with respect to a child custody proceeding until the child attains eighteen years of age. Upon appropriate request by a court or law-enforcement official of another state, the court shall forward a certified copy of those records.

1979, c. 229, §§ 20-142, 20-143, 20-144, 20-145; 2001, c. 305.

Article 2 - JURISDICTION

§ 20-146.12. Initial child custody jurisdiction.

A. Except as otherwise provided in § 20-146.15, a court of this Commonwealth has jurisdiction to make an initial child custody determination only if:

1. This Commonwealth is the home state of the child on the date of the commencement of the proceeding, or was the home state of the child within six months before the commencement of the proceeding and the child is absent from this Commonwealth but a parent or person acting as a parent continues to live in this Commonwealth;

2. A court of another state does not have jurisdiction under subdivision 1, or a court of the home state of the child has declined to exercise jurisdiction on the ground that this Commonwealth is the more appropriate forum under § 20-146.18 or § 20-146.19, and (i) the child and the child's parents, or the child and at least one parent or a person acting as a parent, have a significant connection with this Commonwealth other than mere physical presence and (ii) substantial evidence is available in this Commonwealth concerning the child's care, protection, training, and personal relationships;

3. All courts having jurisdiction under subdivision 1 or 2 have declined to exercise jurisdiction on the ground that a court of this Commonwealth is the more appropriate forum to determine the custody of the child under § 20-146.18 or § 20-146.19; or

4. No court of any other state would have jurisdiction under the criteria specified in subdivision 1, 2, or 3.

B. Subsection A is the exclusive jurisdictional basis for making a child custody determination by a court of this Commonwealth.

C. Physical presence of, or personal jurisdiction over, a party or a child is not necessary or sufficient to make a child custody determination.

1979, c. 229, § 20-126; 2001, c. 305.

§ 20-146.13. Exclusive, continuing jurisdiction.

A. Except as otherwise provided in § 20-146.15, a court of the Commonwealth that has made a child custody determination consistent with § 20-146.12 or 20-146.14 has exclusive, continuing jurisdiction as long as the child, a parent of the child, or any person acting as a parent of the child continues to live in the Commonwealth.

B. A court of the Commonwealth that has made a child custody determination and does not have exclusive, continuing jurisdiction under this section may modify that determination only if it has jurisdiction to make an initial determination under § 20-146.12.

2001, c. 305; 2016, c. 179.

§ 20-146.14. Jurisdiction to modify determination.

Except as otherwise provided in § 20-146.15, a court of the Commonwealth may not modify a child custody determination made by a court of another state unless a court of the Commonwealth has jurisdiction to make an initial determination under subdivision A 1 or A 2 of § 20-146.12 and:

1. The court of the other state determines that it no longer has exclusive, continuing jurisdiction under § 20-146.13 or that a court of the Commonwealth would be a more convenient forum under § 20-146.18; or

2. A court of the Commonwealth or a court of the other state determines that neither a parent of the child, nor the child, nor any person acting as a parent of the child presently resides in the other state.

1979, c. 229, § 20-137; 2001, c. 305; 2016, c. 179.

§ 20-146.15. Temporary emergency jurisdiction.

A. A court of this Commonwealth has temporary emergency jurisdiction if the child is present in this Commonwealth and the child has been abandoned or if it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to mistreatment or abuse or placed in reasonable apprehension of mistreatment or abuse or there is reasonable apprehension that such person is threatened with mistreatment or abuse.

B. If there is no previous child custody determination that is entitled to be enforced under this act and a child custody proceeding has not been commenced in a court of a state having jurisdiction under §§ 20-146.12, 20-146.13 or § 20-146.14, a child custody determination made under this section remains in effect until an order is obtained from a court of a state having jurisdiction under §§ 20-146.12, 20-146.13 or § 20-146.14. If a child custody proceeding has not been or is not commenced in a court of a state having jurisdiction under §§ 20-146.12, 20-146.13 or § 20-146.14, a child custody determination made under this section becomes a final determination, if it so provides and this Commonwealth becomes the home state of the child.

C. If there is a previous child custody determination that is entitled to be enforced under this act, or a child custody proceeding has been commenced in a court of a state having jurisdiction under §§ 20-146.12, 20-146.13 or § 20-146.14, any order issued by a court of this Commonwealth under this section must specify in the order a period that the court considers adequate to allow the person seeking an order to obtain an order from the state having jurisdiction. The order issued in this Commonwealth remains in effect until an order is obtained from the other state within the period specified or until the period expires.

D. A court of this Commonwealth that has been asked to make a child custody determination under this section, upon being informed that a child custody proceeding has been commenced in, or a child custody determination has been made by, a court of a state having jurisdiction under §§ 20-146.12, 20-146.13 or § 20-146.14, shall immediately communicate with the other court. A court of this Commonwealth that is exercising jurisdiction pursuant to §§ 20-146.12, 20-146.13 or § 20-146.14, upon being informed that a child custody proceeding has been commenced in, or a child custody determination has been made by, a court of another state under a statute similar to this section, shall immediately communicate with the court of that state to resolve the emergency, protect the safety of the parties and the child, and determine a period for the duration of the temporary order.

2001, c. 305.

§ 20-146.16. Notice; opportunity to be heard; joinder.

A. Before a child's custody determination is made under this act, notice and an opportunity to be heard in accordance with the standards of § 20-146.7 must be given to all persons entitled to notice under the laws of this Commonwealth as in child custody proceedings between residents of this Commonwealth, any parent whose parental rights have not been previously terminated, and any person having physical custody of the child.

B. The laws of the Commonwealth shall govern the enforceability of a child custody determination made without actual notice or an opportunity to be heard.

C. The obligation to join a party and the right to intervene as a party in a child custody proceeding under this act are governed by the laws of this Commonwealth as in child custody proceedings between residents of this Commonwealth.

1979, c. 229, §§ 20-127, 20-133; 2001, c. 305.

§ 20-146.17. Simultaneous proceedings.

A. Except as otherwise provided in § 20-146.15, a court of this Commonwealth may not exercise its jurisdiction under this article if, at the time of the commencement of the proceeding, a proceeding concerning the custody of the child has been previously commenced in a court of another state having jurisdiction substantially in conformity with this act, unless the proceeding has been terminated or is stayed by the court of the other state because a court of this Commonwealth is a more convenient forum under § 20-146.18.

B. Except as otherwise provided in § 20-146.15, a court of this Commonwealth, before hearing a child custody proceeding, shall examine the court documents and other information supplied by the parties pursuant to § 20-146.20. If the court determines that a child custody proceeding has been commenced in a court in another state having jurisdiction substantially in accordance with this act, the court of this Commonwealth shall stay its proceeding and communicate with the court of the other state. If the court of the state having jurisdiction substantially in accordance with this act does not determine that the court of this Commonwealth is a more appropriate forum, the court of this Commonwealth shall dismiss the proceeding.

C. In a proceeding to modify a child custody determination, a court of this Commonwealth shall determine whether a proceeding to enforce the determination has been commenced in another state. If a proceeding to enforce a child custody determination has been commenced in another state, the court may:

1. Stay the proceeding for modification pending the entry of an order of a court of the other state enforcing, staying, denying, or dismissing the proceeding for enforcement;

2. Enjoin the parties from continuing with the proceeding for enforcement; or

3. Proceed with the modification under conditions it considers appropriate.

1979, c. 229, § 20-129; 2001, c. 305.

§ 20-146.18. Inconvenient forum.

A. A court of this Commonwealth that has jurisdiction under this act to make a child custody determination may decline to exercise its jurisdiction at any time if it determines that it is an inconvenient forum under the circumstances and that a court of another state is a more appropriate forum. The issue of inconvenient forum may be raised upon the motion of a party, the court's own motion, or request of another court.

B. Before determining whether it is an inconvenient forum, a court of this Commonwealth shall consider whether it is appropriate for a court of another state to exercise jurisdiction. For this purpose, the court shall allow the parties to present evidence and shall consider all relevant factors, including:

1. Whether domestic violence has occurred and is likely to continue in the future and which state could best protect the parties and the child;

2. The length of time the child has resided outside this Commonwealth;

3. The distance between the court in this Commonwealth and the court in the state that would assume jurisdiction;

4. The relative financial circumstances of the parties;

5. Any agreement of the parties as to which state should assume jurisdiction;

6. The nature and location of the evidence required to resolve the pending litigation, including testimony of the child;

7. The ability of the court of each state to decide the issue expeditiously and the procedures necessary to present the evidence; and

8. The familiarity of the court of each state with the facts and issues in the pending litigation.

C. If a court of this Commonwealth determines that it is an inconvenient forum and that a court of another state is a more appropriate forum, it shall stay the proceedings upon condition that a child custody proceeding be promptly commenced in another designated state and may impose any other condition the court considers just and proper.

D. A court of this Commonwealth may decline to exercise its jurisdiction under this act if a child custody determination is incidental to an action for divorce or another proceeding while still retaining jurisdiction over the divorce or other proceeding.

1979, c. 229, § 20-130; 2001, c. 305.

§ 20-146.19. Jurisdiction declined by reason of conduct.

A. Except as otherwise provided in § 20-146.15 or by other law of this Commonwealth, if a court of this Commonwealth has jurisdiction under this act because a person seeking to invoke its jurisdiction has engaged in unjustifiable conduct, the court shall decline to exercise its jurisdiction unless:

1. The parents and all persons acting as parents have acquiesced in the exercise of jurisdiction;

2. A court of the state otherwise having jurisdiction under §§ 20-146.12, 20-146.13 or § 20-146.14 determines that this Commonwealth is a more appropriate forum under § 20-146.18; or

3. No court of any other state would have jurisdiction under the criteria specified in subsection B.

B. If a court of this Commonwealth declines to exercise its jurisdiction pursuant to subsection A, it may fashion an appropriate remedy to ensure the safety of the child and prevent a repetition of the unjustifiable conduct, including staying the proceeding until a child custody proceeding is commenced in a court having jurisdiction under §§ 20-146.12, 20-146.13 or § 20-146.14.

C. If a court dismisses a petition or stays a proceeding because it declines to exercise its jurisdiction pursuant to subsection A, it shall assess against the party seeking to invoke its jurisdiction necessary and reasonable expenses including costs, communication expenses, attorney's fees, investigative fees, expenses for witnesses, travel expenses, and child care during the course of the proceedings, unless the party from whom fees are sought establishes that the assessment would be clearly

inappropriate. The court may not assess fees, costs, or expenses against this Commonwealth unless authorized by law other than this act.

1979, c. 229, § 20-131; 2001, c. 305.

§ 20-146.20. Information to be submitted to court.

A. In a child custody proceeding, each party, in its first pleading or in an attached affidavit, shall give information, if reasonably ascertainable, under oath as to the child's present address or whereabouts, the places where the child has lived during the past five years, and the names and present addresses of the persons with whom the child has lived during that period. The pleading or affidavit must state whether the party:

1. Has participated, as a party or witness or in any other capacity, in any other proceeding concerning the custody of or visitation with the child and, if so, identify the court, the case number, and the date of the child custody determination, if any;

2. Knows of any proceeding that could affect the current proceeding, including proceedings for enforcement and proceedings relating to domestic violence, protective orders, termination of parental rights, and adoptions, and, if so, identify the court, the case number, and the nature of the proceeding; and

3. Knows the names and addresses of any persons not a party to the proceeding who has physical custody of the child or claims rights of legal custody or physical custody of, or visitation with, the child and, if so, the names and addresses of those persons.

B. If the information required by subsection A is not furnished, the court, upon motion of a party or its own motion, may stay the proceeding until the information is furnished.

C. If the declaration as to any of the items described in subdivisions A 1, A 2, and A 3 is in the affirmative, the declarant shall give additional information under oath as required by the court. The court may examine the parties under oath as to details of the information furnished and other matters pertinent to the court's jurisdiction and the disposition of the case.

D. Each party has a continuing duty to inform the court of any proceeding in this or any other state that could affect the current proceeding.

E. If a party alleges in an affidavit or a pleading under oath that the health, safety, or liberty of a party or child would be jeopardized by disclosure of identifying information, the information shall be sealed and may not be disclosed to the other party or the public unless the court orders the disclosure to be made after a hearing in which the court takes into consideration the health, safety, or liberty of the party or child. In such a hearing the court shall make a written finding that the disclosure is or is not in the interest of justice. Such hearing and written finding of the issue of disclosure shall be held and made by the court within 15 days of the filing of a pleading or affidavit.

1979, c. 229; 1982, c. 519, § 20-132; 2001, c. 305; 2020, c. 42.

§ 20-146.21. Appearance of parties and child.

A. In a child custody proceeding in this Commonwealth, the court may order a party to the proceeding who is in this Commonwealth to appear before the court in person with or without the child. The court may order any person who is in this Commonwealth and who has physical custody or control of the child to appear in person with the child.

B. If a party to a child custody proceeding whose presence is desired by the court is outside this Commonwealth, the court may direct the party to appear in person with or without the child and inform the party that failure to appear may result in a decision adverse to the party.

C. The court may enter any orders necessary to ensure the safety of the child and of any person ordered to appear under this section.

D. If a party to a child custody proceeding who is outside this Commonwealth is directed to appear under subsection B or desires to appear personally before the court with or without the child, the court may require another party to pay reasonable and necessary travel and other expenses of the party so appearing and of the child.

1979, c. 229, § 20-134; 2001, c. 305.

Article 3 - ENFORCEMENT

§ 20-146.22. Definitions.

In this article:

"Petitioner" means a person who seeks enforcement of an order for return of a child under the Hague Convention on the Civil Aspects of International Child Abduction or enforcement of a child custody determination.

"Respondent" means a person against whom a proceeding has been commenced for enforcement of an order for return of a child under the Hague Convention on the Civil Aspects of International Child Abduction or enforcement of a child custody determination.

2001, c. 305.

§ 20-146.23. Enforcement under Hague Convention.

Under this article a court of this Commonwealth may enforce an order for the return of the child made under the Hague Convention on the Civil Aspects of International Child Abduction.

2001, c. 305.

§ 20-146.24. Duty to enforce.

A. A court of this Commonwealth shall recognize and enforce a child custody determination of a court of another state if the latter court exercised jurisdiction in substantial conformity with this act or the determination was made under factual circumstances meeting the jurisdictional standards of this act and the determination has not been modified in accordance with this act.

B. A court of this Commonwealth may utilize any remedy available under other law of this Commonwealth to enforce a child custody determination made by a court of another state. The remedies

provided in this article are cumulative and do not affect the availability of other remedies to enforce a child custody determination.

1979, c. 229, § 20-138; 2001, c. 305.

§ 20-146.25. Temporary visitation.

A. A court of this Commonwealth that does not have jurisdiction to modify a child custody determination may issue a temporary order enforcing:

1. A visitation schedule made by a court of another state; or

2. The visitation provisions of a child custody determination of another state that does not provide for a specific visitation schedule.

B. If a court of this Commonwealth makes an order under subdivision A 2, it shall specify in the order a period that it considers adequate to allow the petitioner to obtain an order from a court having jurisdiction under the criteria specified in Article 2 (§ 20-146.12 et seq.) of this chapter. The order remains in effect until an order is obtained from the other court or the period expires.

2001, c. 305.

§ 20-146.26. Registration of child custody determination.

A. A child custody determination issued by a court of another state may be registered in this Commonwealth, with or without a simultaneous request for enforcement, by sending to the appropriate juvenile and domestic relations district court in this Commonwealth:

1. A letter or other document requesting registration;

2. Two copies, including one certified copy, of the determination sought to be registered, and a statement under penalty of perjury that to the best of the knowledge and belief of the person seeking registration the order has not been modified; and

3. Except as otherwise provided in § 20-146.20, the name and address of the person seeking registration and any parent or person acting as a parent who has been awarded custody or visitation in the child custody determination sought to be registered.

B. On receipt of the documents required by subsection A, the registering court shall:

1. Cause the determination to be filed as a foreign judgment, together with one copy of any accompanying documents and information, regardless of their form; and

2. Serve notice upon the persons named pursuant to subdivision A 3 and provide them with an opportunity to contest the registration in accordance with this section.

1979, c. 229, § 20-139; 2001, c. 305.

§ 20-146.27. Enforcement of registered determination.

A. A court of this Commonwealth may grant any relief normally available under the law of this Commonwealth to enforce a registered child custody determination made by a court of another state.

B. A court of this Commonwealth shall recognize and enforce, but may not modify, except in accordance with Article 2 (§ 20-146.12 et seq.) of this chapter, a registered child custody determination of a court of another state.

1979, c. 229, § 20-138; 2001, c. 305.

§ 20-146.28. Simultaneous proceedings.

If a proceeding for enforcement under this article is commenced in a court of this Commonwealth and the court determines that a proceeding to modify the determination is pending in a court of another state having jurisdiction to modify the determination under Article 2 (§ 20-146.12 et seq.) of this chapter, the enforcing court shall immediately communicate with the modifying court. The proceeding for enforcement continues unless the enforcing court, after consultation with the modifying court, stays or dismisses the proceeding.

1979, c. 229, § 20-129; 2001, c. 305.

§ 20-146.29. Expedited enforcement of child custody; determination.

A. A petition under this article must be verified. Certified copies of all orders sought to be enforced and of any order confirming registration must be attached to the petition. A copy of a certified copy of an order may be attached instead of the original.

B. A petition for enforcement of a child custody determination must state:

1. Whether the court that issued the determination identified the jurisdictional basis it relied upon in exercising jurisdiction and, if so, what the basis was;

2. Whether the determination for which enforcement is sought has been vacated, stayed, or modified by a court whose decision must be enforced under this act and, if so, identify the court, the case number, and the nature of the proceeding;

3. Whether any proceeding has been commenced that could affect the current proceeding, including proceedings relating to domestic violence, protective orders, termination of parental rights, and adoptions and, if so, identify the court, the case number, and the nature of the proceeding;

4. The present physical address of the child and the respondent, if known;

5. Whether relief in addition to the immediate physical custody of the child and attorneys' fees is sought, including a request for assistance from law-enforcement officials and, if so, the relief sought; and

6. If the child custody determination has been registered under § 20-146.26, the date and place of registration.

C. Upon the filing of a petition, the court shall issue an order directing the respondent to appear in person with or without the child at a hearing and may enter any order necessary to ensure the safety of the parties and the child. The hearing must be held on the next judicial day after service of the order

unless that date is impossible. In that event, the court shall hold the hearing on the first judicial day possible. The court may extend the date of hearing at the request of the petitioner.

D. An order issued under subsection C must state the time and place of the hearing and advise the respondent that at the hearing the court will order that the petitioner may take immediate physical custody of the child and the payment of fees, costs, and expenses under § 20-146.33, and may schedule a hearing to determine whether further relief is appropriate, unless the respondent appears and establishes that:

1. The child custody determination has not been registered under § 20-146.26, and that:

a. The issuing court did not have jurisdiction under Article 2 (§ 20-146.12 et seq.) of this chapter;

b. The child custody determination for which enforcement is sought has been vacated, stayed, or modified by a court having jurisdiction to do so under Article 2 (§ 20-146.12 et seq.) of this chapter;

c. The respondent was entitled to notice, but notice was not given in accordance with the standards of § 20-146.7, in the proceedings before the court that issued the order for which enforcement is sought; or

2. The child custody determination for which enforcement is sought was registered under § 20-146.26, but has been vacated, stayed, or modified by a court of a state having jurisdiction to do so under Article 2 (§ 20-146.12 et seq.) of this chapter.

2001, c. 305.

§ 20-146.30. Service of petition and order.

Except as otherwise provided in § 20-146.32, the petition and order shall be served, by any method authorized by the law of this Commonwealth, upon the respondent and any person who has physical custody of the child.

2001, c. 305.

§ 20-146.31. Hearing and order.

A. Unless the court issues a temporary emergency order pursuant to § 20-146.15, upon a finding that a petitioner is entitled to immediate physical custody of the child, the court shall order that the petitioner may take immediate physical custody of the child unless the respondent establishes that:

1. The child custody determination has not been registered under § 20-146.26 and that:

a. The issuing court did not have jurisdiction under Article 2 (§ 20-146.12 et seq.);

b. The child custody determination for which enforcement is sought has been vacated, stayed, or modified by a court of a state having jurisdiction to do so under Article 2 (§ 20-146.12 et seq.); or

c. The respondent was entitled to notice, but notice was not given in accordance with the standards of § 20-146.7, in the proceedings before the court that issued the order for which enforcement is sought; or

2. The child custody determination for which enforcement is sought was registered under § 20-146.26, but has been vacated, stayed, or modified by a court of a state having jurisdiction to do so under Article 2 (§ 20-146.12 et seq.).

B. The court shall award the fees, costs, and expenses authorized under § 20-146.33 and may grant additional relief, including a request for the assistance of law-enforcement officials, and set a further hearing to determine whether additional relief is appropriate.

C. If a party called to testify refuses to answer on the ground that the testimony may be self-incriminating, the court may draw an adverse inference from the refusal.

D. A privilege against disclosure of communications between spouses and a defense of immunity based on the relationship between spouses or between parent and child may not be invoked in a proceeding under this article.

2001, c. 305; 2020, c. 900.

§ 20-146.32. Ex parte order to take physical custody of child.

A. Upon the filing of a petition seeking enforcement of a child custody determination, the petitioner may request in the petition that the court issue an ex parte order that the child be taken into immediate physical custody if the child is imminently likely to suffer serious physical harm or be removed from this Commonwealth. Any petition for an ex parte order shall include the statements required by subsection B of § 20-146.29.

B. If the court, upon the testimony of the petitioner or other witness, finds that the child is imminently likely to suffer serious physical harm or be removed from this Commonwealth, it may issue an ex parte order to take immediate physical custody of the child. A petition filed to enforce a child custody determination which seeks an ex parte order shall be heard on the next judicial day after the ex parte order is issued the unless that date is impossible. In that event, the court shall hold the hearing on the first judicial day possible.

C. An ex parte order to take physical custody of a child shall:

1. Recite the facts upon which a conclusion of imminent serious physical harm or removal from the jurisdiction is based;

2. Direct law-enforcement officers to take physical custody of the child immediately; and

3. Provide for the placement of the child with the petitioner, suitable relative, other suitable interested individual or the local department of social services pending final relief.

D. The respondent must be served with the petition and ex parte order immediately after the child is taken into physical custody.

E. An ex parte order to take physical custody of a child is enforceable throughout this Commonwealth. If the court finds on the basis of the testimony of the petitioner or other witness that a less intrusive remedy is not effective, it may authorize law-enforcement officers to enter private property to take physical

custody of the child. If required by exigent circumstances of the case, the court may authorize law-enforcement officers to make a forcible entry at any hour.

F. The court may impose conditions upon placement of a child to ensure the appearance of the child and the child's custodian.

2001, c. 305.

§ 20-146.33. Costs, fees, and expenses.

A. The court shall award the prevailing party, including a state, necessary and reasonable expenses incurred by or on behalf of the party, including costs, communication expenses, attorney's fees, investigative fees, expenses for witnesses, travel expenses, and child care during the course of the proceedings, unless the party from whom fees or expenses are sought establishes that the award would be clearly inappropriate.

B. The court may not assess fees, costs, or expenses against a state unless authorized by law other than this act.

1979, c. 229, § 20-136; 2001, c. 305.

§ 20-146.34. Recognition and enforcement.

A court of this Commonwealth shall accord full faith and credit to an order issued by another state and consistent with this act that enforces a child custody determination by a court of another state unless the order has been vacated, stayed, or modified by a court having jurisdiction to do so under Article 2 (§ 20-146.12 et seq.) of this chapter.

2001, c. 305.

§ 20-146.35. Appeals.

An appeal may be taken from a final order in a proceeding under this article in accordance with expedited appellate procedures in other civil cases. Unless the court enters a temporary emergency order under § 20-146.15, the enforcing court may not stay an order enforcing a child custody determination pending appeal.

2001, c. 305.

Article 4 - MISCELLANEOUS PROVISIONS [Repealed]

§ 20-146.36. Application and construction.

In applying and construing this act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

2001, c. 305.

§ 20-146.37. Transitional provision.

A motion or other request for relief made in a child custody proceeding or to enforce a child custody determination that was commenced before July 1, 2001, is governed by the law in effect at the time the motion or other request was made.

2001, c. 305.

§ 20-146.38. Construction of provisions; purposes of act.

A. The general purposes of this act are to:

1. Avoid jurisdictional competition and conflict with courts of other states in matters of child custody that have in the past resulted in the shifting of children from state to state with harmful effects on their well-being;

2. Promote cooperation with the courts of other states to the end that a custody decree is rendered in that state that can best decide the case in the interest of the child;

3. Ensure that litigation concerning the custody of a child take place ordinarily in the state with which the child and his family have the closest connection and where significant evidence concerning his care, protection, training, and personal relationships is most readily available, and that courts of this state decline the exercise of jurisdiction when the child and his family have a closer connection with another state;

4. Discourage continuing controversies over child custody in the interest of greater stability of home environment and of secure family relationships for the child;

5. Deter abductions and other unilateral removals of children undertaken to obtain custody awards;

6. Avoid relitigation of custody decisions of other states in this Commonwealth insofar as feasible;

7. Facilitate the enforcement of custody decrees of other states;

8. Promote and expand the exchange of information and other forms of mutual assistance between the courts of this Commonwealth and those of other states concerned with the same child; and

9. Make uniform the law of those states that enact it.

B. This act shall be construed to promote the general purposes stated in this section.

2001, c. 305.

Chapter 8 - PREMARITAL AGREEMENT ACT

§ 20-147. Application.

This chapter shall apply to any premarital agreement executed on or after July 1, 1986.

1985, c. 434; 1986, c. 201.

§ 20-148. Definitions.

As used in this chapter:

"Premarital agreement" means an agreement between prospective spouses made in contemplation of marriage and to be effective upon marriage.

"Property" means an interest, present or future, legal or equitable, vested or contingent, in real or personal property, including income and earnings.

1985, c. 434; 1986, c. 201.

§ 20-149. Formalities of premarital agreement.

A premarital agreement shall be in writing and signed by both parties. Such agreement shall be enforceable without consideration and shall become effective upon marriage.

1985, c. 434; 1986, c. 201.

§ 20-150. Content of agreement.

Parties to a premarital agreement may contract with respect to:

1. The rights and obligations of each of the parties in any of the property of either or both of them whenever and wherever acquired or located;

2. The right to buy, sell, use, transfer, exchange, abandon, lease, consume, expend, assign, create a security interest in, mortgage, encumber, dispose of, or otherwise manage and control property;

3. The disposition of property upon separation, marital dissolution, death, or the occurrence or nonoccurrence of any other event;

4. Spousal support;

5. The making of a will, trust, or other arrangement to carry out the provisions of the agreement;

6. The ownership rights in and disposition of the death benefit from a life insurance policy;

7. The choice of law governing the construction of the agreement; and

8. Any other matter, including their personal rights and obligations, not in violation of public policy or a statute imposing a criminal penalty.

1985, c. 434; 1986, c. 201.

§ 20-151. Enforcement; void marriage.

A. A premarital agreement is not enforceable if the person against whom enforcement is sought proves that:

1. That person did not execute the agreement voluntarily; or

2. The agreement was unconscionable when it was executed and, before execution of the agreement, that person (i) was not provided a fair and reasonable disclosure of the property or financial obligations of the other party; and (ii) did not voluntarily and expressly waive, in writing, any right to disclosure of the property or financial obligations of the other party beyond the disclosure provided.

B. Any issue of unconscionability of a premarital agreement shall be decided by the court as a matter of law. Recitations in the agreement shall create a prima facie presumption that they are factually correct.

C. If a marriage is determined to be void, an agreement that would otherwise have been a premarital agreement shall be enforceable only to the extent necessary to avoid an inequitable result.

1985, c. 434; 1986, c. 201.

§ 20-152. Limitation of actions.

Any statute of limitations applicable to an action asserting a claim for relief under a premarital agreement is tolled during the marriage of the parties to the agreement. However, equitable defenses limiting the time for enforcement, including laches and estoppel, are available to either party.

1985, c. 434; 1986, c. 201.

§ 20-153. Amendment or revocation of agreement.

After marriage, a premarital agreement may be amended or revoked only by a written agreement signed by the parties. The amended agreement or the revocation is enforceable without consideration.

1985, c. 434; 1986, c. 201.

§ 20-154. Prior agreements.

All written agreements entered into prior to the enactment of this chapter between prospective spouses for the purpose affecting any of the subjects specified in § 20-150 shall be valid and enforceable if otherwise valid as contracts.

1985, c. 434; 1986, c. 201.

§ 20-155. Marital agreements.

Married persons may enter into agreements with each other for the purpose of settling the rights and obligations of either or both of them, to the same extent, with the same effect, and subject to the same conditions, as provided in §§ 20-147 through 20-154 for agreements between prospective spouses, except that such marital agreements shall become effective immediately upon their execution. If the terms of such agreement are (i) contained in a court order endorsed by counsel or the parties or (ii) recorded and transcribed by a court reporter and affirmed by the parties on the record personally, the agreement is not required to be in writing and is considered to be executed. A reconciliation of the parties after the signing of a separation or property settlement agreement shall abrogate such agreement unless otherwise expressly set forth in the agreement.

1987, c. 41; 1998, c. 638; 2003, cc. 662, 669.

Chapter 9 - Status of Children of Assisted Conception

§ 20-156. Definitions.

As used in this chapter unless the context requires a different meaning:

"Assisted conception" means a pregnancy resulting from any intervening medical technology, whether in vivo or in vitro, which completely or partially replaces sexual intercourse as the means of conception. Such intervening medical technology includes, but is not limited to, conventional medical and surgical treatment as well as noncoital reproductive technology such as artificial insemination by donor, cryopreservation of gametes and embryos, in vitro fertilization, uterine embryo lavage, embryo transfer, gamete intrafallopian tube transfer, and low tubal ovum transfer.

"Compensation" means payment of any valuable consideration for services in excess of reasonable medical and ancillary costs.

"Cryopreservation" means freezing and storing of gametes and embryos for possible future use in assisted conception.

"Donor" means an individual, other than a surrogate, who contributes the sperm or egg used in assisted conception.

"Gamete" means either a sperm or an ovum.

"Genetic parent" means an individual who contributes a gamete resulting in a conception.

"Gestational mother" means the woman who gives birth to a child, regardless of her genetic relationship to the child.

"Embryo" means the organism resulting from the union of a sperm and an ovum from first cell division until approximately the end of the second month of gestation.

"Embryo transfer" means the placing of a viable embryo into the uterus of a gestational mother.

"Infertile" means the inability to conceive after one year of unprotected sexual intercourse.

"Intended parent" means a married couple or unmarried individual who enters into an agreement with a surrogate under the terms of which such parent will be the parent of any child born to the surrogate through assisted conception regardless of the genetic relationships between the intended parent, the surrogate, and the child.

"In vitro" means any process that can be observed in an artificial environment such as a test tube or tissue culture plate.

"In vitro fertilization" means the fertilization of ova by sperm in an artificial environment.

"In vivo" means any process occurring within the living body.

"Legal or contractual custody" means having authority granted by law, contract, or court order to make decisions concerning the use of an embryo.

"Ovum" means the female gamete or reproductive cell prior to fertilization.

"Reasonable medical and ancillary costs" means the costs of the performance of assisted conception, the costs of prenatal maternal health care, the costs of maternal and child health care for a reasonable postpartum period, the reasonable costs for medications and maternity clothes, and any additional and reasonable costs for housing and other living expenses attributable to the pregnancy.

"Sperm" means the male gametes or reproductive cells which impregnate the ova.

"Surrogacy contract" means an agreement between the intended parent, a surrogate, and her spouse, if any, in which the surrogate agrees to be impregnated through the use of assisted conception, to

carry any resulting fetus, and to relinquish to the intended parent the custody of and parental rights to any resulting child.

"Surrogate" means any adult woman who agrees to bear a child carried for the intended parent.

1991, c. 600; 1997, c. 81; 2019, c. 375.

§ 20-157. Virginia law to control.

The provisions of this chapter shall control, without exception, in any action brought in the courts of this Commonwealth to enforce or adjudicate any rights or responsibilities arising under this chapter.

1991, c. 600.

§ 20-158. Parentage of child resulting from assisted conception.

A. Determination of parentage, generally. – Except as provided in subsections B, C, D, and E, the parentage of any child resulting from the performance of assisted conception shall be determined as follows:

1. The gestational mother of a child is the child's mother.

2. The spouse of the gestational mother of a child is the child's other parent, notwithstanding any declaration of invalidity or annulment of the marriage obtained after the performance of assisted conception, unless such spouse commences an action in which the mother and child are parties within two years after such spouse discovers or, in the exercise of due diligence, reasonably should have discovered the child's birth and in which it is determined that such spouse did not consent to the performance of assisted conception.

3. A donor is not the parent of a child conceived through assisted conception, unless the donor is the spouse of the gestational mother.

B. Death of spouse. – Any child resulting from the insemination of a gestational mother's ovum using her spouse's sperm, with his consent, is the child of the gestational mother and her spouse notwithstanding that, during the 10-month period immediately preceding the birth, either party died.

However, any person who dies before in utero implantation of an embryo resulting from the union of the spouse's sperm or gestational mother's ovum with another gamete, whether or not the other gamete is that of the person's spouse, is not the parent of any resulting child unless (i) implantation occurs before notice of the death can reasonably be communicated to the physician performing the procedure or (ii) the person consents to be a parent in writing executed before the implantation.

C. Divorce. – Any child resulting from insemination of a gestational mother's ovum using her spouse's sperm, with his consent, is the child of the gestational mother and her spouse notwithstanding that either party filed for a divorce or annulment during the 10-month period immediately preceding the birth. Any person who is a party to an action for divorce or annulment commenced by filing before in utero implantation of an embryo resulting from the union of the spouse's sperm or gestational mother's ovum with another gamete, whether or not the other gamete is that of the person's spouse, is not the parent of any resulting child unless (i) implantation occurs before notice of the filing can reasonably be

communicated to the physician performing the procedure or (ii) the person consents in writing to be a parent, whether the writing was executed before or after the implantation.

D. Birth pursuant to court approved surrogacy contract. – After approval of a surrogacy contract by the court and entry of an order as provided in subsection D of § 20-160, the intended parent is the parent of any resulting child. However, if the court vacates the order approving the agreement pursuant to subsection B of § 20-161, the surrogate who is the genetic parent is the mother of the resulting child and her spouse, if any, is the other parent. The intended parent may only obtain parental rights through adoption as provided in Chapter 12 (§ 63.2-1200 et seq.) of Title 63.2.

E. Birth pursuant to surrogacy contract not approved by court. – In the case of a surrogacy contract that has not been approved by a court as provided in § 20-160, the parentage of any resulting child shall be determined as follows:

1. The gestational mother is the child's mother unless the intended mother is a genetic parent, in which case the intended mother is the mother.

2. If an intended parent is a genetic parent of the resulting child, such intended parent is the child's parent. However, if (i) the surrogate is a genetic parent, (ii) the surrogate is married and her spouse is a party to the surrogacy contract, and (iii) the surrogate who is a genetic parent exercises her right to retain custody and parental rights to the resulting child pursuant to § 20-162, then the surrogate and her spouse are the parents. If the surrogate is unmarried and (a) is a genetic parent, (b) is a party to the surrogacy contract, and (c) exercises her right to retain custody and parental rights to the resulting child pursuant to § 20-162, then the surrogate is the parent.

3. If no intended parent is a genetic parent of the resulting child, but the embryo that was used is subject to the legal or contractual custody of an intended parent, then such intended parent is the parent. However, if no intended parent is a genetic parent, and the embryo that was used is not subject to the legal or contractual custody of such intended parent, then the surrogate is the mother and her spouse, if any, is the child's other parent if such other parent is a party to the contract. In such an event, the intended parent may only obtain parental rights through adoption as provided in Chapter 12 (§ 63.2-1200 et seq.) of Title 63.2.

4. After the signing and filing of the surrogate consent and report form in conformance with the requirements of subsection A of § 20-162, the intended parent is the parent of the child and the surrogate and her spouse, if any, shall not be the parents of the child.

1991, c. 600; 1997, c. 81; 2000, c. 830; 2019, c. 375.

§ 20-159. Surrogacy contracts permissible.

A. A surrogate, her spouse, if any, and the prospective intended parent may enter into a written agreement whereby the surrogate may relinquish all her rights and duties as parent of a child conceived through assisted conception, and the prospective intended parent may become the parent of the child as provided in subsection D or E of § 20-158.

B. Surrogacy contracts may be approved by the court as provided in § 20-160. However, any surrogacy contract that has not been approved by the court shall be governed by the provisions of §§ 20-156 through 20-159 and §§ 20-162 through 20-165 including the provisions for reformation in conformance with this chapter as provided in § 20-162.

1991, c. 600; 2019, c. 375.

§ 20-160. Petition and hearing for court approval of surrogacy contract; requirements; orders.

A. Prior to the performance of assisted conception, the intended parent, the surrogate, and her spouse, if any, shall join in a petition to the circuit court of the county or city in which at least one of the parties resides. The surrogacy contract shall be signed by all the parties and acknowledged before an officer or other person authorized by law to take acknowledgments.

A copy of the contract shall be attached to the petition. The court shall appoint a guardian ad litem to represent the interests of any resulting child and shall appoint counsel to represent the surrogate. The court shall order a home study by a local department of social services or welfare or a licensed child-placing agency, to be completed prior to the hearing on the petition.

All hearings and proceedings conducted under this section shall be held in camera, and all court records shall be confidential and subject to inspection only under the standards applicable to adoptions as provided in § 63.2-1245. The court conducting the proceedings shall have exclusive and continuing jurisdiction of all matters arising under the surrogacy contract until all provisions of the contract are fulfilled.

B. The court shall hold a hearing on the petition. The court shall enter an order approving the surrogacy contract and authorizing the performance of assisted conception for a period of twelve months after the date of the order, and may discharge the guardian ad litem and attorney for the surrogate upon finding that:

1. The court has jurisdiction in accordance with § 20-157;

2. A local department of social services or welfare or a licensed child-placing agency has conducted a home study of the intended parents, the surrogate, and her spouse, if any, and has filed a report of this home study with the court;

3. The intended parent, the surrogate, and her spouse, if any, meet the standards of fitness applicable to adoptive parents;

4. All the parties have voluntarily entered into the surrogacy contract and understand its terms and the nature, meaning, and effect of the proceeding and understand that any agreement between them for payment of compensation is void and unenforceable;

5. The agreement contains adequate provisions to guarantee the payment of reasonable medical and ancillary costs either in the form of insurance, cash, escrow, bonds, or other arrangements satisfactory to the parties, including allocation of responsibility for such costs in the event of termination of the pregnancy, termination of the contract pursuant to § 20-161, or breach of the contract by any party;

6. The surrogate has had at least one pregnancy, and has experienced at least one live birth, and bearing another child does not pose an unreasonable risk to her physical or mental health or to that of any resulting child. This finding shall be supported by medical evidence;

7. Prior to signing the surrogacy contract, the intended parent, the surrogate, and her spouse, if any, have submitted to physical examinations and psychological evaluations by practitioners licensed to perform such services pursuant to Title 54.1, and the court and all parties have been given access to the records of the physical examinations and psychological evaluations;

8. The intended parent is infertile, is unable to bear a child, or is unable to do so without unreasonable risk to the unborn child or to the physical or mental health of the intended parent or the child. This finding shall be supported by medical evidence;

9. At least one intended parent is expected to be the genetic parent of any child resulting from the agreement or such intended parent has the legal or contractual custody of the embryo at issue;

10. The spouse of the surrogate, if any, is a party to the surrogacy agreement;

11. All parties have received counseling concerning the effects of the surrogacy by a qualified health care professional or social worker, and a report containing conclusions about the capacity of the parties to enter into and fulfill the agreement has been filed with the court; and

12. The agreement would not be substantially detrimental to the interests of any of the affected persons.

C. Unless otherwise provided in the surrogacy contract, all court costs, counsel fees, and other costs and expenses associated with the hearing, including the costs of the home study, shall be assessed against the intended parent.

D. Within seven days of the birth of any resulting child, the intended parent shall file a written notice with the court that the child was born to the surrogate within 300 days after the last performance of assisted conception. Upon the filing of this notice and a finding that one intended parent is the genetic parent of the resulting child as substantiated by medical evidence, or upon proof of the legal or contractual custody of the embryo by such intended parent, the court shall enter an order directing the State Registrar of Vital Records to issue a new birth certificate naming the intended parent as the parent of the child pursuant to § 32.1-261.

If evidence cannot be produced that at least one intended parent is the genetic parent of the resulting child, or proof of the legal or contractual custody of the embryo by such intended parent cannot be produced, the court shall not enter an order directing the issuance of a new birth certificate naming the intended parent as the parent of the child, and the surrogate and her spouse, if any, shall be the parents of the child. The intended parent may obtain parental rights only through adoption as provided in Chapter 12 (§ 63.2-1200 et seq.) of Title 63.2.

1991, c. 600; 2000, c. 830; 2010, c. 712; 2019, c. 375.

§ 20-161. Termination of court-approved surrogacy contract.

A. Subsequent to an order entered pursuant to subsection B of § 20-160, but before the surrogate becomes pregnant through the use of assisted conception, the court for cause, or the surrogate, her spouse, if any, or the intended parent, for cause, may terminate the agreement by giving written notice of termination to all other parties and by filing notice of the termination with the court. Upon receipt of the notice, the court shall vacate the order entered under subsection B of § 20-160.

B. Within 180 days after the last performance of any assisted conception, a surrogate who is also a genetic parent may terminate the agreement by filing written notice with the court. The court shall vacate the order entered pursuant to subsection B of § 20-160 upon finding, after notice to the parties to the agreement and a hearing, that the surrogate has voluntarily terminated the agreement and that she understands the effects of the termination.

Unless otherwise provided in the contract as approved, the surrogate shall incur no liability to the intended parent for exercising her rights of termination pursuant to this section.

1991, c. 600; 2010, c. 712; 2019, c. 375.

§ 20-162. Contracts not approved by the court; requirements.

A. In the case of any surrogacy agreement for which prior court approval has not been obtained pursuant to § 20-160, the provisions of this section and §§ 20-156 through 20-159 and §§ 20-163 through 20-165 shall apply. Any provision in a surrogacy contract that attempts to reduce the rights or responsibilities of the intended parent, the surrogate, or her spouse, if any, or the rights of any resulting child shall be reformed to include the requirements set forth in this chapter. A provision in the contract providing for compensation to be paid to the surrogate is void and unenforceable. Such surrogacy contracts shall be enforceable and shall be construed only as follows:

1. The surrogate, her spouse, if any, and the intended parent shall be parties to any such surrogacy contract.

2. The contract shall be in writing, signed by all the parties, and acknowledged before an officer or other person authorized by law to take acknowledgments.

3. Upon expiration of three days following birth of any resulting child, the surrogate may relinquish her parental rights to the intended parent, if at least one intended parent is the genetic parent of the child, or the embryo was subject to the legal or contractual custody of such intended parent, by signing a surrogate consent and report form naming the intended parent as the parent of the child. The surrogate consent and report form shall be developed, furnished, and distributed by the State Registrar of Vital Records. The surrogate consent and report form shall be signed and acknowledged before an officer or other person authorized by law to take acknowledgments. The surrogate consent and report form, a copy of the contract, and a statement from the physician who performed the assisted conception stating either the genetic relationships between the child, the surrogate, and at least one intended parent, or proof of the legal or contractual custody of the embryo, shall be filed with the State Registrar within 180 days after the birth. The statement from the physician shall be signed and acknowledged before an officer or other person authorized by law to take acknowledgments. There shall be a rebuttable

presumption that the statement from the physician accurately states the genetic relationships among the child, the surrogate, and the intended parent. Where a physician's statement is not available and at least one intended parent is a genetic parent, DNA testing establishing the genetic relationships between the child, the surrogate, and the intended parent may be substituted for the physician's statement.

4. Upon the filing of the surrogate consent and report form and the required attachments, including the physician's statement, DNA testing establishing the genetic relationships between the child, the surrogate, and the intended parent, or proof of the legal or contractual custody of the embryo, within 180 days of the birth, a new birth certificate shall be established by the State Registrar for the child naming the intended parent as the parent of the child as provided in § 32.1-261.

B. Any contract governed by the provisions of this section shall include or, in the event such provisions are not explicitly covered in the contract or are included but are inconsistent with this section, shall be deemed to include the following provisions:

1. The intended parent shall be the parent of any resulting child when the surrogate relinquishes her parental rights as provided in subdivision A 3 and a new birth certificate is established as provided in subdivision A 4 of this section and § 32.1-261, unless parentage is instead established through Chapter 3.1 (§ 20-49.1 et seq.);

2. Incorporation of this chapter and a statement by each of the parties that they have read and understood the contract, they know and understand their rights and responsibilities under Virginia law, and the contract was entered into knowingly and voluntarily; and

3. A guarantee by the intended parent for payment of reasonable medical and ancillary costs either in the form of insurance, cash, escrow, bonds, or other arrangements satisfactory to the parties, including allocation of responsibility for such costs in the event of termination of the pregnancy, termination of the contract, or breach of the contract by any party.

C. Under any contract that does not include an allocation of responsibility for reasonable medical and ancillary costs in the event of termination of the pregnancy, termination of the contract, or breach of the contract by any party, the following provisions shall control:

1. If the intended parent and the surrogate and her spouse, if any, and if such spouse is a party to the contract, consent in writing to termination of the contract, the intended parent is responsible for all reasonable medical and ancillary costs for a period of six weeks following the termination.

2. If the surrogate is a genetic parent and voluntarily terminates the contract during the pregnancy, without consent of the intended parent, the intended parent shall be responsible for one-half of the reasonable medical and ancillary costs incurred prior to the termination.

3. If, after the birth of any resulting child, the surrogate is also a genetic parent and fails to relinquish parental rights to the intended parent pursuant to the contract, the intended parent shall be responsible for one-half of the reasonable medical and ancillary costs incurred prior to the birth.

1991, c. 600; 2000, c. 890; 2010, c. 712; 2019, c. 375.

§ 20-163. Miscellaneous provisions related to all surrogacy contracts.

A. The surrogate shall be solely responsible for the clinical management of the pregnancy.

B. After the entry of an order under subsection B of § 20-160 or upon the execution of a contract pursuant to § 20-162, the marriage of the surrogate shall not affect the validity of the order or contract, and her spouse shall not be deemed a party to the contract in the absence of his explicit written consent.

C. Following the entry of an order pursuant to subsection D of § 20-160 or upon the relinquishing of the custody of and parental rights to any resulting child and the filing of the surrogate consent and report form as provided in § 20-162, the intended parent shall have the custody of, parental rights to, and full responsibilities for any child resulting from the performance of assisted conception from a surrogacy agreement regardless of the child's health, physical appearance, any mental or physical disability, and regardless of whether the child is born alive.

D. A child born to a surrogate within 300 days after assisted conception pursuant to an order under subsection B of § 20-160 or a contract under § 20-162 is presumed to result from the assisted conception. This presumption is conclusive as to all persons who fail to file an action to test its validity within two years after the birth of the child. The child and the parties to the contract shall be named as parties in any such action. The action shall be filed in the court that issued or could have issued an order under § 20-160.

E. Health care providers shall not be liable for recognizing the surrogate as the mother of the resulting child before receipt of a copy of an order entered under § 20-160 or a copy of the contract, or for recognizing the intended parent as the parent of the resulting child after receipt of such order or copy of the contract.

F. Any contract provision requiring or prohibiting an abortion or selective reduction is against the public policy of the Commonwealth and is void and unenforceable.

1991, c. 600; 2019, c. 375; 2022, c. 800; 2023, cc. 148, 149.

§ 20-164. Relation of parent and child.

A child whose status as a child is declared or negated by this chapter is the child only of his parent or parents as determined under this chapter, Title 64.2, and, when applicable, Chapter 3.1 (§ 20-49.1 et seq.) of this title for all purposes including, but not limited to, (i) intestate succession; (ii) probate law exemptions, allowances, or other protections for children in a parent's estate; and (iii) determining eligibility of the child or its descendants to share in a donative transfer from any person as an individual or as a member of a class determined by reference to the relationship. However, a child born more than ten months after the death of a parent shall not be recognized as such parent's child for the purposes of subdivisions (i), (ii) and (iii) of this section.

1991, c. 600; 1994, c. 919.

§ 20-165. Surrogate brokers prohibited; penalty; liability of surrogate brokers.

A. It is unlawful for any person, firm, corporation, partnership, or other entity to accept compensation for recruiting or procuring surrogates or to accept compensation for otherwise arranging or inducing an intended parent and surrogates to enter into surrogacy contracts in this Commonwealth. A violation of this section shall be punishable as a Class 1 misdemeanor.

B. Any person who acts as a surrogate broker in violation of this section shall, in addition, be liable to all the parties to the purported surrogacy contract in a total amount equal to three times the amount of compensation to have been paid to the broker pursuant to the contract. One-half of the damages under this subsection shall be due the surrogate and her spouse, if any, and if such spouse is a party to the contract, and one-half shall be due the intended parent.

An action under this section shall be brought within five years of the date of the contract.

C. The provisions of this section shall not apply to the services of an attorney in giving legal advice or in preparing a surrogacy contract.

1991, c. 600; 2010, c. 712; 2019, c. 375; 2020, c. 900.

Chapter 10 - Power of Attorney to Delegate Parental or Legal Custodial Powers

§ 20-166. Power of attorney to delegate parental or legal custodial powers.

A. A parent or legal custodian of a child, by a properly executed power of attorney pursuant to § 20-167, may delegate to another person, for a period not to exceed 180 days, any of the powers regarding the custody, care, and property of the child except the power to consent to marriage or adoption of the child, the performance or inducement of an abortion on or for the child, or the termination of parental rights to the child. In the event that both parents of a child are exercising joint custody, both parents shall be required to execute such power of attorney.

Such parent or legal custodian who is a service member may delegate such powers for a period longer than 180 days while on active duty service if such active duty is longer than 180 days, but such period shall not exceed the term of active duty service plus 30 days. For the purposes of this section, "service member" means (i) a member of the Armed Forces of the United States, (ii) a member of the Armed Forces Reserves, (iii) a member of the National Guard, (iv) a member of the commissioned corps of the National Oceanic and Atmospheric Administration, (v) a member of the commissioned corps of the U.S. Public Health Services, or (vi) any person otherwise required to enter or serve in the active military services of the United States under a call or order of the President of the United States or to serve on state active duty.

A delegation of powers under this section shall not operate to change or modify any parental or legal rights, obligations, or authority established by an existing court order or deprive a parent or legal custodian of any parental or legal rights, obligations, or authority regarding the custody, visitation, or support of any child under this title.

B. Any power of attorney properly executed pursuant to § 20-167 shall be signed by all persons with authority to make decisions concerning the child pursuant to Chapter 6.1 (§ 20-124.1 et seq.), the

person to whom powers are delegated under the power of attorney, and a representative of a licensed child-placing agency that assists parents and legal guardians with the process of delegating parental and legal custodial powers of their children, including assistance with identifying appropriate placements for their children and providing services and resources to support children, parents and legal guardians, and persons to whom parental or legal custodial powers are delegated pursuant to this chapter. That agency shall file notice of the arrangement authorized by the power of attorney with the local department of social services in the jurisdiction where the parents or legal guardian resides within seven days of its execution.

C. Any person who has signed the form under § 20-167 shall have the authority to revoke or withdraw the power of attorney authorized by subsection A at any time. If the delegation of authority lasts longer than 180 days, a new power of attorney shall be executed. Where such delegation is executed by a service member, if the delegation is longer than 180 days while on active duty service and exceeds the term of active duty service plus 30 days, a new power of attorney shall be executed.

D. The attorney-in-fact shall exercise parental or legal authority on a continuous basis for not less than 24 hours and without compensation for the intended duration of the power of attorney authorized by subsection A and shall not be subject to the licensing requirements of § 63.2-1701.

E. The execution of a power of attorney by a parent or legal custodian authorized by subsection A shall not constitute abandonment, abuse, or neglect as defined in § 63.2-100 unless the parent or legal custodian fails to make contact or execute a new power of attorney after the time limit has elapsed.

F. Under a delegation of powers as authorized by subsection A, the child subject to the power of attorney shall not be deemed placed in foster care, in a foster home, or in an independent foster home as defined in § 63.2-100, and the parties shall not be subject to any of the licensing requirements or regulations for foster care.

G. A licensed child-placing agency that assists parents and legal guardians with the process of delegating parental and legal custodial powers of their children shall (i) comply with background check requirements established by regulations of the Board of Social Services or otherwise provided by law; (ii) develop and implement written policies and procedures for (a) governing active and closed cases, (b) governing admissions, (c) monitoring the administration of medications, (d) prohibiting corporal punishment, (e) ensuring that children are not subjected to abuse or neglect, (f) investigating allegations of misconduct toward children, (g) implementing back-up emergency care plans for children, (h) assigning designated casework staff, (i) managing all records, (j) utilizing discharge policies, and (k) regulating the use of seclusion and restraint; and (iii) provide pre-service and ongoing training for temporary placement providers and staff. Any person to whom any powers are delegated pursuant to this section shall comply with background check requirements established by regulations of the Board of Social Services or otherwise provided by law.

H. Except as may be permitted by the federal No Child Left Behind Act, 20 U.S.C. §§ 6301 et seq. and 7801 et seq., a power of attorney executed pursuant to § 20-167 shall be invalid if executed for the primary purpose of enrolling the child in a school for the sole purpose of participating in the academic or interscholastic athletics programs provided by that school or for any other unlawful purpose. Violation of this subsection shall be punishable in accordance with the laws of the Commonwealth and may require, in addition to any other remedies, repayment by such parent of all costs incurred by the school as a result of the violation.

2019, c. 297.

§ 20-167. Statutory form for power of attorney to delegate parental or legal custodial powers.

A. A power of attorney to delegate parental or legal authority executed pursuant to this chapter shall be substantially as follows:

POWER OF ATTORNEY TO DELEGATE PARENTAL OR LEGAL CUSTODIAL POWERS

1. I/We certify that I/we am/are the parent or legal custodian of:

Full name of minor child: _____ Date of birth: _____

Full name of minor child: _____ Date of birth: _____

Full name of minor child: _____ Date of birth: _____

2. I/We designate _____ (insert full name, address, and phone number of designated attorney-in-fact) as the attorney-in-fact of each child listed above.

3. I/We delegate to the attorney-in-fact all of my/our power and authority regarding the care, custody, and property of each minor child named above, including the right to enroll the child in school, the right to inspect and obtain copies of education records and other records concerning the child, the right to attend school activities and other functions concerning the child, and the right to give or withhold any consent or waiver with respect to school activities, medical and dental treatment, and any other activity, function, or treatment that may concern the child. This delegation shall not include the power or authority to consent to marriage or adoption of the child, the performance or inducement of an abortion on or for the child, or the termination of parental rights to the child. I/We understand that this power of attorney shall not operate to change or modify any parental or legal rights, obligations, or authority established by an existing court order or deprive a parent or legal custodian of any parental or legal rights, obligations, or authority regarding the custody, visitation, or support of any child under Title 20 of the Code of Virginia, and I/we understand that I/we shall continue to be bound by any obligations in such order. By my/our signature below, I/we hereby certify that I/we am/are not executing this power of attorney for any unlawful purpose or for the primary purpose of enrolling my/our child/children in a school for the sole purpose of participating in the academic or interscholastic athletics programs provided by that school.

OR

3. I/We delegate to the attorney-in-fact the following specific powers and responsibilities:

_____

_____.

This delegation shall not include the power or authority to consent to marriage or adoption of the child, the performance or inducement of an abortion on or for the child, or the termination of parental rights to the child. I/We understand that this power of attorney shall not operate to change or modify any parental or legal rights, obligations, or authority established by an existing court order or deprive a parent or legal custodian of any parental or legal rights, obligations, or authority regarding the custody, visitation, or support of any child under Title 20 of the Code of Virginia, and I/we understand that I/we shall continue to be bound by any obligations in such order. By my/our signature below, I/we hereby certify that I/we am/are not executing this power of attorney for any unlawful purpose or for the primary purpose of enrolling my/our child/children in a school for the sole purpose of participating in the academic or interscholastic athletics programs provided by that school.

4. This power of attorney is effective for a period not to exceed 180 days, beginning _____ (insert date) and ending _____ (insert date). I/We reserve the right to revoke this authority at any time.

OR

4. I/We am/are a service member, as defined by § 20-166 of the Code of Virginia, and am/are on, or am/are scheduled to be on, active duty for a period that is set to last longer than 180 days. This power of attorney is effective for a period not to exceed the period of active duty plus 30 days, beginning ___ _____ (insert date) and ending _____ (insert date). I/We reserve the right to revoke this authority at any time.

Signature(s) of parent/legal custodian: _____ Date: _____

5. I hereby accept my designation as attorney-in-fact for the minor child/children specified in this power of attorney and agree to act at all times in the best interests of the child/children specified herein and within the limits of the powers delegated to me. I understand that this power of attorney does not change or modify any parental or legal rights, obligations, or authority established by an existing court order or deprive a parent or legal custodian of any parental or legal rights, obligations, or authority regarding the custody, visitation, or support of the child/children specified herein. By my signature below, I affirm that I have received notice of any existing court order regarding the custody, visitation, or support of the child/children and agree to honor the rights of a parent or legal custodian of the child/children as specified in such order.

Signature of attorney-in-fact: _____ Date: _____

6. I, _____ (insert name of representative of licensed child-placing agency), on behalf of _____ (insert name of licensed child-placing agency), hereby approve the designation of the aforementioned attorney-in-fact for the minor child/children specified in this power

of attorney and accept responsibility for the supervision of the placement during the time the child/children is/are in the care of the attorney-in-fact.

Signature of representative of licensed child-placing agency: _____ Date: _____

B. A power of attorney executed under this chapter is legally sufficient if the wording of the form complies substantially with subsection A, the form is properly completed, and the signatures of the parties are acknowledged or verified before a notary public.

2019, c. 297.

Chapter 11 - Uniform Collaborative Law Act

§ 20-168. Definitions.

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

"Collaborative law communication" means a statement, whether oral or in a record, or verbal or nonverbal, that (i) is made to conduct, participate in, continue, or reconvene a collaborative law process and (ii) occurs after the parties sign a collaborative law participation agreement and before the collaborative law process is concluded.

"Collaborative law participation agreement" means an agreement by persons to participate in a collaborative law process.

"Collaborative law process" means a procedure intended to resolve a collaborative matter without intervention by a tribunal in which persons sign a collaborative law participation agreement and are represented by collaborative lawyers.

"Collaborative lawyer" means a lawyer who represents a party in a collaborative law process.

"Collaborative matter" means a dispute, transaction, claim, problem, or issue for resolution that is described in a collaborative law participation agreement and that is between family or household members or arises under the family or domestic relations laws of the Commonwealth, including (i) marriage, divorce, dissolution, annulment, and property distribution; (ii) child custody, visitation, and parenting time; (iii) alimony, spousal support, maintenance, and child support; (iv) adoption; (v) parentage; and (vi) negotiation or enforcement of premarital, marital, and separation agreements.

"Family abuse" has the same meaning as set forth in § 16.1-228.

"Family or household member" has the same meaning as set forth in § 16.1-228.

"Law firm" means (i) lawyers who practice law together in a partnership, professional corporation, sole proprietorship, limited liability company, or association or (ii) lawyers employed together in (a) a legal services organization or (b) the legal department of another organization.

"Nonparty participant" means a person, other than a party and the party's collaborative lawyer, that participates in a collaborative law process.

"Party" means a person who signs a collaborative law participation agreement and whose consent is necessary to resolve a collaborative matter.

"Proceeding" means a judicial, administrative, arbitral, or other adjudicative process before a tribunal, including related prehearing and post-hearing motions, conferences, and discovery.

"Prospective party" means a person who discusses with a prospective collaborative lawyer the possibility of signing a collaborative law participation agreement.

"Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

"Related to a collaborative matter" means involving the same parties, transaction or occurrence, nucleus of operative fact, dispute, claim, or issue as the collaborative matter.

"Sign" means, with present intent to authenticate or adopt a record, to (i) execute or adopt a tangible symbol or (ii) attach to or logically associate with the record an electronic symbol, sound, or process.

"Tribunal" means a court, arbitrator, administrative agency, or other body acting in an adjudicative capacity that, after presentation of evidence or legal argument, has jurisdiction to render a decision affecting a party's interest in a matter.

2021, Sp. Sess. I, c. 346.

§ 20-169. Applicability.

This chapter applies to a collaborative law participation agreement that meets the requirements of § 20-170 and is signed on or after July 1, 2021.

2021, Sp. Sess. I, c. 346.

§ 20-170. Collaborative law participation agreement; requirements.

A. A collaborative law participation agreement shall:

1. Be in a record;

2. Be signed by the parties;

3. State the parties' intention to resolve a collaborative matter through a collaborative law process under this chapter;

4. Describe the nature and scope of the matter;

5. Identify the collaborative lawyer who represents each party in the process; and

6. Contain a statement by each collaborative lawyer confirming the lawyer's representation of a party in the collaborative law process, which may be contained in a separate writing.

B. Parties may agree to include in a collaborative law participation agreement additional provisions not inconsistent with this chapter.

2021, Sp. Sess. I, c. 346.

§ 20-171. Beginning and concluding collaborative law process.

A. A collaborative law process begins when the parties sign a collaborative law participation agreement.

B. A tribunal shall not order a party to participate in a collaborative law process over such party's objection.

C. A collaborative law process is concluded by a:

1. Resolution of a collaborative matter as evidenced by a signed record;

2. Resolution of a part of the collaborative matter, evidenced by a signed record, in which the parties agree that the remaining parts of the matter will not be resolved in the process; or

3. Termination of the process.

D. A collaborative law process terminates:

1. When a party gives notice to his collaborative lawyer and to other parties in a record that the process is ended;

2. When a party:

a. Begins a proceeding related to a collaborative matter without the agreement of all parties; or

b. In a pending proceeding related to the matter, (i) initiates a pleading, motion, order to show cause, or request for a conference with the tribunal; (ii) requests that the proceeding be put on the tribunal's active docket; or (iii) takes similar action requiring notice to be sent to the parties; or

3. Except as otherwise provided by subsection G, when a party discharges a collaborative lawyer or a collaborative lawyer withdraws from further representation of a party.

E. A party's collaborative lawyer shall give prompt notice to all other parties in a record of a discharge or withdrawal.

F. A party may terminate a collaborative law process with or without cause.

G. Notwithstanding the discharge or withdrawal of a collaborative lawyer, a collaborative law process continues if, not later than 30 days after the date that the notice of the discharge or withdrawal of a collaborative lawyer required by subsection E is sent to the parties:

1. The unrepresented party engages a successor collaborative lawyer; and

2. In a signed record:

a. The parties consent to continue the process by reaffirming the collaborative law participation agreement;

b. The collaborative law participation agreement is amended to identify the successor collaborative lawyer; and

c. The successor collaborative lawyer confirms the lawyer's representation of a party in the collaborative process.

H. A collaborative law process does not conclude if, with the consent of the parties, a party requests a tribunal to approve a resolution of the collaborative matter or any part of such matter as evidenced by a signed record, including any orders necessary to effectuate the terms of an agreement reached in the collaborative law process and evidenced in a signed record.

I. A collaborative law participation agreement may provide additional methods of concluding a collaborative law process.

2021, Sp. Sess. I, c. 346.

§ 20-172. Proceedings pending before tribunal; status report.

A. Persons in a proceeding pending before a tribunal may sign a collaborative law participation agreement to seek to resolve a collaborative matter related to the proceeding. The parties shall file promptly with the tribunal a notice of the collaborative law participation agreement after it is signed. Subject to subsection D and §§ 20-173 and 20-174, the filing operates as an application for a stay of the proceeding.

B. In the event that a stay is not granted by the tribunal, the proceeding shall be nonsuited by the parties before the collaborative law process may continue.

C. In the event that a stay of the proceeding is granted by the tribunal, the parties shall promptly file with the tribunal a notice in a record when their collaborative law process concludes. A stay of the proceeding under subsection A is lifted when the notice is filed. The notice shall not specify any reason for termination of the process.

D. A tribunal in which a proceeding is stayed under subsection A may require the parties and collaborative lawyers to provide a status report on the collaborative law process and the proceeding. A status report may include only information on whether the process is ongoing or concluded. It shall not include a report, assessment, evaluation, recommendation, finding, or other communication regarding a collaborative law process or collaborative law matter.

E. A tribunal shall not consider a communication made in violation of subsection D.

F. A tribunal shall provide parties notice and an opportunity to be heard before dismissing a proceeding in which a notice of collaborative process is filed based on delay or failure to prosecute.

2021, Sp. Sess. I, c. 346.

§ 20-173. Emergency order.

During a collaborative law process, a tribunal may issue emergency orders to protect the health, safety, welfare, or interest of a party or a party's family or household member.

2021, Sp. Sess. I, c. 346.

§ 20-174. Affirmation of agreement by tribunal.

A tribunal may affirm, ratify, and incorporate into a court order any agreement resulting from a collaborative law process.

2021, Sp. Sess. I, c. 346.

§ 20-175. Disqualification of collaborative lawyer and lawyers in associated law firm; exception.

A. Except as otherwise provided in subsection C, a collaborative lawyer is disqualified from appearing before a tribunal to represent a party in a proceeding related to the collaborative matter.

B. Except as otherwise provided in subsection C and § 20-176, a lawyer in a law firm with which the collaborative lawyer is associated is disqualified from appearing before a tribunal to represent a party in a proceeding related to the collaborative matter if the collaborative lawyer is disqualified from doing so under subsection A.

C. A collaborative lawyer or another lawyer in a law firm with which the collaborative lawyer is associated may represent a party:

1. To ask a tribunal to affirm, ratify, and incorporate any agreement resulting from the collaborative law process into a court order;

2. To ask a tribunal to enter any order necessary to effectuate the terms of any agreement resulting from the collaborative law process; or

3. To seek or defend an emergency order to protect the health, safety, welfare, or interest of a party or a party's family or household member, if a successor lawyer is not immediately available to represent such person.

D. If subdivision C 3 applies, a collaborative lawyer, or another lawyer in a law firm with which the collaborative lawyer is associated, may represent a party or a party's family or household member only until such person is represented by a successor lawyer or reasonable measures are taken to protect the health, safety, welfare, or interest of the person.

2021, Sp. Sess. I, c. 346.

§ 20-176. Low-income parties; exception from imputed disqualification.

A. The disqualification provisions of § 20-175 apply to a collaborative lawyer representing a party with or without fee.

B. After a collaborative law process concludes, another lawyer in a law firm with which a collaborative lawyer disqualified pursuant to § 20-175 is associated may represent a party without fee in the collaborative matter or a matter related to such collaborative matter if:

1. The party has an annual income that qualifies the party for free legal representation under the criteria established by the law firm for free legal representation;

2. The collaborative law participation agreement so provides for such subsequent representation; and

3. The collaborative lawyer is isolated from any participation in the collaborative matter or a matter related to the collaborative matter through procedures within the law firm that are reasonably calculated to isolate the collaborative lawyer from such participation.

2021, Sp. Sess. I, c. 346.

§ 20-177. Disclosure of information.

Except as otherwise provided by law, during the collaborative law process, on the request of another party, a party shall make timely, full, candid, and informal disclosure of information related to the collaborative matter without the requirement of the formal discovery procedures set forth in Part 4 of the Rules of Supreme Court of Virginia. A party shall also promptly update previously disclosed information that has materially changed. The parties may define the scope of disclosure during the collaborative law process.

2021, Sp. Sess. I, c. 346.

§ 20-178. Standards of professional responsibility and mandatory reporting not affected.

This chapter does not affect the professional responsibility obligations and standards applicable to a lawyer or other licensed professional or the obligation of a person to report abuse or neglect, abandonment, or exploitation of a child or adult under the laws of the Commonwealth.

2021, Sp. Sess. I, c. 346.

§ 20-179. Appropriateness of collaborative law process.

Before a prospective party signs a collaborative law participation agreement, a prospective collaborative lawyer shall:

1. Assess with the prospective party factors the lawyer reasonably believes relate to whether a collaborative law process is appropriate for the prospective party's matter;

2. Provide the prospective party with information that the lawyer reasonably believes is sufficient for the party to make an informed decision about the material benefits and risks of a collaborative law process as compared to the material benefits and risks of other reasonably available alternatives for resolving the proposed collaborative matter, such as litigation, mediation, arbitration, or expert evaluation; and

3. Advise the prospective party that:

a. After signing a collaborative law participation agreement, if a party initiates a proceeding or seeks tribunal intervention in a pending proceeding related to the collaborative matter, the collaborative law process terminates;

b. Participation in a collaborative law process is voluntary, and any party has the right to unilaterally terminate a collaborative law process with or without cause; and

c. The collaborative lawyer and any lawyer in a law firm with which the collaborative lawyer is associated may not appear before a tribunal to represent a party in a proceeding related to the collaborative matter, except as authorized by subsection C of § 20-175 or by § 20-176.

2021, Sp. Sess. I, c. 346.

§ 20-180. History of family abuse.

A. Before a prospective party signs a collaborative law participation agreement, a prospective collaborative lawyer shall make reasonable inquiry into whether there exists a history of family abuse between the prospective parties.

B. Throughout a collaborative law process, a collaborative lawyer shall reasonably and continuously assess whether there exists a history of family abuse between the parties.

C. If a collaborative lawyer reasonably believes that the party the lawyer represents or the prospective party who consults the lawyer has a history of family abuse with another party or prospective party, the lawyer shall not begin or continue a collaborative law process unless (i) the party or the prospective party requests beginning or continuing the process and (ii) the collaborative lawyer reasonably believes that the safety of the party or prospective party can be protected adequately during the process.

2021, Sp. Sess. I, c. 346.

§ 20-181. Confidentiality of collaborative law communication.

A collaborative law communication is confidential to the extent agreed upon by the parties in a signed record or as provided by another law of the Commonwealth.

2021, Sp. Sess. I, c. 346.

§ 20-182. Privilege against disclosure of collaborative law communication; admissibility; discovery.

A. Subject to §§ 20-183 and 20-184, a collaborative law communication is privileged under subsection B, is not subject to discovery, and is not admissible in evidence.

B. In a proceeding, the following privileges apply:

1. A party may refuse to disclose, and may prevent any other person from disclosing, a collaborative law communication.

2. A nonparty participant may refuse to disclose, and may prevent any other person from disclosing, a collaborative law communication of the nonparty participant.

C. Evidence or information that is otherwise admissible or subject to discovery does not become inadmissible or protected from discovery solely because of its disclosure or use in a collaborative law process.

2021, Sp. Sess. I, c. 346.

§ 20-183. Waiver and preclusion of privilege.

A. A privilege under § 20-182 may be waived in a record or orally during a proceeding if it is expressly waived by all parties and, in the case of the privilege of a nonparty participant, it is also expressly waived by such participant.

B. A person who makes a disclosure or representation about a collaborative law communication that prejudices another person in a proceeding shall not assert a privilege under § 20-182; such preclusion applies only to the extent necessary for the person prejudiced to respond to the disclosure or representation.

2021, Sp. Sess. I, c. 346.

§ 20-184. Limits of privilege.

A. There is no privilege under § 20-182 for a collaborative law communication that is:

1. Available to the public;

2. A threat or statement of a plan to inflict bodily injury or commit a crime of violence;

3. Intentionally used to plan a crime, commit or attempt to commit a crime, or conceal an ongoing crime or ongoing criminal activity; or

4. In an agreement resulting from the collaborative law process, evidenced by a record signed by all parties to the agreement.

B. The privileges under § 20-182 for a collaborative law communication do not apply to the extent that a communication is:

1. Sought or offered to prove or disprove a claim or complaint of professional misconduct or malpractice arising from or related to a collaborative law process; or

2. Sought or offered to prove or disprove abuse, neglect, abandonment, or exploitation of a child or adult, unless the child protective services or adult protective services unit of the local department of social services is a party to or otherwise participates in the process.

C. There is no privilege under § 20-182 if a tribunal finds, after a hearing in camera, that the party seeking discovery or the proponent of the evidence has shown that the evidence is not otherwise available, the need for the evidence substantially outweighs the interest in protecting confidentiality, and the collaborative law communication is sought or offered in (i) a court proceeding involving a felony or misdemeanor or (ii) a proceeding seeking rescission or reformation of a contract arising out of the collaborative law process or in which a defense to avoid liability on the contract is asserted.

D. If a collaborative law communication is subject to an exception under subsection B or C, only the part of the communication necessary for the application of the exception may be disclosed or admitted.

E. Disclosure or admission of evidence excepted from the privilege under subsection B or C does not make the evidence or any other collaborative law communication discoverable or admissible for any other purpose.

F. The privileges under § 20-182 do not apply if the parties agree in advance in a signed record, or if a record of a proceeding reflects agreement by the parties, that all or part of a collaborative law process is not privileged. This subsection does not apply to a collaborative law communication made by a person who did not receive actual notice of the agreement that all or part of a collaborative law process is not privileged before the communication was made.

2021, Sp. Sess. I, c. 346.

§ 20-185. Authority of tribunal in case of noncompliance.

A. If a collaborative law participation agreement fails to meet the requirements of § 20-170, or a lawyer fails to comply with § 20-179 or 20-180, a tribunal may nevertheless find that the parties intended to enter into a collaborative law participation agreement if they (i) signed a record indicating an intention to enter into a collaborative law participation agreement and (ii) reasonably believed they were participating in a collaborative law process.

B. If a tribunal makes the findings specified in subsection A, and the interests of justice require, the tribunal may (i) enforce an agreement evidenced by a record resulting from the collaborative law process in which the parties participated, (ii) apply the disqualification provisions of § 20-175, and (iii) apply a privilege under § 20-182.

2021, Sp. Sess. I, c. 346.

§ 20-186. Uniformity of application and construction.

In applying and construing this uniform chapter, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

2021, Sp. Sess. I, c. 346.

§ 20-187. Relation to Electronic Signatures in Global and National Commerce Act.

This chapter modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7001 et seq., but does not modify, limit, or supersede § 101(c) of that act, 15 U.S.C. § 7001(c), or authorize electronic delivery of any of the notices described in § 103(b) of that act, 15 U.S.C. § 7003(b).

2021, Sp. Sess. I, c. 346.