SEPARATION AND DIVORCE

Report of the

VIRGINIA ADVISORY LEGISLATIVE COUNCIL

To

The Governor

And

The General Assembly of Virginia

HOUSE DOCUMENT NO. 24

COMMONWEALTH OF VIRGINIA

Department of Purchases and Supply

Richmond

1975

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SEPARATION AND DIVORCE

Report of the

Virginia Advisory Legislative Council

Richmond, Virginia
January 6, 1975

To: Honorable Mills E. Godwin, Jr., Governor of Virginia

And

The General Assembly of Virginia

I. Introduction.

Today's society can well be characterized as highly mobile and constantly changing. In fact as well as in theory, women are no longer totally dependant on their male counterparts; they are demanding equal rights and equal treatment under the laws and many women have indicated a willingness to assume equal responsibility. Society as a whole is demanding efficient and effective service under the law. The realm of domestic relations is an area of the law which has been the subject of repeated studies and analysis not only from the legal but from the social point of view. In order to review the need for legislation in this field, the General Assembly enacted House Joint Resolution No. 25 at its 1974 Session.

HOUSE JOINT RESOLUTION NO. 25

Directing the Virginia Advisory Legislative Council to continue its study on separation and divorce; domestic relations; and the laws on dower and curtesy.

Whereas, House Joint Resolution No. 225 of the General Assembly of 1973 directed the Virginia Advisory Legislative Council to make a study and report on the laws on separation and divorce and dower and curtesy; and

Whereas, the Council having made such a study and reported to the Governor and the General Assembly, in addition to a report on the matters assigned it, that additional study should be made, particularly as to all the laws relating to domestic relations; now, therefore, be it

Resolved by the House of Delegates, the Senate concurring, That the Virginia Advisory Legislative Council is directed to continue its study of all matters relating to separation and divorce and dower and curtesy; that its studies should include all matters relating to domestic relations with the view toward recommending

needed modifications, additions and deletions. The Council shall study the experiences of other states and such other matters as may be pertinent to the study. The Council shall complete its study and report to the Governor and the General Assembly no later than November one, nineteen hundred seventy-four.

Delegate James M. Thomson of Alexandria, a member of the Council, was selected to serve as Chairman of a Committee to conduct this study. Also selected to serve on this Committee were: Senator Howard P. Anderson of Halifax, Vice Chairman; Mr. Charles A. Blanton, II, of Richmond; Mr. Martin A. Gannon of Alexandria; Senator Frederick T. Gray of Chesterfield; Delegate George H. Heilig, Jr., of Norfolk; Mr. Carroll Thomas Mustian of Richmond; Mr. William A. Perkins, Jr., of Charlottesville; Judge Irene L. Pancoast of Alexandria; Mr. Arthur E. Smith of Roanoke; Mrs. Betty A. Thompson of Arlington; Judge W. Carrington Thompson of Chatham; Professor Walter Wadlington of Charlottesville and Mr. Jerrold G. Weinberg of Norfolk.

The Virginia Advisory Legislative Council and the Division of Legislative Services made staff and facilities available to carry out this study; they assigned the necessary employees to assist the members of the Committee at all times.

The study Committee held numerous meetings across the Commonwealth; in Richmond, Virginia Beach, Hot Springs, Alexandria and a final public hearing in Charlottesville. While each meeting was not a public hearing, the Committee attempted to hear those that did attend the several meetings.

The Committee having made its report to the Council, the Council makes the following recommendations.

Preliminary Statement

The Council is of the opinion, as it was last year, that a radical change in Virginia's domestic relations law is desirable, but legislative experience has shown us that such recommendations cannot be enacted. The Subcommittee has retreated from a policy of pure no-fault divorce to one which retains most of the old fault grounds but which increases the viability of the no-fault provision (§ 20-91(9) by reducing it from two years to one year. The Council, therefore feels that the necessary changes can and should be made within the existing structure of the present laws. Using its study of 1973 as a basis, the Council has used a more conservative approach in reworking many of its 1973 recommendations. This approach has the benefit of retaining the extensive case law which has developed in Virginia in domestic relations law. This year the Council has looked more closely at the Code sections concerning property rights and settlements upon the granting of a divorce. Furthermore, the Council is recommending technical changes in Title 20 which would reflect a more equal responsibility between husbands and wives in the area of support and maintenance. Along this same line the Council is recommending that dower and curtesy be made

synonymous and that men as well as women be allowed to hold property in their sole and separate equitable estates.

RECOMMENDATIONS

Marriage

1. An existing statute requires that parties applying for a marriage license be informed if either or both of them have syphilis. The Council recommends that this statute be broadened to require that the information be given in writing. It is believed that the written information will close a communications gap so that a sound judgment may be made by the parties as to whether or not to continue their plans for marriage.(Reference § 20-4)

2. The parties, rather than the husband, should be charged with the payment of the fee for the celebration of the marriage. This change is in keeping with the provisions of Article I, Section 11 of the Virginia Constitution, which outlaws discrimination based on sex.

Furthermore, the Council feels that the presently allowable fee of ten dollars should be increased to twenty dollars. As a matter of practice, the Council has observed that the present limitation is not observed in a majority of such situations. (Reference § 20-27)

3. The Council recommends that the statute prohibiting marriage between certain degrees of consanguinity and affinity be streamlined. Accordingly, the adoption of a modified version of that part of the Uniform Marriage and Divorce Act which regulates such marriages is recommended. Under the proposal of the Council, adopted children are treated as blood relatives. Furthermore, children of prohibited marriages are legitimate, even though such marriages are void ab initio. (Reference § 20-38.1)

4. It is recommended that the minimum age of consent to marriage for both males and females be the same, namely eighteen years of age. Heretofore, the marriageable age for females was sixteen and that for males was eighteen. This is another instance where the Council is recommending that the different requirements for males and females be eliminated. (Reference § 20-48)

5. The Council recommends that marriages of persons between sixteen and eighteen years of age be allowed, if pregnancy is involved, with the consent of the parent of the person or persons who are under eighteen years of age. As an alternative, persons between sixteen and eighteen years of age are permitted to marry, where such persons go before the court and the court gives its consent to such marriage. The court would be able to give its consent to persons within this age bracket even over the objection of the parent or legal guardian. Marriages of persons sixteen years of age or under, with the exception of cases involving pregnancy or court consent, who have not followed these guidelines are void ab initio. In the case of pregnancy of a female, when either party is under the age of sixteen, the consent of the parent or guardian is

required, together with a medical certificate of proof of pregnancy (Reference §§ 20-48 and 20-49).

6. The effect of these proposals will overrule the case of Needham v Needham , 183 VA 681, which held that youthful marriages without parental consent as provided by law were nonetheless valid. (Reference §§ 20-45.1, 20-48 and 20-49)

Desertion and Nonsupport

7. In keeping with Article 1, Section 11 of the Constitution, providing for equal rights between the sexes, we have recommended that certain provisions relating to desertion and nonsupport be changed. The effect of these changes will be to completely equalize the grounds under which one spouse would be required to pay support and maintenance to the other spouse. These provisions would overrule the case and statute law in Virginia which established a policy of support and maintenance payments solely for the wife. (Reference § 20-61)

8. The changes recommended in Chapters 5 and 5.2, §§ 20-61 through 20-88.31, are basically technical in nature and would bring the provisions of these chapters into agreement with the provisions of Article I, Section 11 of the Virginia Constitution, which prohibits discrimination on the basis of sex. These changes include:

(a) The substitution of the phrase "maintenance and support for the spouse" in place of the term "alimony." Inherent in the term "alimony" is the idea of payment of money by a husband to a wife. The Council feels that in keeping with the hereinbefore mentioned Constitutional provision, this concept should be equally applicable to a husband as it presently is to a wife. The phrase "maintenance and support of the spouse" is a similar term which would not bear the stamp of past concepts traditionally attached to the term "alimony."

(b) The substitution of the word "spouse" in place of "husband" or "wife" where applicable.

9. The only substantive change recommended in these chapters is contained in § 20-67. This proposed change would give the circuit court concurrent original jurisdiction with the juvenile and domestic relations district court in all cases arising under these chapters.

Annulment and Divorce

10. Grounds for divorce now set out in § 20-91, such as impotency, conviction of a felony, or prostitution unknown to the other party prior to the marriage should be deleted as grounds for divorce and should be placed in a separate statute which would provide for suits for an annulment. Fraud and duress, are already grounds for annulment at common law and they are added to the statute on annulment. (Reference § 20-89.1)

11. (a) It is recommended that all fault grounds for divorce except adultery, sodomy committed outside the marriage, buggery, confinement subsequent to a conviction for a felony, cruelty, reasonable apprehension of bodily hurt and wilful desertion or abandonment be deleted from the law. (Reference §§ 20-91 and 20-95)

(b) The provisions of §§ 20-91(6) and 20-95 should be conformed and the time period for a final decree of divorce on the grounds of cruelty, desertion or abandonment reduced from one year to six months.

(c) The provisions of § 20-91(9), which permit divorce after two years separation, should be reduced to one year. The decree of divorce from bed and board should be retained, but the twelve month period for entry of a final decree should be reduced to six months. (Reference § 20-121)

12. The Council recommends that the court be given authority to make lump sum awards of support in addition to, or in lieu of, periodic payments, and that guidelines be incorporated into the Code which would aid the court in determining the matter of support and maintenance for the spouse and children. Nothing proposed in this report is designed or intended to overturn the courts' area of primary interest; namely, the well-being of the children. The interests of infant children have always been given primary concern over the other interests in divorce proceedings. The criteria herein set forth are designed to assure that maintenance and support payments will provide that both spouses contribute according to their abilities for the best interest of the children. Among the guidelines that the court would take into account are (1) the earning capacity, (2) the obligations and needs and the financial resources of the parties, including any property assigned by the court pursuant to § 20-107.1, (3) the education and training of the parties and the ability and opportunity of the parties to secure education and training, (4) the standard of living established during the marriage, (5) the duration of the marriage, (6) the age, physical and mental condition of the parties, and (7) such other factors as are necessary to consider the equities between the parties. It should, however, be noted that the Council recommends that no permanent support and maintenance be granted a spouse against whom grounds for divorce exist with the exception of a divorce obtained under the provisions of § 20-91(9). (Reference § 20-107)

13. It is the consensus of the Council that the present situation concerning division of the estate of the husband and wife upon the granting of a divorce is not practicable or desirable. The term "estate" as presently defined in § 20-107 should be changed. The court is severely limited in dealing with property rights and as a result the parties are left to fight it out between themselves, before, during and even after the divorce is over. In order to avoid excessive litigation, the Council feels that the court should be able to divide the property (jointly held real estate and personalty) without additional lit igation.

The Committee expended a great deal of time in considering how guidelines might be fashioned in the division of the estate of the parties in a broken marriage. Many points of view were raised in the course of the deliberations of the Committee, both from the testimony of witnesses, and by members of the Committee itself. As a result, the Committee's judgment was to present six alternative amendments for the Council's deliberations, to the guidelines set out in paragraph 12. Basically, these suggested changes give to the court at the time of the entry of a decree of divorce, a vinculo or at the request of the parties, at the time of a decree a mensa, authority to divide jointly held property. This authority is granted in various degrees under each alternative. They were:

(a) Upon entry of a divorce from the bond of matrimony, or upon the request of both parties at the time of a decree a mensa, the court is authorized to divide the "estate" equally between the parties without regard to contribution or fault by either party. The divisions, if made, would automatically be equal, with no discretion in the court to make division at any other percentage.

The "estate" is to be construed to mean all rights of the parties whether created by the marriage or otherwise, in and to all jointly held real estate within the jurisdiction of the court and in and to all jointly held personal property wherever located.

(b) This alternative is identical to (a), except that the court would have the authority to divide all jointly held real estate within the Commonwealth, rather than limiting the authority to that within the physical jurisdiction of the court.

(c) Upon entry of a decree of divorce from the bond of matrimony or upon the request of both parties at the time of a decree a mensa, the court may make division of the "estate" of the parties as it deems equitable under the circumstances, regardless of the fault of either party.

The court in making its division is directed to consider (1) the contribution made by a spouse to the particular property and to the marriage; (2) duration of the marriage; (3) the financial resources, abilities, earning capacity, obligations and needs of the parties; (4) any decree by the court for support and maintenance of the spouse; and (5) such other factors as are necessary to consider the equities between the parties.

The term "estate" is construed to mean all rights of the parties, whether created by the marriage or otherwise, in and to all jointly held real estate within the jurisdiction of the court and in and to all jointly held tangible and intangible personal property, wherever located.

(d) This alternative is identical with (c), except that the courts' authority over jontly held real estate is extended to that held within the Commonwealth.

(e) This alternative contains the same criteria as set out in (c), except that the court is permitted discretion to apportion the

"estate" in such a manner that no party who is found at fault would be awarded a greater share than fifty percent of the "estate."

(f) This alternative is as (e), except that the jurisdiction of the court to divide jointly held real estate would extend throughout the Commonwealth.

13(A). The Council, after mature deliberations as to these alternate proposals, recommends that the General Assembly adopt the alternative set out in (b) of paragraph 13. This presents a less radical departure from present practice; would decrease, however, multiple litigation and generally result in a more equitable vehicle to encourage couples facing divorce to seek amicable agreement in lieu of divisive and inure disruptive controversy.

14. The Council recommends that the period of time before which an a mensa decree can be merged into a decree of divorce from bond of matrimony be reduced from one year to six months. The six months period is recommended so that the distinction can be preserved between an a mensa decree where the proper grounds exist and the newly recommended no fault provision. Such a reduction will permit a party to get a final decree where the grounds are desertion and abandonment or cruelty within six months. If the no fault ground is utilized, the waiting period would be one year. (Reference § 20-95)

15. For centuries, women have been able to hold property in their sole and separate equitable estate, free from any marital rights of the husband. In compliance with the provisions of Article I, Section 11 of the Virginia Constitution, the Council urges that this right which has so long been an exclusive right of women be extended to men as well. The reason for the establishment of such estates exclusively for the benefit of the wife has ceased to exist with the enactment of the Married Woman's Act. Such an estate would be presumptively created only where the prescribed language is utilized. (Reference § 55-51.1)

16. (a). The Council recommends that dower and curtesy be made synonymous. (Reference § 64.-19.1)

(b) The Council recommends that a surviving spouse inherit real property in the same manner as personal property. Therefore, instead of the creation of a life estate in one-third of the real estate held by the deceased spouse, the surviving spouse would take a one-third interest in fee. This would eliminate the distinction between the inheritance of real and personal property as to the type of estate inherited and the interest in the real property of the surviving spouse would be certain and no longer subject to the contingencies of the actuarial tables. (Reference § 64.1-19.2)

17. The courts, in determining support and maintenance for the spouse and children do not have, at present, any reliable means to determine a party's present financial situation. Quite often outward appearance of affluence or lack of it are deceptive. The Council recommends that the parties be allowed to file interrogatories or to require the production of accounts or other papers in equity cases to

be used as a guide in determining a just and equitable payment. Accordingly, a party's income tax return could be required to be produced before the court.

18. The Council reviewed the present statutes concerning orders of publication as used in domestic relations suits and concluded that the present statutes are in no need of revision.

Respectfully Submitted

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WILLARD J. MOODY, Chairman

EDWARD E. LANE, Vice chairman

GEORGE E. ALLEN, JR.

VINCENT F. CALLAHAN, JR.

ARCHIBALD A. CAMPBELL

JOSEPH V. GARTLAN, JR.

JERRY H. GEISLER

ROBERT R. GWATHMEY, III

.....
C. HARDAWAY MARKS

LEWIS A. McMURRAN

.....
WILLIAM V. RAWLINGS

.....
JAMES M. THOMSON

LAWRENCE DOUGLAS WILDER

EDWARD E. WILLEY

COMMITTEE AMENDMENT IN THE NATURE

OF A SUBSTITUTE FOR HOUSE BILL NO. 208

(As passed by the House of Delegates February 25, 1974)

A BILL to amend and reenact §§ 20-4, 20-27, 20-48, 20-49, 20-61, 20-67, 20-70 20-71.1, 20-74, 20-75, 20-79, 20-83, 20-86, 20-87, 20-88, 20-88.23:3, 20-91, 20-93, 20-94, 20-95, 20-96, 20-99, 20-102, 20-103, 20-104, 20-107, 20-109, 20-110, 20-112, 20-113, 20-114, 20-115, 20-120, 20-121, 20-121.01 and 20-122, as severally amended, of the Code of Virginia; and to further amend the Code of Virginia by adding sections numbered 20-38.1, 20-45.1 and 20-89.1 and 20-107.1; and to repeal §§ 20-29, 20-38, 20-45, 20-89, 20-92, 20-100, 20-101, and 20-119, as severally amended, of the Code of Virgina, the amended, new and repealed sections relating to marriage and divorce generally, serological tests; what marriages void or voidable; prohibited marriages; minimum age of marriage with consent of parents; judicial consent in cases; annulment of marriages and divorces; to abolish certain grounds for divorce;and to provide for certain procedures in certain cases of separations.

Be it enacted by the General Assembly of Virginia:

1. That §§ 20-4, 20-27, 20-48, 20-49, 20-61, 20-67, 20-70, 20-71.1, 20-74, 20-75, 20-79, 20-83, 20-86, 20-87, 20-88, 20-88.23:3, 20-91, 20-93, 20-94, 20-95, 20-96, 20-99, 20-102, 20-103, 20-104, 20-107, 20-109, 20-110, 20-112, 20-113, 20-114, 20-115, 20-120, 20-121, 20-121.01 and 20-122, as severally amended, of the Code of Virginia are amended and reenacted and the Code of Virginia is amended by adding sections numbered 20-38.1, 20-45.1, 20-89.1 and 20-107.1 as follows:

§ 20-4. Informing parties of indication of syphilis.—If any such serological test, on being repeated, or the history or physical findings, as to any person, indicate evidence of syphilis, the physician shall in person *and in writing* inform both such person and the other party for whom the marriage license is desired of the result of such test or tests, the nature of the disease and the possibilities of transmitting the disease to the marital partner of such person and to their children, and shall in the statement filed with or transmitted to the State Department of Health state that such has been done *transmit a copy of such writing.*

§ 20-27. Fee for celebrating marriage.—Any person authorized to celebrate the rites of marriage shall be paid by *permitted to charge* the husband *parties* a fee not to exceed ten *twenty* dollars in each case *for each ceremony.*

§ 20-38.1. (a) 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 a brother and a sister, whether the relationships are by the half or the whole blood or by adoption;

(3) A marriage between an uncle and a niece or between an aunt and a nephew, whether the relationships are by the half or the whole blood.

(b) Children born of a prohibited marriage are legitimate.

§ 20-45.1. (a) All marriages which are prohibited by § 20-38.1 or where either or both of the parties are, at the time of the solemnization of the marriage, under the age of eighteen, and have not complied with the provisions of §§ 20-48 and 20-49, 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.

§ 20-48. The minimum age at which male persons may marry shall be eighteen. The minimum age at which female minors may marry.

In case of pregnancy when either the female *party* is under sixteen or the male under eighteen , the clerk authorized to issue marriage licenses in the county or city wherein the female resides shall issue proper marriage license with the consent of the parent or guardian of the person or persons under the ages *age* aforesaid only upon presentation of a doctor's certificate showing he has examined the female and that she is pregnant, or has been pregnant within nine months previous to such examination, which certificate shall be filed by the clerk, and such marriage consummated under such circumstances shall be valid. If any such person under the age aforesaid be a ward of the State by virtue of having been adjudicated a delinquent, dependent, or neglected child, instead of the consent of the parent or natural guardian there shall be required the consent of the judge or justice having jurisdiction to control the custody of such person; or, if such person so adjudicated shall have been committed to the Board of Welfare, the Board of Corrections or to any society, association, or institution approved by it for this purpose, such consent shall be given by some person thereto authorized by the Commissioner of Public Welfare, or by the principal executive officer of such society, association, or institution, as the case may be.

Nothing herein contained shall be construed to prevent clerks from issuing a marriage license under circumstances mentioned in § 18.1-45, or to prevent persons under circumstances mentioned therein from marrying.

§ 20-49. When consent required and how given.— If *Except as provided in § 20-48, if* any female person *or persons* intending to marry be *sixteen years of age but* under eighteen years of age, and has *have* not been previously married, the consent of the father or mother or guardian of such person, shall be given either personally to the clerk or judge, or in writing subscribed by a witness, who shall make oath before

the clerk or judge that the writing was signed or sworn to in his presence by such father, guardian, or mother, as the case may be, or the writing shall be sworn to before a notary public or some person authorized to take acknowledgments to deeds under the laws of this State, which oath shall be properly certified by such officer. If there be no father, guardian, or mother, or if such person be abandoned by her parents, the judge of the circuit court of the county *or city ,* or of the corporation court of the city wherein the female *such person or either of them* resides, either in term or vacation, or the clerk or deputy clerk of such court, may, on the application of the *verified petition of such* person *or persons* intending to marry, properly certified , authorize a marriage license to be issued, or issue the same, as the case may be. For the purpose of giving consent under the provisions of this section, an insane father or an insane mother shall be treated as if there were no father or mother, or father and mother, as the case may be.

If any such female person under eighteen years of age be a ward of the State by virtue of having been adjudicated a delinquent, dependent, or neglected child, the consent required by this section shall be given by the judge or justice having jurisdiction to control the custody of such person; or, if such person so adjudicated shall have been committed to the Board of Welfare, Board of Corrections or to any society, association, or institution approved by it for this purpose, such consent shall be given personally by the Commissioner of Public Welfare or by some person thereto authorized by him, the Director of the Department of Corrections or by some persn thereto authorized by him, or by the principal executive officer of such society, association, or institution, as the case may be, such authorization to be in writing, attested or sworn to as hereinabove provided.

§ 20-61. Desertion or nonsupport of wife, husband or children in necessitous circumstances.—Any husband *spouse* who without cause deserts or willfully neglects or refuses or fails to provide for the support and maintenance of his *or her spouse,* wife, or any wife who without cause deserts or willfully neglects or refuses or fails to provide for the support and maintenance of her husband who is incapacitated due to age or other infirmity, 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 wife, husband *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 five hundred dollars, or confinement in jail not exceeding twelve months, or both, or in the case of a husband or father by confinement in the Bureau of Correctional Field Units or on work release employment as provided in § 53-166.1, for a period of not less than ninety days nor more than twelve months or in the case of a wife or mother in a State correctional institution for women 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 one thousand

dollars and the fine or forfeiture may be directed by the court to be paid in whole or in part to the wife or husband *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 any parent of any 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.

§ 20-67. Jurisdiction.—Proceedings under this chapter shall be had in the *circuit courts or the* juvenile and domestic relations district courts, which shall have exclusive *concurrent* 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 State, and any defendant so indicted or presented and apprehended 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.

§ 20-70. No warrant of arrest to issue.— (a) 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 or any magistrate of the city or county may issue his *a* warrant for him *the spouse or parent* returnable before the court.

§ 20-71.1. Attorneys' fees in proceedings under section 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, petitioning 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 of record 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.

§ 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; provided, however, that 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.

§ 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

§ 20-79. Effect of divorce proceedings.—(a) In any case where an order has been entered under the provisions of this chapter, directing a defendant 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 State having jurisdiction thereof, in which decree provision is made for alimony or support money *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 same 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, alimony *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) Provided, that 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 menso 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 all matters pertaining to alimony *support and maintenance for the spouse*, maintenance, support, care and custody of the child or children.

§ 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 wife *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 State.

§ 20-86. Duties of probation officers.—Such probation officer shall ascertain the name and address and such facts in relation to the antecedent history and environment of the person or persons committed to his charge as may enable him to determine what corrective measures will be proper in the case, and shall exercise constant supervision over the conduct of such person or persons, and his or her family and make report to the judge or justice whenever he shall deem it necessary or be required so to do, and he shall use every effort to encourage and stimulate such person to a reformation and to effect a reconciliation between estranged couples.

§ 20-87. Arrest for violating directions, rules or regulations given by judge.—Whenever the chief of police, sheriff or probation officer shall become 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, sheriff or probation officer 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.

§ 20-88. Support of parents by children.—It shall be the joint and several duty of all persons seventeen years of age or over, of sufficient earning capacity or income, after reasonably providing for his *or her* own immediate family, to provide or assist in providing for the support and maintenance of his or her mother or aged or infirm 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.

Where such courts have been or shall be established, the juvenile and domestic relations *district* court shall have exclusive original jurisdiction in all cases arising under this section. Where no such courts have been established, jurisdiction for the enforcement of this section shall be vested in the corporation or hustings courts in cities and in the circuit courts *court* of the counties . 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 wilful failure to support any such child by the father or mother, as the case may be, prior to the child's emancipation.

Any person violating the provisions of this section shall be guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding five hundred dollars or imprisonment in jail for a period not exceeding twelve months or both. Provided, however, in determining eligibility of such parent for assistance under a State or federal medical or financial assistance program, the financial resources of any child or children referred to herein shall not be considered in determining such eligibility.

§ 20-88.23:3. Immunity of obligor from criminal prosecution.— If at the hearing the obligor is called for examination as an adverse party and he *or she* declines to answer upon the ground that his *or her* testimony may tend to incriminate him *or her*, the court may require him *or her* to answer, in which event he *or she* is immune from criminal prosecution with respect to matters revealed by his *or her* testimony, except for perjury committed in this testimony.

§ 20-89.1. (a) When a marriage is alleged to be void or voidable for any of the causes mentioned&in §§ 20-13, 20-38.1, 20-43, 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, the wife, without the knowledge of the husband, was with child by some person other than the husband, or where the husband, without knowledge of the wife, had fathered a child born to a woman other than the wife within ten 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 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. 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 or 20-49, 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.

§ 20-91. Grounds for divorce from bond of matrimony.—A divorce from the bond of matrimony may be decreed:

(1) For adultery , or sodomy or buggery ;

(1a) For sodomy committed outside the marriage;

(1b) For buggery;

(2) For natural or incurable impotency of body existing at the time of entering into the matrimonial contract;

(3) Where either of the parties subsequent to the marriage has been sentenced to confinement in the penitentiary of this state or of any other state of the United States or to confinement in a penitentiary of the United States, *convicted of a felony, and 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 or her conjugal rights); *or*

(4) Where prior to the marriage, either party, without the knowledge of the other, had been convicted of an infamous offense;

(5) [Repealed.]

(6) Where either party *has been guilty of cruelty, caused reasonable apprehension of bodily hurt, or* wilfully deserts or abandons the other for one year , such divorce may be decreed to the *innocent* party abandoned *after a period of six months from the date of such act*;

(7) Where, at the time of the marriage, the wife without the knowledge of the husband was with child by some person other than the husband;

(8) Where prior to the marriage the wife had been, without the knowledge of her husband, a prostitute, such divorce may be decreed to the husband; and

(9) *(a)* On the application of either party if and when the husband and wife have lived separate and apart without any cohabitation and without interruption for two years *one year.* 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 two years *one year* 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 subsection *(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 subsection (9), not appealed to the Supreme Court of Appeals *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 subsection (9) shall in no way lessen any obligation a husband *any party* may otherwise have to support his wife *the spouse* unless he *such party* shall prove that there exists in his *the* favor *of such party* some other ground of divorce under this section *or § 20-95.*

§ 20-93. Insanity of guilty party after commencement of desertion no defense.—When the suit is for divorce from the bond of matrimony for wilful desertion or abandonment, it shall be no defense that the guilty party has, since the commencement of such desertion, and within one year *six months* thereafter, become and has been adjudged insane, but at the expiration of one year *six months* 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.

§ 20-94. Effect of cohabitation after knowledge of adultery; 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 plaintiff *person seeking relief.*

§ 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, *wilful desertion or* abandonment or desertion .

§ 20-96. Jurisdiction of suits for annulment, affirmance or divorce.—The circuit and corporation courts *court*, on the chancery side thereof, and every court of this State exercising chancery jurisdiction, shall have jurisdiction of suits for annulling or affirming marriage and for divorces.

§ 20-99. How such suits instituted and conducted; costs.—Such suit shall be instituted and conducted as other suits in equity, except

that the bill shall not be taken for confessed, nor shall a divorce , *annulment, or affirmation of a marriage* be granted on the uncorroborated testimony of the parties or either of them; and, whether the defendant answer or not, the cause shall be heard independently of the admissions of either party in the pleadings or otherwise; and no process or notice in such proceedings shall be served in this State, except by officers authorized to serve the same; provided, however, that 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 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 Rule 2:17 *1:12* of the Rules of the Supreme Court of Appeals *Virginia*. Costs may be awarded to either party as equity and justice may require.

§ 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 *wilful desertion or* abandonment or desertion , to allege or prove an offer of reconciliation.

§ 20-103. Court may make orders pending the suit, etc.—The court in term or the judge in vacation may, at any time pending the suit, in the discretion of such court or judge, make any order that may be proper to compel the man *spouse* to pay any sums necessary for the maintenance of *and support for* the woman *petitioning spouse* and to enable *him or* her to carry on the suit, or to prevent him *or her* from imposing any restraint on *his or* her personal liberty , or to provide for the custody and maintenance of the minor children of the parties during the pendency of the suit, or to preserve the estate of the man *or woman*, so that it be forthcoming to meet any decree which may be made in the suit, or to compel him *or her* to give security to abide such decree.

§ 20-104. Order of publication against nonresident defendant.—When in a *In any* suit for annulment , or *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 State of Virginia, or that diligence has been used by or on behalf of the plaintiff to ascertain in what county or corporation 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. No depositions in the suit shall be commenced until at least ten days shall have elapsed after the order of publication has been duly published as required by law.

All annulments or divorces heretofore granted in suits in which the defendant was proceeded against by an order of publication which required the defendant to appear within ten days after due publication thereof, and in which depositions were taken less than fifteen days, but not less than ten days, after such due publication and in suits in which the defendant was proceeded against by an

order of publication issued on an affidavit that diligence had been used by or on behalf of the plaintiff to ascertain in what county or corporation such defendant was, without effect, or wherein the order of publication 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.

§ 20-107. Court may decree as to estate and maintenance of parties, and custody of children and resumption of former name.— Upon decreeing the dissolution of a marriage, and also upon decreeing a divorce, whether from the bond of matrimony or from bed and board, and upon decreeing that neither party is entitled to a divorce , the court may make such further decree as it shall deem expedient concerning the estate *as provided in § 20-107.1* and the maintenance *and support* of the parties, or either of them, *including the awarding of an immediate lump sum payment in addition to or in lieu of support and maintenance payments,* and the care, custody and maintenance of their minor children, and may determine with which of the parents the children or any of them shall remain, provided, that the court shall have no authority to decree support of children or alimony *support and maintenance of the spouse* to continue after the death of the father or husband *person ordered to pay such support and maintenance.* Upon decreeing a divorce from the bond of matrimony, the court may allow either party to resume a former name. The word "estate" as used in this section shall be construed to mean only those rights of the parties created by the marriage in and to the real property of each other, and such rights of either party, in the event of the death of the other, in the distribution of such decedent's estate pursuant to § 64.1-11. *The court shall, in determining such support and maintenance for the spouse or children, consider the following:*

(1) the earning capacity, obligations and needs, and financial resources of the parties;

(2) the education and training of the parties and the ability and opportunity of the parties to secure such education and training;

(3) the standard of living established during the marriage;

(4) the duration of the marriage;

(5) the age, physical and mental condition of the parties;

(6) the division of property under the provisions of § 20-107.1; and

(7) such other factors as are necessary to consider the equities between the parties.

Provided, however, that no permanent support and maintenance for the spouse shall be awarded by the court from a spouse if there exists in his or her favor a ground of divorce under any provision of §§ 20-91(1) through (8) or 20-95.

Alternative B

§ 20-107.1. Upon entry of a decree of divorce from the bond of matrimony or upon

the request of both parties, the court may divide the estate equally between the parties without regard to contribution by either party. The word "estate" as used in this section shall be construed to mean all rights of the parties, whether created by the marriage or otherwise, in and to all jointly held real property within the Commonwealth and in and to all jointly held tangible and intangible personal property.

§ 20-109. Changing maintenance and support for a spouse; effect of stipulations as to maintenance and support for a spouse; cessation upon remarriage or death.—Upon petition of either party the court may increase, decrease, or cause to cease, any alimony *support and maintenance for the spouse* that may thereafter accrue whether the same has been heretofore or hereafter awarded, as the circumstances may make *deem* proper; provided, however, if a stipulation or contract signed by the party to whom such relief might otherwise be awarded is filed with the pleadings or depositions, then no decree or order directing the payment of alimony *support and maintenance for the spouse*, suit money, or counsel fee shall be entered except in accordance with that stipulation or contract unless such party raise objection thereto prior to entry of the decree; provided that if any former spouse, for whom provisions for alimony or support or *and* maintenance have been made in such stipulation or contract whether entered into heretofore or hereafter, shall thereafter remarry, the court shall, upon such remarriage, order that such alimony or support or *and* maintenance for such former spouse shall cease as of the date of such marriage, and upon the death of any such former spouse, the court shall order that no payment shall be made to the estate of such decedent on account of such provisions, unless such stipulation or contract otherwise specifically provides in the event of remarriage or death.

§ 20-110. Maintenance and support for a spouse to cease on remarriage.—If any person *former spouse* to whom alimony *support and maintenance* has been awarded shall thereafter marry, such alimony *support and maintenance* shall cease as of the date of such marriage.

§ 20-112. Notice when proceedings reopened.—When the proceedings are reopened the party or parties sought to be charged with the support of any child involved in the suit shall be given such notice by service or order of publication as required in similar cases *to increase, decrease or terminate maintenance and support for a spouse or for a child, 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.*

§ 20-113. Procedure when respondent fails to perform order for support and maintenance of child or spouse 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 payment of alimony *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 alimony *for the support and maintenance of the spouse*, may proceed to deal with the respondent as provided in §§ 20-114 and 20-115; it may revise and alter its decree as to the child or payment of alimony *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 payment of alimony *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.) of this title.

§ 20-114. Recognizance for compliance with order or decree.—Upon the entry, or thereafter, of any order or decree for support *, and* maintenance or alimony *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.

§ 20-115. Commitment and sentence for failure to comply with order or decree.—Upon failure or refusal to give the recognizance provided for in the preceding section, or upon conviction of any party for contempt of court in failing or refusing to comply with any order or decree for support *, and* maintenance or alimony *for a spouse or for a child or children,* the court may commit and sentence such party to *the State correctional institution for women,* a workhouse, city farm or work squad, or the State convict road force, at hard labor, as provided for in §§ 20-61 and 20-62, for a fixed or indeterminate period or until the further order of the court, in no event however for more than twelve months, and 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 party *spouse* or parties *the child or children* for whose benefit such order or decree provided.

§ 20-120. Revocation of decree from bed and board on reconciliation.— When a *an a mensa* decree for a separation forever, or limited period, has been made in a suit for a divorce from bed and board *has been entered pursuant to § 20-95,* it may at any time thereafter, upon the joint application of the parties, and the production by them of satisfactory evidence of their reconciliation, be revoked by the same court which made it and under such regulations and restrictions as the court may impose.

§ 20-121. Merger of decree for divorce from bed and board with decree for divorce from bond of matrimony.—In any case where *wilful* desertion *or abandonment* or cruelty is the ground for divorce , when one year *six months* shall have elapsed from the time of such *wilful* desertion *or abandonment* or when one year *six months* shall have elapsed from the time the parties separated when cruelty is charged, upon application of the party injured, and upon the production of satisfactory evidence, whether taken theretofore or in support of such application, the court may merge such decree for divorce from bed and board into a decree for a divorce from the bonds of matrimony, if the court shall be of opinion, from the evidence so

taken, that no reconciliation has taken place, or is probable, and that a separation has continued without interruption since the granting of such divorce. It shall not be necessary to give the guilty party notice of the taking of depositions in any case in which the only purpose of the proceeding is to merge the decree for divorce from bed and board into a decree for a divorce from the bonds of matrimony, and to allow the wife, if she so desires, to resume her maiden name or a former married name, nor shall it be necessary to give the guilty party notice of application to the court in any case in which the only purpose of the proceeding is to merge the decree for divorce from bed and board into a decree for a divorce from the bonds of matrimony and to allow the wife, if she desires, to resume her maiden name or a former married name; but 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, alimony or support *and maintenance for a spouse or child or children* money except as specifically provided in such decree. And when one year *six months* shall have elapsed after the entering of a decree for divorce from bed and board, or when one year *six months* shall have elapsed from the time the parties separated when cruelty is charged or when one year *six months* shall have elapsed from the time of such desertion, upon application of the guilty party to such divorce proceedings, after giving to the other party in the original action ten days' notice, and upon the production of satisfactory evidence whether taken theretofore, or in support of such application, the court may, in its discretion, merge such decree for divorce from bed and board into a decree for a divorce from the bonds of matrimony, if the court shall be of the opinion from the evidence so taken, that no reconciliation has taken place, or is probable, and that a separation has continued without interruption since the granting of such divorce, and the court may also make such provision as is proper for the maintenance and support of wife *spouse* and children, if any, in accordance with the right of the case. The provisions of this and the preceding section (§ 20-120) shall apply to the divorces from bed and board, which have been heretofore as well as those which may be hereafter granted.

§ 20-121.01. Decree of divorce from bonds of matrimony without decree from bed and board.—In any case where *wilful* 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.

§ 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, and by such publication as above mentioned offers to engage, appear, or act as attorney or counsel in any suit for alimony *support and maintenance for the spouse*, divorce, or the severance, dissolution, or annulment of

marriage, either in this State or elsewhere, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined not less than one hundred dollars nor more than three hundred dollars, and the person so convicted shall, in addition to the above penalty, be disbarred from practicing as such attorney at law in the courts of this Commonwealth. This section shall not apply to the printing or publishing of any notice or advertisement required or authorized by any law of this State or orders of any court.

2. That §§ 20-29, 20-38, 20-45, 20-89, 20-92, 20-100, 20-101, and 20-119, as severally amended, of the Code of Virginia are repealed.

A BILL to amend and reenact §§ 8-320 and 8-324 of the Code of Virginia, relating to interrogatories and production of books and records.

Be it enacted by the General Assembly of Virginia:

1. That §§ 8-320 and 8-324 of the Code of Virginia are amended and reenacted as follows:

§ 8-320. Filing interrogatories to adverse party or claimant; summons to answer.—In a case at law *or equity* a party may file in the clerk's office, and, in a case or matter before a commissioner of a court, any person interested may file with such commissioner interrogatories to any adverse party or claimant. The clerk or commissioner shall issue a summons, directed as prescribed in § 8-44, requiring the officer to summon the proper party to answer such interrogatories, and make return thereof within such time, not exceeding sixty days, as may be prescribed in the summons. With the summons there shall be a copy of the interrogatories, which shall be delivered to the person served with the summons at the time of such service. If the summons be against a plaintiff who is not a resident of this State, or a defendant who is not a resident of this State but who has appeared in the case or been served with process in this State, the service may be on his attorney at law.

§ 8-324. How production of book accounts or other writing compelled.—In any case at law *or equity* a party may file in the clerk's office, and in any case or matter before a commissioner of a court any person interested may file with such commissioner, an affidavit, setting forth that there is, he verily believes, a book of accounts or other writing in possession of an adverse party or claimant containing material evidence for him, specifying with reasonable certainty such writing or the part of such book. The clerk or commissioner shall issue a summons, directed as under § 8-320, requiring him to summon the proper party to produce such writing, or an exact copy of such part of such book, and make return thereof as under that section. With the summons there shall be a copy of the affidavit, which shall be delivered to the person served with the summons at the time of such service. If the summons be against a plaintiff who is not a resident of this State, or a defendant who is not a resident of this State but who has appeared in the case or been served with process in this State, the service may be on his attorney at law.

A BILL and reenact § 64.1-19 of the Code of Virginia, and to amend the Code of Virginia by adding § 64.1-19.1, the amended and new sections relating to dower and curtesy of a surviving spouse.

Be it enacted by the General Assembly of Virginia:

1. That § 64.1-19 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding § 64.1-19.1, as follows:

§ 64.1-19. Dower or curtesy of a surviving spouse.—A surviving spouse shall be entitled to a dower or curtesy interest of one third *of the fee* of all the real estate whereof the deceased spouse or any other to his use was at any time seized during coverture of an estate of inheritance, unless such right shall have been lawfully barred or relinquished *notwithstanding the provisions of § 64.1-1 or the provisions of any will made by the deceased spouse.*

§ 64.1-19.1. Where the word "curtesy" appears in this chapter or this Code, it shall be taken to be synonymous with the word "dower" as the same appears in this chapter or this Code, and shall be so construed for all purposes.

A BILL to amend the Code of Virginia by adding a section numbered 55-51.1; and to amend and reenact § 64.1-21 of the Code of Virginia; and to repeal § 55-47 of the Code of Virginia, the respective sections relating to and allowing all natural persons to take and hold real estate as their equitable separate estates.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 55-51.1 and that § 64.1-21 of the Code of Virginia is amended and reenacted as follows:

§ 55-51.1. (a) Notwithstanding any provision of law, statutory or otherwise, any person may take and hold real estate as a separate equitable estate. They may be created as heretofore and shall be held in all respects according to the provisions of the instrument by which they are created and with all the powers conferred by such instruments. Nothing contained in Chapter 3 of this title shall be construed to prevent the creation of such estates.

(b) The provisions of this section shall not apply to any deed of conveyance of real estate executed in this Commonwealth prior to June one, nineteen hundred seventy-five.

§ 64.1-21. When no curtesy in separate estate.—A surviving husband *or wife* shall not be entitled to curtesy *or dower* in the equitable separate estate of the deceased *husband or* wife if such right thereto has been expressly excluded by the instrument creating the same.

2. That § 55-47 of the Code of Virginia is repealed.