

**REPORT OF THE  
JOINT SUBCOMMITTEE STUDYING**

# **Support Laws in the Commonwealth**

**TO THE GOVERNOR AND  
THE GENERAL ASSEMBLY OF VIRGINIA**



## **House Document No. 24**

**COMMONWEALTH OF VIRGINIA  
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**Report of the  
Joint Subcommittee Studying  
Support Laws in the Commonwealth  
To  
The Governor and the General Assembly of Virginia  
Richmond, Virginia  
1984**

To: Honorable Charles S. Robb, Governor of Virginia  
and  
The General Assembly of Virginia

**INTRODUCTION**

Recognizing that child support enforcement is a serious problem which has reached monumental proportions in the Commonwealth and that the court support process should be improved to reduce the growing demands for public assistance funds in this area, the 1981 Session of the General Assembly authorized a comprehensive study of Virginia's support laws. House Joint Resolution No. 260 established a joint subcommittee to conduct this review and report its findings to the General Assembly. The study was continued in 1982 by House Joint Resolution No. 40.

Delegate C. Hardaway Marks of Hopewell was selected to chair the joint subcommittee. Other members asked to serve on the subcommittee were Delegates Frank M. Slayton, Mary A. Marshall, and Robert C. Scott, and Senators Frederick C. Boucher, Virgil H. Goode, Jr., Joseph V. Gartlan, Jr., and Thomas J. Michie, Jr. Additionally, two juvenile and domestic relations district court judges, Arlin F. Ruby and J. English Ford, and the Commissioner of the Department of Social Services, William L. Lukhard, were appointed to the subcommittee.

The study was continued again by House Joint Resolution No. 74 in the 1983 Session. At that time, Senator Peter K. Babalas replaced Senator Boucher and Delegate Jay W. DeBoer replaced Delegate Scott on the subcommittee. Two Commonwealth's attorneys, William R. Reynolds and Aubrey M. Davis, Jr., and two members of the Commission on the Status of Women, Anna E. H. Dees and Darrel L. Tillar, were also appointed to serve on the subcommittee.

Realizing the importance of this study to the citizens of the Commonwealth, the subcommittee attempted to maximize input from the public and to receive the advice and opinions of as many interested groups and individuals as possible. In addition to a number of work and study sessions, public hearings were held on September 22 and November 5 in 1982 and on July 22 and August 22 in 1983. The August 22 hearing was held in Norfolk where the problem of non-payment of child support is particularly acute due to the large military population.

**BACKGROUND**

Over the past several decades, dramatic changes have taken place in the American family structure. Increasing instability in marital relations has contributed to a divorce rate of epidemic proportions. Between 1960 and 1979 the national divorce rate grew from 2.2 divorces per thousand people to 5.4 per thousand. In total, an estimated 1.2 million children were affected by divorce in 1979.

These figures do not, however, portray the full extent of the problem. Large numbers of couples with children simply separate without obtaining a divorce. In 1979, more than twenty-one percent of children receiving welfare had parents who were separated without a court order.

Aggravating these statistics is a steadily rising number of out-of-wedlock births. In 1964, only 6 percent of all births were out of wedlock. By 1979, this figure had grown to over 17 percent of all births. During 1979, almost 550,000 children were born to mothers under 20 years of age. Approximately 50 percent of these mothers were unmarried, and many had not graduated from high school and had few marketable skills. All too commonly, women in this situation receive little or nothing from their child's father and soon enter a pattern of unemployment, poverty, welfare dependency and repeated pregnancies.

Faced with rapidly growing delinquency rates in the payment of child support, many jurisdictions, including Virginia, have attempted to toughen enforcement laws. These efforts have

often fallen woefully short, attested to by the fact that approximately 79 percent of all parents nationwide obligated to pay child support make no payments after four years. As a result, taxpayers must shoulder the burden of supporting untold numbers of financially abandoned children who are the real victims of inadequate enforcement systems.

### **EXECUTIVE SUMMARY**

Following a thorough review of Virginia's support laws, the joint subcommittee makes the following recommendations to increase the efficiency of our child support enforcement effort:

1. That juvenile courts be given jurisdiction over and power to dispose of controversies requiring a determination of paternity and be authorized to use amended evidence factors in § 20-61.1 to decide paternity.
2. That the party who does not prevail in a paternity determination pay the cost of any blood tests and that such test results may be submitted into evidence in writing under oath.
3. That the court must consider an award of joint custody if it appears to be in the best interest of the child.
4. That assignments of earnings under § 63.1-272 need not be subject to the requirements of § 40.1-31.
5. That all orders for support of a child direct that payments be made through the juvenile court clerk of court unless otherwise ordered by the court upon agreement of the parties or for good cause shown.
6. That the General Assembly enact a wage assignment statute which will serve to attach the wages of any parent obligated to pay child support who fails to make a required payment within 15 days of the due date.
7. That the Congress of the United States be memorialized to establish a national wage assignment law to facilitate the collection of child support.

### **CONSIDERATIONS AND FINDINGS**

During the course of its study, the joint subcommittee investigated a wide spectrum of possible improvements and modifications in our statutes relating to child support enforcement. Valuable assistance was provided by the Department of Social Services and, specifically, by the Division of Support Enforcement.

Testimony was received in favor of enacting legislation to provide for an award of joint custody. The subcommittee realized that joint custody could have merit in many cases but declined to affirmatively advance this concept beyond codifying case law holdings that Virginia courts may award joint custody if it is in the best interest of the child. (Appendix D-2, p.14)

Factors used in criminal proceedings to determine paternity were examined in detail. The subcommittee recommended that evidence of a man's cohabitation with the mother at the probable time of the child's conception could be introduced in evidence. Currently, it must be shown that he openly cohabited with the mother during all ten months prior to the birth, and this requirement was thought to be unrealistic. The subcommittee also felt evidence that a man and woman applied for a marriage license after conception of a child should be admissible. (Appendix D-1, pp 1 and 2)

These and other evidence factors set forth in § 20-61.1 were incorporated in § 16.1-279 (Appendix D-2, p. 14) so as to authorize juvenile and domestic relations courts to establish paternity in a civil action. Jurisdiction over paternity cases was given to juvenile courts in the same draft (p. 2).

The subcommittee received testimony that in many cases the party requesting a blood test to establish paternity is required to pay for necessary testings irrespective of the results. It was recommended that a more equitable policy would be to encourage the court to require payment from the party who does not prevail in such tests. As a cost-reducing measure, it was further recommended that written blood test results be admissible into evidence under oath rather than requiring a personal appearance by the tester in each case. (Appendix D-1, p.3)

At the request of the Division of Support Enforcement, the subcommittee recommended that assignments of earnings under § 63.1-272 not be subject to the requirements of § 40.1-31 which also mandates consent of the employer before an assignment can go into effect. It was felt that these guidelines, which essentially constitute a consumer protection law, are out of keeping with the voluntary nature of § 63.1-272. (Appendix D-5, p.2)

The subcommittee determined that, unless agreed otherwise by the parties or for good cause shown, all child support payments should be made through the clerk of the appropriate juvenile court to the persons entitled to these payments. It was felt this procedure would permit the courts to quickly respond to delinquencies as they occur. (Appendix D-4, pp. 10, 13 & 16)

As a major step to assure the enforcement of child support orders, the subcommittee supported passage of an assignment of earnings statute in the Commonwealth. Under the provisions of the suggested legislation (Appendix D-4, pp. 13-16), any parent who fails to make a required child support payment within 15 days of the due date would have his or her wages assigned for the amount of any arrearage and for all future payments as they become due. The subcommittee believed the present statute pertaining to the enforcement of support orders by payroll deduction (§ 20-79.1) is inadequate, too limited in scope and should be repealed. Although there was some discussion of requiring enforcement of all child support orders by wage assignment, the majority of the subcommittee felt strongly that such assignments carry a stigma of wrongdoing in the average citizen's mind and should not be utilized until a delinquency occurs.

Recognizing that interstate enforcement of support orders is a primary stumbling block to the development of effective child support programs on the state level, the subcommittee recommended that the U.S. Congress be memorialized to establish a national wage assignment law at the earliest feasible date. (Appendix D-3)

The friend of the court system of court support enforcement used in Michigan was studied at some length. Under this program, a friend of the court agency has been established in each county to oversee all aspects of the child support process. These agencies preliminarily advise the courts on the appropriate size of support orders, collect payments and ensure that they are regularly received, and participate in enforcement when delinquencies occur. The subcommittee believed that such a system in Virginia would be prohibitively expensive and would work a hardship on smaller communities. It was noted that localities are free to set up their own court support units and that this has already been done in a number of areas around the State.

#### **CONTINUING STUDY**

A significant effort is current being made in the Congress of the United States to pass child support enforcement reform measures. One of these bills, H.R. 4325, has been adopted by the full House in a unanimous vote under suspension of the rules and will be considered by the Senate in early 1984. Also, a number of bills to establish a uniform national wage assignment system to enforce child support orders are pending before the Congress.

Legislation of this nature enacted by the Congress will require changes in the Commonwealth's statutes which relate to child support and its enforcement and may involve modification in court support unit procedures and operations.

Consequently, the joint subcommittee has requested by study resolution (L.D. No. 4010125) that it be continued for one year to evaluate pertinent federal legislation and recommend to the General Assembly appropriate or necessary amendments to the Code of Virginia.

Respectfully submitted,

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APPENDIX A

**HOUSE JOINT RESOLUTION NO. 260**

*Requesting a joint subcommittee of the House of Delegates and Senate to study Virginia's support laws.*

Agreed to by the House of Delegates, February 16, 1981

Agreed to by the Senate, February 12, 1981

WHEREAS, the expenditure of taxpayer funds for public assistance to support 115,127 dependent children and 50,059 caretakers in Virginia as of July, 1980 was \$151,631,813 in fiscal year 1979-80, of which \$65,085,239 came from State funds; and

WHEREAS, Chapters 5 and 5.2 of Title 20 of the Code of Virginia have not been reviewed for possible revisions in light of the changes in the support law created by Chapter 11 of Title 16.1 of the Code of Virginia, which was enacted in 1977 particularly since significant differences in support law procedures and practices contained in these titles since 1977 have created uncertainty and confusion in the interpretation and application of the support laws, including but not limited to questions concerning enforcement of judgments (including garnishments), wage assignments, service of process, use of blood tests, burdens and standards of proof, paternity matters in civil support cases, spousal support, evidence admissible at trial, and appeal provisions; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That a joint subcommittee be established to examine the provisions of Chapter 5 of Title 20 and Chapter 11 of Title 16.1 and make such recommended changes as will both resolve the confusion concerning the support laws of Virginia and improve the court support process to reduce the growing demands of public assistance funds in accordance with the legislative mandate contained in § 63.1-275 of the Code of Virginia.

The joint subcommittee shall be composed of eleven members who shall be selected in the following manner: two members of the House Courts of Justice Committee appointed by the Chairman; two members of the Senate Courts of Justice Committee appointed by the Chairman; two members of the House Health, Welfare and Institutions Committee appointed by the Chairman; two members of the Senate Rehabilitative and Social Services Committee appointed by the Chairman; two Juvenile and Domestic Relations District Court Judges appointed by the Chief Justice of the Supreme Court of Virginia; and a representative from the Department of Welfare. The subcommittee shall choose its own chairman. The joint subcommittee will make its report to the Governor and the General Assembly at the end of its deliberations.

The cost of conducting this study shall not exceed \$5,000.



APPENDIX B

HOUSE JOINT RESOLUTION NO. 40

*Continuing the study of Virginia's support laws.*

Agreed to by the House of Delegates, February 20, 1982  
Agreed to by the Senate, March 1, 1982

WHEREAS, the support of a large number of dependent children and their caretakers requires an annual expenditure of more than fifty million dollars of Virginia's tax revenues; and

WHEREAS, Virginia law contains procedures whereby the Commonwealth can require reimbursement by an able parent for such support; and

WHEREAS, there exists uncertainty in the interpretation of these laws and questions regarding their enforcement; and

WHEREAS, several committees of the General Assembly were requested to study the support laws of Virginia (HJR No. 260, 1981 Session), but the joint subcommittee appointed to conduct the study has not had sufficient time to complete its deliberations; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the joint study of Virginia's support laws is continued. The membership of the subcommittee appointed to conduct the study shall remain the same and any vacancy shall be filled in the same manner as the original appointment.

The subcommittee shall complete its study in time to submit its recommendations to the 1983 Session of the General Assembly.

The cost of conducting this study shall not exceed \$7,000.

APPENDIX C

HOUSE JOINT RESOLUTION NO. 74

*Continuing the study of Virginia's support laws.*

Agreed to by the House of Delegates, February 25, 1983

Agreed to by the Senate, February 23, 1983

WHEREAS, on a nationwide basis, less than ten percent of court-ordered child support is actually paid; and

WHEREAS, caretakers of dependent children are confronted with burdensome, confusing and expensive legal procedures in their efforts to compel payment of child support; and

WHEREAS, other jurisdictions have established friends of the court programs which operate as self-starting agencies to oversee all aspects of the child support process, including enforcement of court-ordered support payments by incarceration and other means, and to provide assistance and counseling to custodial parents; and

WHEREAS, several committees of the General Assembly were requested to study the support laws of Virginia (HJR No. 260, 1981 Session), and the joint subcommittee appointed to conduct the study has submitted a number of legislative proposals for consideration by the General Assembly but has not had sufficient time to complete its deliberations; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the joint study of Virginia's support laws is continued. The membership of the subcommittee appointed to conduct the study shall remain the same, except that four additional members, two of whom are Commonwealth's attorneys knowledgeable in the area of child support enforcement and familiar with court service programs currently operating in the Commonwealth and two who are on the Commission on the Status of Women shall be appointed to the study subcommittee by the Speaker of the House. Any vacancy shall be filled in the same manner as the original appointment.

The subcommittee shall complete its study in time to submit its recommendations to the 1984 Session of the General Assembly.

The cost of conducting this study shall not exceed \$5,000.

#### APPENDIX D-1

A BILL to amend and reenact §§ 20-61.1 and 20-61.2 of the Code of Virginia, pertaining to evidence of paternity in support proceedings involving unwed parents; admission of blood tests in legal proceedings.

Be it enacted by the General Assembly of Virginia:

1. That §§ 20-61.1 and 20-61.2 of the Code of Virginia are amended and reenacted as follows:

§ 20-61.1. Support of children of unwed parents by father; evidence of paternity.—Whenever in proceedings hereafter under this chapter concerning a child whose parents are not married, a man admits before any court having jurisdiction to try and dispose of the same, that he is the father of the child or the court finds that the man has voluntarily admitted paternity in writing, under oath, or if it be shown by other evidence beyond reasonable doubt that he is the father of the child and that he should be responsible for the support of the child, the court may then enter and enforce judgment for the support, maintenance and education of such child as if the child were born in lawful wedlock.

Such other evidence that the man is the father of the child shall be limited to evidence of the following:

(1) That he cohabited ~~openly~~ with the mother ~~during all of the ten months immediately prior to~~ at the time of the *probable conception* of the child ~~was born~~ ; or

(2) That he gave consent to a physician or other person, not including the mother, charged with the responsibility of securing information for the preparation of a birth record that his name be used as the father of the child upon the birth records of the child; or

(3) That he allowed by a general course of conduct the common use of his surname by the child; or

(4) That he claimed the child as his child on any statement, tax return or other document filed and signed by him with any local, state or federal government or any agency thereof; or

(5) Results of medically reliable genetic blood grouping tests, which tests may include the human leukocyte antigen (HLA) test ; or

*(6) That he and the mother applied for a marriage license after conception of the child.*

The findings of a court hereunder shall not be used against the man in any manner except for the specific purposes of this chapter and for the purposes of descent and distribution pursuant to Title 64.1.

Notwithstanding the provisions of § 19.2-271 or any other law, the judge or other court officer before whom a man has admitted paternity of any child, whose support is the subject of any proceeding brought under the provisions of this chapter, may testify, in any court having jurisdiction to conduct proceedings under this chapter, as to any admission of paternity made by such man in his court and as to any other facts directly affecting the relevancy or probative value of such admission.

§ 20-61.2. Admission of results of blood tests in divorce or support proceedings where question of paternity arises.—In the trial of any matter in any court in which the question of paternity arises, regardless of any presumptions with respect to paternity, the court before whom the matter may be brought, upon motion of either party, may direct and order that the alleged father, the mother and child shall submit to blood grouping tests. The court, in its discretion, may require the person ~~requesting such blood grouping tests who does not prevail in the paternity determination~~ to pay the cost thereof of the blood grouping tests . The results of such blood grouping tests shall be admitted in evidence when offered *in writing, under oath*, by a duly licensed and certified practicing physician or other qualified scientist , *provided that the written results are filed with the clerk of the court hearing the case at least seven days prior to the hearing or trial. 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 within a reasonable time prior to the hearing or trial .*

## APPENDIX D-2

A BILL to amend and reenact §§ 16.1-241 and 16.1-279 of the Code of Virginia, relating to disposition in juvenile and domestic relations district courts; jurisdiction.

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-241 and 16.1-279 of the Code of Virginia are amended and reenacted as follows:

§ 16.1-241. Jurisdiction.—The judges of the juvenile and domestic relations district court elected or appointed under this law shall be conservators of the peace within the corporate limits of the cities and the boundaries of the counties for which they are respectively chosen and within one mile beyond the limits of such cities and counties. Except as hereinafter provided, each juvenile and domestic relations district court shall have, within the limits of the territory for which it is created, exclusive original jurisdiction, and within one mile beyond the limits of said city or county, concurrent jurisdiction with the juvenile court or courts of the adjoining city or county over all cases, matters and proceedings involving:

A. The custody, visitation, support, control or disposition of a child:

1. Who is alleged to be abused, neglected, in need of services or delinquent;

2. Who is abandoned by his parent or other custodian or who by reason of the absence or physical or mental incapacity of his parents is without parental care and guardianship;

2a. Who is at risk of being abused or neglected by a parent or custodian who has been adjudicated as having abused or neglected another child in the care of the parent or custodian;

3. Whose custody, visitation or support or *paternity* is a subject of controversy or requires determination. In such cases jurisdiction shall be concurrent with and not exclusive of courts having equity jurisdiction, as provided in § 16.1-244 hereof;

4. Who is the subject of an entrustment agreement entered into pursuant to § 63.1-56 or § 63.1-204 or whose parent or parents for good cause desire to be relieved of his care and custody;

5. Where the termination of residual parental rights and responsibilities is sought. In such cases jurisdiction shall be concurrent with and not exclusive of courts having equity jurisdiction, as provided in § 16.1-244 hereof;

6. Who is charged with a traffic infraction as defined in § 46.1-1 (40).

The authority of the juvenile court to adjudicate matters involving the custody, visitation, support, control or disposition of a child shall not be limited to the consideration of petitions filed by a mother, father or legal guardian but shall include petitions filed by any party with a legitimate interest therein. In any decree involving visitation, the juvenile and domestic relations district court may provide in such decree for visitation privileges for grandparents, stepparents or other family members.

B. The commitment of a mentally ill person or judicial certification of eligibility for admission to a treatment facility of a mentally retarded person. Such commitment and certification shall be in accordance with the provisions of Chapters 1 (§ 37.1-1 et seq.) and 2 (§ 37.1-63 et seq.) of Title 37.1 of the Code. Jurisdiction of the commitment and certification of adults shall be concurrent with the general district court.

C. ~~Except as provided in subsection D hereof~~, Judicial consent, *except as provided in subsection D hereof*, to such activities as may require parental consent ~~may be given~~ for a child; who has been separated from his or her parents, guardian, legal custodian or other person standing in loco parentis and is in the custody of the court when such consent is required by law.

D. Judicial consent for emergency surgical or medical treatment for a child, who is neither married nor has ever been married, when the consent of his or her parent, guardian, legal custodian or other person standing in loco parentis is unobtainable because such parent, guardian, legal custodian or other person standing in loco parentis (i) is not a resident of this Commonwealth, (ii) his or her whereabouts is unknown, (iii) he or she cannot be consulted with promptness, reasonable under the circumstances or (iv) fails to give such consent or provide such treatment when requested by the judge to do so.

D1. [Repealed.]

E. Any person charged with deserting, abandoning or failing to provide support for any person in violation of law.

F. Any parent, guardian, legal custodian or other person standing in loco parentis of a child:

1. Who has been abused or neglected;

2. Who is the subject of an entrustment agreement entered into pursuant to § 63.1-56 or § 63.1-204 or is otherwise before the court pursuant to subsection A 4 of this section;

3. Who has been adjudicated in need of services or delinquent, if the court finds that such person has by overt act or omission induced, caused, encouraged or contributed to the conduct of the child complained of in the petition.

G. Petitions filed by or on behalf of a child or such child's parent, guardian, legal custodian or other person standing in loco parentis for the purpose of obtaining treatment, rehabilitation or other services which are required by law to be provided for that child or such child's parent, guardian, legal custodian or other person standing in loco parentis. Jurisdiction in such cases shall be concurrent with and not exclusive of that of courts having equity jurisdiction as provided in § 16.1-244 hereof.

H. ~~Any~~ Any case where a child is not qualified to obtain a work permit under other provisions of law.

I. The prosecution and punishment of persons charged with ill - treatment, abuse, abandonment or neglect of children or with any violation of law which causes or tends to cause a child to come within the purview of this law, or with any other offense against the person of a child. In prosecution for felonies over which the court ~~shall have~~ *has* jurisdiction, such jurisdiction shall be limited to determining whether or not there is probable cause.

J. All offenses committed by one member of the family against another member of the family and the trial of all criminal warrants in which one member of the family is complainant against another member of the family. In prosecution for felonies over which the court ~~shall have~~ *has* jurisdiction, said jurisdiction shall be limited to determining whether or not there is probable cause. The word "family" as herein used shall be construed to include husband and wife, parent and child, brothers and sisters, grandparent and grandchild, regardless of whether such persons reside in the same home.

K. Petitions filed by a natural parent, whose parental rights to a child have been voluntarily relinquished pursuant to a court proceeding, to seek a reversal of the court order terminating such parental rights. No such petition shall be accepted, however, after the child has been placed in the home of adoptive parents.

L. Any person who seeks spousal support after having separated from his or her spouse. A decision under this subsection shall not be res judicata in any subsequent action for spousal support in a circuit court.

The ages specified in this law refer to the age of the child at the time of the acts complained of in the petition.

§ 16.1-279. Disposition.—A. If a child is found to be abused or neglected, or is at risk of being abused or neglected by a parent or custodian who has been adjudicated as having abused or neglected another child in the care of the parent or custodian, or is abandoned by his parent or other custodian or who by reason of the absence or physical or mental incapacity of his parents is without parental care and guardianship, the juvenile court or the circuit court, as the case may be, may make any of the following orders of disposition to protect the welfare of the child:

1. Enter an order pursuant to the provisions of § 16.1-278.

2. Permit the child to remain with his or her parent, guardian, legal custodian or other person standing in loco parentis subject to such conditions and limitations as the court may order with respect to such child, and his or her parent, guardian, legal custodian or other person standing in loco parentis.

3. After a finding that there is no less drastic alternative, transfer legal custody subject to

the provisions of § 16.1-281 to any of the following:

a. A relative or other individual who, after study, is found by the court to be qualified to receive and care for the child.

b. A child welfare agency, private organization or facility which is licensed or otherwise authorized by law to receive and provide care for such child; however, no court shall transfer legal custody of an abused or neglected child to an agency, organization or facility out of the Commonwealth without the approval of the Commissioner of Social Services.

c. The local board of public welfare or social services of the county or city in which the court has jurisdiction or, at the discretion of the court, to the local board of the county or city in which the child has residence if other than the county or city in which the court has jurisdiction, which board shall accept such child for care and custody. However, such local board, if one other than in the county or city in which the court has jurisdiction, shall not be required to accept such child until it has been given reasonable notice of the pendency of the case and an opportunity to be heard. Nothing herein shall be construed as prohibiting the commitment of a child to any local board of public welfare or social services in the Commonwealth when such local board consents to the commitment. The board to which the child is committed shall have the final authority to determine the appropriate placement for the child.

4. Transfer legal custody pursuant to subsection A 3 hereof and order the parent, guardian, legal custodian or other person standing in loco parentis to participate in such services and programs or to refrain from such conduct as the court may prescribe.

5. Terminate the rights of such parent, guardian, legal custodian or other person standing in loco parentis pursuant to § 16.1-283.

B. Where a parent or other custodian seeks to be relieved of the care and custody of any child pursuant to subsection A 4 of § 16.1-241 or where a public or private agency seeks to gain approval of an entrustment agreement pursuant to § § 63.1-56 or § 63.1-204, the juvenile court or the circuit court may, after compliance with § 16.1-277, make any of the orders of disposition permitted in a case involving an abused or neglected child. If the parent or other custodian seeks to be relieved permanently of the care and custody of any child or where a public or private agency seeks to gain approval of a permanent entrustment agreement entered into pursuant to § § 63.1-56 or § 63.1-204, the juvenile court or the circuit court may, after compliance with § 16.1-277, terminate the parental rights of the parent or other custodian and appoint a local board of public welfare or social services or a licensed child-placing agency as custodian of the child with the authority to place the child for adoption and consent thereto. However, no order of disposition pursuant to this paragraph B shall be made over the objection of any party, which was not provided for or requested in the entrustment agreement or in the petition's prayer for relief.

C. If a child is found to be in need of services, the juvenile court or the circuit court, as the case may be, may make any of the following orders of disposition for the supervision, care and rehabilitation of the child:

1. Enter an order pursuant to the provisions of § 16.1-278.

2. Permit the child to remain with his or her parent, guardian, legal custodian or other person standing in loco parentis subject to such condition and limitations as the court may order with respect to such child and his or her parent, guardian, legal custodian or other person standing in loco parentis.

2a. Order the parent, guardian, legal custodian or other person standing in loco parentis of a child living with such person to participate in such programs, cooperate in such treatment or be subject to such conditions and limitations as the court may order and as are designed for the rehabilitation of the child and parent, guardian, legal custodian or other person standing in loco parentis of such child.

3. Place the child on probation under such conditions and limitations as the court may prescribe.

4. In the case of any child ; fourteen years of age or older, where the court finds that the school officials have made a diligent effort to meet the child's educational needs, and after study, the court further finds that the child is not able to benefit appreciably from further schooling, the court may:

a. Excuse the child from further compliance with any legal requirement of compulsory school attendance, and

b. Authorize the child, notwithstanding the provisions of any other law, to be employed in any occupation which is not legally declared hazardous for children under the age of eighteen.

5. Transfer legal custody to any of the following:

a. A relative or other individual who, after study, is found by the court to be qualified to receive and care for the child.

b. A child welfare agency, private organization or facility which is licensed or otherwise is authorized by law to receive and provide care for such child; however, no court shall transfer legal custody of a child in need of services to an agency, organization or facility out of the Commonwealth without the approval of the Commissioner of Social Services.

c. The local board of public welfare or social services of the county or city in which the court has jurisdiction or, at the discretion of the court, to the local board of the county or city in which the child has residence if other than the county or city in which the court has jurisdiction, which board shall accept such child for care and custody. Such local board, if one other than in the county or city in which the court has jurisdiction, shall not be required to accept such child until it has been given reasonable notice of the pendency of the case and an opportunity to be heard. Nothing herein shall be construed as prohibiting the commitment of a child to any local board of public welfare or social services in the Commonwealth when such local board consents to the commitment. The board to which the child is committed shall have the final authority to determine the appropriate placement for the child.

6. Require the child to participate in a public service project under such conditions as the court prescribes.

D. Unless a child found to be abused, neglected or in need of services ~~shall~~ *is* also be found to be delinquent and ~~shall be~~ *is* older than ten years of age, he shall not be committed to the State Board of Corrections. No juvenile court or circuit court shall order the commitment of any child jointly to the State Board of Corrections and to a local board of public welfare or social services or transfer the custody of a child jointly to a court service unit of a juvenile court and to a local board of public welfare or social services pursuant to this section.

E. If a child is found to be delinquent, the juvenile court or the circuit court may make any of the following orders of disposition for his supervision, care and rehabilitation:

1. Enter an order pursuant to the provisions of § 16.1-278.

2. Permit the child to remain with his or her parent, guardian, legal custodian or other person standing in loco parentis subject to such conditions and limitations as the court may order with respect to such child and his or her parent, guardian, legal custodian or other person standing in loco parentis.

3. Order the parent, guardian, legal custodian or other person standing in loco parentis of a child living with such person to participate in such programs, cooperate in such treatment or be subject to such conditions and limitations as the court may order and as are designed for the rehabilitation of the child and parent, guardian, legal custodian or other person standing in loco parentis of such child.

3a. Defer disposition for a period of time not to exceed twelve months, after which time the charge may be dismissed by the judge if the child be of good behavior during the period which disposition is deferred.

3b. Without entering a judgment of guilty and with the consent of the child and his attorney, defer disposition of the delinquency charge for a period not to exceed twelve months and place the child on probation under such conditions and limitations as the court may prescribe. Upon fulfillment of the terms and conditions, the court shall discharge the child and dismiss the proceedings against him. Discharge and dismissal under these provisions shall be without adjudication of guilt.

4. Place the child on probation under such conditions and limitations as the court may prescribe.

5. Impose a fine not to exceed \$500 upon such child.

6. Suspend the motor vehicle and operator's license of such child.

7. Require the child to make restitution or reparation to the aggrieved party or parties for actual damages or loss caused by the offense for which the child was found to be delinquent.

7a. Require the child to participate in a public service project under such conditions as the court prescribes. For purposes of this section a "public service project" shall mean any governmental or quasi-governmental agency project or any project of a nonprofit corporation or association operated exclusively for charitable or community purposes.

8. In case of traffic violations or traffic infractions, impose only those penalties which are authorized to be imposed on adults for such violations or infractions.

9. Transfer legal custody to any of the following:

a. A relative or other individual who, after study, is found by the court to be qualified to receive and care for the child.

b. A child welfare agency, private organization or facility which is licensed or otherwise authorized by law to receive and provide care for such child; however, no court shall transfer legal custody of a delinquent child to an agency, organization or facility outside of the Commonwealth without the approval of the Director.

c. The local board of public welfare or social services of the county or city in which the court has jurisdiction or, at the discretion of the court, to the local board of the county or city in which the child has residence if other than the county or city in which the court has jurisdiction, which board shall accept such child for care and custody. Such local board, if one other than in the county or city in which the court has jurisdiction, shall not be required to accept such child until it has been given reasonable notice of the pendency of the case and an opportunity to be heard. Nothing herein shall be construed as prohibiting the commitment of a child to any local board of public welfare or social services in the Commonwealth when such local board consents to the commitment. The board to which the child is committed shall have the final authority to determine the appropriate placement for the child.

10. Commit the child to the Department of Corrections; however, no child ten years of age or under shall be committed to the Department.

11. Impose the penalty authorized by § 16.1-284.

F. In cases involving the custody, visitation or support or paternity of a child pursuant to subsection A 3 of § 16.1-241, the court may make any order of disposition to protect the welfare of the child and family as may be made by the circuit court. *Where the question of paternity arises in any such proceeding, the court may use, but is not limited to, the evidence factors set forth in § 20-61.1 in making a determination of paternity. In cases between the parents of a child involving the custody of that child, the court shall consider an award of joint custody if such disposition appears to be in the best interest of the child.*

F1. In cases involving a child who is charged with a traffic infraction, impose only those penalties which are authorized to be imposed on adults for such infractions.

G. In cases involving a person who is adjudged mentally ill or is judicially certified as eligible for admission to a treatment facility for the mentally retarded, disposition shall be in accordance with the provisions of Chapters 1 (§ 37.1-1 et seq.) and 2 (§ 37.1-63 et seq.) of Title 37.1 of the Code. No child shall be committed pursuant to this section or the provisions of Title 37.1 of this Code to a maximum security unit within any state mental hospital where adults determined to be criminally insane reside.

H. In cases involving judicial consent to the matters set out in subsections C and D of § 16.1-241, the juvenile court or the circuit court may make any appropriate order to protect the health and welfare of the child.

I. In cases involving charges of desertion, abandonment or failure to provide support by any person in violation of law, disposition shall be made in accordance with Chapter 5 (§ 20-61 et seq.) of Title 20 of the Code. The court may also award attorney's fees on behalf of any party in an appropriate case. Each juvenile and domestic relations district court may enter judgment for money in any amount for arrears of support and maintenance of any person in cases where (1) the court has previously acquired personal jurisdiction over all necessary parties or a proceeding in which such jurisdiction has been obtained has been referred or transferred to the



court by a circuit court or another juvenile and domestic relations district court, and (2) payment of such money has been previously ordered by the court, a circuit court, or another juvenile and domestic relations district court. However, no such judgment shall be entered unless a petition of a party, a probation officer, a superintendent of public welfare, or on the court's own motion, is duly served on the person against whom judgment is sought, in accordance with the applicable provisions of law relating to notice when proceedings are reopened. The petition shall contain a caption stating the name of the court, the title of the action, the names of all parties and the address of the party against whom judgment is sought, the amount of arrearage for which judgment is sought, and the date and time when such judgment will be sought. The judge or clerk of the court shall certify and deliver an abstract of any judgment entered pursuant to this section to the clerk of the circuit court of the same judicial district, and executions upon such judgment shall be issued by the clerk of such circuit court. If the amount of the judgment does not exceed \$5,000, exclusive of interest and any attorney's fees, an abstract of any such judgment entered pursuant to this section may be delivered to the clerk of the general district court of the same judicial district, and executions upon such judgment shall be issued by the clerk of such general district court. Arrearages accumulated prior to July 1, 1976, shall also be subject to the provisions hereof.

J. In cases involving a child who is not able to obtain a work permit under other provisions of law, the juvenile court or the circuit court may grant a special work permit on forms furnished by the Department of Labor and Industry, subject to such restrictions and conditions as it may deem appropriate and as may be set out in Chapter 5 (§ 40.1-78 et seq.) of Title 40.1 of the Code.

K. In cases involving petitions filed by or on behalf of a child or such child's parent, guardian, legal custodian or other person standing in loco parentis for the purpose of obtaining treatment, rehabilitation or other services required by law to be provided for such persons, the juvenile court or the circuit court, as the case may be, may enter an order in accordance with § 16.1-278.

L. In cases involving the violation of any law, regulation or ordinance for the education, protection or care of children or involving offenses committed by one spouse against another, the juvenile court or the circuit court may impose a penalty prescribed by applicable sections of the Code. However, in cases involving offenses committed by one spouse against another, the court may impose conditions and limitations in an effort to effect the reconciliation and rehabilitation of the parties, including, but not limited to, treatment and counseling for either or both spouses and payment by the defendant spouse for crisis shelter care for the complaining spouse.

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

### APPENDIX D-3

#### HOUSE JOINT RESOLUTION NO.....

Memorializing the Congress of the United States to establish a national wage assignment law.

WHEREAS, approximately seventy-nine percent of all parents obligated by court order to pay child support make no payments after four years, approximately fifty percent of all marriages end in divorce, and approximately thirty percent of all children born in this country are illegitimate; and

WHEREAS, although child support laws fall within the jurisdiction of each state, child support enforcement often requires legal action across state borders, subjecting such enforcement to cumbersome legal procedures, interstate reciprocity and the incompatibility of state laws; and

WHEREAS, the problem of interstate enforcement has been recognized for thirty years and is still a major stumbling block to developing effective child support programs; and

WHEREAS, in our highly mobile society, interstate enforcement is crucial in the struggle to stop absent parents from evading their duties of child support; and

WHEREAS, the Uniform Reciprocal Enforcement of Support Act, which was adopted by all states in 1955, has historically been the major force to achieve uniform interstate enforcement of child support orders; and

WHEREAS, the several states have adopted various amendments to the Uniform Act or dropped whole sections in the adopted version, effectively weakening enforcement and closing many avenues for prosecution; and

WHEREAS, the American taxpayer has been forced to take on the enormous burden of supporting many children abandoned by one or both parents which could be assumed by absent parents with enactment of strong enforcement legislation at the federal level; and

WHEREAS, such legislation would offer financial, social, and medical benefits to numerous children across our country, as well as fostering in families a sense of parental responsibility, heritage, and self-esteem; and

WHEREAS, one of the most effective means of collecting current and past-due child support is with the use of a court order which requires the payment of support by an employer out of the obligated parent's wages; and

WHEREAS, such wage assignment laws on the state level are ineffective on an interstate basis; and

WHEREAS, several proposals are pending before the Congress of the United States which would establish a uniform national system of wage assignment to enforce child support orders; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the General Assembly of Virginia memorializes the Congress of the United States to establish at the earliest feasible date a national wage assignment law to facilitate collection of child support; and, be it

RESOLVED FURTHER, That the Clerk of the House of Delegates transmit copies of this resolution to the Speaker of the United States House of Representatives, to the President of the United States Senate, and to members of the Virginia delegation to the Congress of the United States.

#### APPENDIX D-4

A BILL to amend and reenact §§ 16.1-279 and 20-74 of the Code of Virginia, to amend the Code of Virginia by adding sections numbered 20-79.2 and 20-109.2, and to repeal § 20-79.1 of the Code of Virginia, relating generally to disposition and enforcement of child support orders; assignments of earnings.

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-279 and 20-74 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding sections numbered 20-79.2 and 20-109.2 as follows:

§ 16.1-279. Disposition.—A. If a child is found to be abused or neglected, or is at risk of being abused or neglected by a parent or custodian who has been adjudicated as having abused or neglected another child in the care of the parent or custodian, or is abandoned by his parent or other custodian or who by reason of the absence or physical or mental incapacity of his parents is without parental care and guardianship, the juvenile court or the circuit court, as the case may be, may make any of the following orders of disposition to protect the welfare of the child:

1. Enter an order pursuant to the provisions of § 16.1-278.
2. Permit the child to remain with his or her parent, guardian, legal custodian or other person standing in loco parentis subject to such conditions and limitations as the court may order with respect to such child, and his or her parent, guardian, legal custodian or other person standing in loco parentis.
3. After a finding that there is no less drastic alternative, transfer legal custody subject to the provisions of § 16.1-281 to any of the following:
  - a. A relative or other individual who, after study, is found by the court to be qualified to receive and care for the child.
  - b. A child welfare agency, private organization or facility which is licensed or otherwise authorized by law to receive and provide care for such child; however, no court shall transfer legal custody of an abused or neglected child to an agency, organization or facility out of the Commonwealth without the approval of the Commissioner of Social Services.
  - c. The local board of public welfare or social services of the county or city in which the court has jurisdiction or, at the discretion of the court, to the local board of the county or city in which the child has residence if other than the county or city in which the court has jurisdiction, which board shall accept such child for care and custody. However, such local board, if one other than in the county or city in which the court has jurisdiction, shall not be required to accept such child until it has been given reasonable notice of the pendency of the case and an opportunity to be heard. Nothing herein shall be construed as prohibiting the commitment of a child to any local board of public welfare or social services in the Commonwealth when such local board consents to the commitment. The board to which the child is committed shall have the final authority to determine the appropriate placement for the child.
4. Transfer legal custody pursuant to subsection A 3 hereof and order the parent, guardian, legal custodian or other person standing in loco parentis to participate in such services and programs or to refrain from such conduct as the court may prescribe.
5. Terminate the rights of such parent, guardian, legal custodian or other person standing in loco parentis pursuant to § 16.1-283.

B. Where a parent or other custodian seeks to be relieved of the care and custody of any child pursuant to subsection A 4 of § 16.1-241 or where a public or private agency seeks to gain approval of an entrustment agreement pursuant to § 63.1-56 or § 63.1-204, the juvenile court or the circuit court may, after compliance with § 16.1-277, make any of the orders of disposition permitted in a case involving an abused or neglected child. If the parent or other custodian seeks to be relieved permanently of the care and custody of any child or where a public or private agency seeks to gain approval of a permanent entrustment agreement entered into pursuant to § 63.1-56 or § 63.1-204, the juvenile court or the circuit court may, after compliance with § 16.1-277, terminate the parental rights of the parent or other custodian and appoint a local board of public welfare or social services or a licensed child-placing agency as custodian of the child with the authority to place the child for adoption and consent thereto.

However, no order of disposition pursuant to this paragraph B shall be made over the objection of any party, which was not provided for or requested in the entrustment agreement or in the petition's prayer for relief.

C. If a child is found to be in need of services, the juvenile court or the circuit court, as the case may be, may make any of the following orders of disposition for the supervision, care and rehabilitation of the child:

1. Enter an order pursuant to the provisions of § 16.1-278.

2. Permit the child to remain with his or her parent, guardian, legal custodian or other person standing in loco parentis subject to such condition and limitations as the court may order with respect to such child and his or her parent, guardian, legal custodian or other person standing in loco parentis.

2a. Order the parent, guardian, legal custodian or other person standing in loco parentis of a child living with such person to participate in such programs, cooperate in such treatment or be subject to such conditions and limitations as the court may order and as are designed for the rehabilitation of the child and parent, guardian, legal custodian or other person standing in loco parentis of such child.

3. Place the child on probation under such conditions and limitations as the court may prescribe.

4. In the case of any child, fourteen years of age or older, where the court finds that the school officials have made a diligent effort to meet the child's educational needs, and after study, the court further finds that the child is not able to benefit appreciably from further schooling, the court may:

a. Excuse the child from further compliance with any legal requirement of compulsory school attendance, and

b. Authorize the child, notwithstanding the provisions of any other law, to be employed in any occupation which is not legally declared hazardous for children under the age of eighteen.

5. Transfer legal custody to any of the following:

a. A relative or other individual who, after study, is found by the court to be qualified to receive and care for the child.

b. A child welfare agency, private organization or facility which is licensed or otherwise is authorized by law to receive and provide care for such child; however, no court shall transfer legal custody of a child in need of services to an agency, organization or facility out of the Commonwealth without the approval of the Commissioner of Social Services.

c. The local board of public welfare or social services of the county or city in which the court has jurisdiction or, at the discretion of the court, to the local board of the county or city in which the child has residence if other than the county or city in which the court has jurisdiction, which board shall accept such child for care and custody. Such local board if one other than in the county or city in which the court has jurisdiction, shall not be required to accept such child until it has been given reasonable notice of the pendency of the case and an opportunity to be heard. Nothing herein shall be construed as prohibiting the commitment of a child to any local board of public welfare or social services in the Commonwealth when such local board consents to the commitment. The board to which the child is committed shall have the final authority to determine the appropriate placement for the child.

6. Require the child to participate in a public service project under such conditions as the court prescribes.

D. Unless a child found to be abused, neglected or in need of services shall also be found to be delinquent and shall be older than ten years of age, he shall not be committed to the State Board of Corrections. No juvenile court or circuit court shall order the commitment of any child jointly to the State Board of Corrections and to a local board of public welfare or social services or transfer the custody of a child jointly to a court service unit of a juvenile court and to a local board of public welfare or social services pursuant to this section.

E. If a child is found to be delinquent, the juvenile court or the circuit court may make any of the following orders of disposition for his supervision, care and rehabilitation:

1. Enter an order pursuant to the provisions of § 16.1-278.
2. Permit the child to remain with his or her parent, guardian, legal custodian or other person standing in loco parentis subject to such conditions and limitations as the court may order with respect to such child and his or her parent, guardian, legal custodian or other person standing in loco parentis.
3. Order the parent, guardian, legal custodian or other person standing in loco parentis of a child living with such person to participate in such programs, cooperate in such treatment or be subject to such conditions and limitations as the court may order and as are designed for the rehabilitation of the child and parent, guardian, legal custodian or other person standing in loco parentis of such child.
  - 3a. Defer disposition for a period of time not to exceed twelve months, after which time the charge may be dismissed by the judge if the child be of good behavior during the period which disposition is deferred.
  - 3b. Without entering a judgment of guilty and with the consent of the child and his attorney, defer disposition of the delinquency charge for a period not to exceed twelve months and place the child on probation under such conditions and limitations as the court may prescribe. Upon fulfillment of the terms and conditions, the court shall discharge the child and dismiss the proceedings against him. Discharge and dismissal under these provisions shall be without adjudication of guilt.
4. Place the child on probation under such conditions and limitations as the court may prescribe.
5. Impose a fine not to exceed \$500 upon such child.
6. Suspend the motor vehicle and operator's license of such child.
7. Require the child to make restitution or reparation to the aggrieved party or parties for actual damages or loss caused by the offense for which the child was found to be delinquent.
  - 7a. Require the child to participate in a public service project under such conditions as the court prescribes. For purposes of this section a "public service project" shall mean any governmental or quasi-governmental agency project or any project of a nonprofit corporation or association operated exclusively for charitable or community purposes.
8. In case of traffic violations or traffic infractions, impose only those penalties which are authorized to be imposed on adults for such violations or infractions.
9. Transfer legal custody to any of the following:
  - a. A relative or other individual who, after study, is found by the court to be qualified to receive and care for the child.
  - b. A child welfare agency, private organization or facility which is licensed or otherwise authorized by law to receive and provide care for such child; however, no court shall transfer legal custody of a delinquent child to an agency, organization or facility outside of the Commonwealth without the approval of the Director.
  - c. The local board of public welfare or social services of the county or city in which the court has jurisdiction or, at the discretion of the court, to the local board of the county or city in which the child has residence if other than the county or city in which the court has jurisdiction, which board shall accept such child for care and custody. Such local board if one other than in the county or city in which the court has jurisdiction, shall not be required to accept such child until it has been given reasonable notice of the pendency of the case and an opportunity to be heard. Nothing herein shall be construed as prohibiting the commitment of a child to any local board of public welfare or social services in the Commonwealth when such local board consents to the commitment. The board to which the child is committed shall have the final authority to determine the appropriate placement for the child.
10. Commit the child to the Department of Corrections; however, no child ten years of age or under shall be committed to the Department.
11. Impose the penalty authorized by § 16.1-284.

F. In cases involving the custody, visitation or support of a child pursuant to subsection A 3 of § 16.1-241, the court may make any order of disposition to protect the welfare of the child and family as may be made by the circuit court. *All orders for support of a child shall direct that payments be made through the appropriate clerk of court for disbursement to the person entitled to such payments unless otherwise ordered by the court upon agreement of the parties or for other good cause shown.*

F1. In cases involving a child who is charged with a traffic infraction, impose only those penalties which are authorized to be imposed on adults for such infractions.

G. In cases involving a person who is adjudged mentally ill or is judicially certified as eligible for admission to a treatment facility for the mentally retarded, disposition shall be in accordance with the provisions of Chapters 1 (§ 37.1-1 et seq.) and 2 (§ 37.1-63 et seq.) of Title 37.1 of the Code. No child shall be committed pursuant to this section or the provisions of Title 37.1 of this Code to a maximum security unit within any state mental hospital where adults determined to be criminally insane reside.

H. In cases involving judicial consent to the matters set out in subsections C and D of § 16.1-241, the juvenile court or the circuit court may make any appropriate order to protect the health and welfare of the child.

I. In cases involving charges of desertion, abandonment or failure to provide support by any person in violation of law, disposition shall be made in accordance with Chapter 5 (§ 20-61 et seq.) of Title 20 of the Code. The court may also award attorney's fees on behalf of any party in an appropriate case. Each juvenile and domestic relations district court may enter judgment for money in any amount for arrears of support and maintenance of any person in cases where (1) the court has previously acquired personal jurisdiction over all necessary parties or a proceeding in which such jurisdiction has been obtained has been referred or transferred to the court by a circuit court or another juvenile and domestic relations district court, and (2) payment of such money has been previously ordered by the court, a circuit court, or another juvenile and domestic relations district court. However, no such judgment shall be entered unless a petition of a party, a probation officer, a superintendent of public welfare, or on the court's own motion, is duly served on the person against whom judgment is sought, in accordance with the applicable provisions of law relating to notice when proceedings are reopened. The petition shall contain a caption stating the name of the court, the title of the action, the names of all parties and the address of the party against whom judgment is sought, the amount of arrearage for which judgment is sought, and the date and time when such judgment will be sought. The judge or clerk of the court shall certify and deliver an abstract of any judgment entered pursuant to this section to the clerk of the circuit court of the same judicial district, and executions upon such judgment shall be issued by the clerk of such circuit court. If the amount of the judgment does not exceed ~~\$5,000~~ \$7,000, exclusive of interest and any attorney's fees, an abstract of any such judgment entered pursuant to this section may be delivered to the clerk of the general district court of the same judicial district, and executions upon such judgment shall be issued by the clerk of such general district court. Arrearages accumulated prior to July 1, 1976, shall also be subject to the provisions hereof.

J. In cases involving a child who is not able to obtain a work permit under other provisions of law, the juvenile court or the circuit court may grant a special work permit on forms furnished by the Department of Labor and Industry, subject to such restrictions and conditions as it may deem appropriate and as may be set out in Chapter 5 (§ 40.1-78 et seq.) of Title 40.1 of the Code.

K. In cases involving petitions filed by or on behalf of a child or such child's parent, guardian, legal custodian or other person standing in loco parentis for the purpose of obtaining treatment, rehabilitation or other services required by law to be provided for such persons, the juvenile court or the circuit court, as the case may be, may enter an order in accordance with § 16.1-278.

L. In cases involving the violation of any law, regulation or ordinance for the education, protection or care of children or involving offenses committed by one spouse against another, the juvenile court or the circuit court may impose a penalty prescribed by applicable sections of the Code. However, in cases involving offenses committed by one spouse against another, the court may impose conditions and limitations in an effort to effect the reconciliation and rehabilitation of the parties, including, but not limited to, treatment and counseling for either or both spouses and payment by the defendant spouse for crisis shelter care for the complaining spouse.

M. In cases involving a spouse who seeks spousal support after having separated from his or

her spouse, the court may enter any appropriate order to protect the welfare of the spouse seeking support.

§ 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 direct that the case be referred to the appropriate juvenile and domestic relations court for collection as stipulated under § 16.1-279F and 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.*

§ 20-79.2. Enforcement of child support orders; assignment of earnings.—A. *Upon the entry of any order directing the payment of child support in a proceeding under this chapter, § 20-107.2, § 20-109.1 or Title 16.1, the court shall ascertain the obligated party's social security number and the name and address of such party's employer. In addition, the court shall require the obligated party to keep the court advised of any changes in his employment and shall advise such party that upon his failure to make any payment required by the order within fifteen days of the due date, an order assigning his wages will issue to the party's employer.*

B. *The clerk of any court to which child support payments are made for disbursement to the appropriate persons shall promptly prepare and submit to the court an affidavit of delinquency if any payment is not received within fifteen days of the due date under the order. Upon receipt of the affidavit, the court shall issue an order of assignment directing the employer of the obligor to deduct from the obligor's wages such amounts as the court finds necessary to comply with its support order, including any arrearages. These amounts shall not exceed fifty percent of the obligor's disposable earnings as defined in § 34-29. The order shall include the obligor's social security number, if known, and a form to be completed by the employer and returned to the court if the employer chooses to waive the hearing provided for in paragraph C. A certified copy of the order, which shall cite this section, shall be promptly served upon the obligor and upon his employer. The order shall be binding upon any employer of the obligor upon whom the order is served.*

C. *The employer shall have ten days from the date he is served to submit to the court a written request for a hearing to offer evidence as to why the order of assignment should not go into effect. Such order shall be rescinded by the court only for good cause shown. The order of assignment shall be effective upon expiration of the ten-day period if a hearing is not requested or sooner upon receipt by the court of a waiver of the hearing.*

D. *An employer entitled to charge and collect a fee pursuant to § 63.1-272 may charge and collect such fee in connection with any order entered pursuant to this section. The order shall provide that any deductions required to be made pursuant to this section shall be made at regular intervals consistent with the pay periods of such person, unless the court expressly authorizes a different interval for such deductions, in a single monetary amount or the fifty percent maximum, whichever is less, beginning with the next regular pay period of such person following service of the order on the employer. The order shall further provide that the employer shall be deemed to have complied with such order by mailing to the court, by first class mail, any amount required to be deducted, which amount may be paid by check, made payable to the court, for disbursement by the court to the person entitled to such payments.*

E. *The order shall provide that no employer shall discharge any employee by reason of the fact that his earnings have been made subject to a deduction pursuant to this section. Only the employee shall have standing to bring an action against the employer based upon such employee's discharge from employment in violation of the order.*

F. *Any fees or costs which accrue from proceedings under this section may be assessed against the obligor by the court.*

G. *For the purposes of this section "obligor" shall mean a person required to make payments under a child support order.*

H. *The lien created by attachment of the obligor's wages pursuant to this section shall be paramount and prior to all claims of general creditors, whether such claim arose prior to or subsequent to the assignment, except claims of the Commonwealth and its political subdivisions for taxes, levies and fees, penalties and interest thereon, and claims given higher dignity under federal law.*

*§ 20-109.2. Payment of child support.—All orders for support of a child under §§ 20-107.2 or 20-109.1 shall direct that the case be referred to the appropriate juvenile and domestic relations court for collection as stipulated under § 16.1-279F.*

2. That § 20-79.1 of the Code of Virginia is repealed.



**APPENDIX D-5**

A BILL to amend and reenact § 63.1-272 of the Code of Virginia, relating to assignments of earnings.

Be it enacted by the General Assembly of Virginia:

1. That § 63.1-272 of the Code of Virginia is amended and reenacted as follows:

§ 63.1-272. Assignment of earnings to be honored; fee.—Any person, firm, corporation, association, political subdivision or department of the Commonwealth employing a person owing a support debt or obligation, shall honor, according to its terms, a duly executed assignment of earnings presented by the Director as a plan to satisfy or retire a support debt or obligation. This requirement to honor the assignment of earnings and the assignment of earnings itself shall be applicable whether such earnings are to be paid presently or in the future and shall continue in force and effect until released in writing by the Director. The person, firm, corporation, political subdivision or department of the Commonwealth herein specified shall be entitled to receive from such debtor a fee of five dollars for each answer or remittance on account of such debtor. Payment of moneys pursuant to an assignment of earnings presented by the Director shall serve as full acquittance under any contract of employment, and the Commonwealth warrants and represents that it shall defend and hold harmless such action taken pursuant to such assignment of earnings. The Director shall be released from liability for improper receipt of moneys under an assignment of earnings upon return of any moneys so received.

*Any assignment of earnings presented under this section shall not be subject to the requirements set forth in § 40.1-31.*





