

# CHILD SUPPORT, CUSTODY AND VISITATION IN VIRGINIA

## JB LANGLEY-EUSTIS LAW CENTER

The issues surrounding child custody, visitation, and support can be complex. This pamphlet provides general information on Virginia laws, **but is NOT a substitute for consulting an attorney.**

The Commonwealth of Virginia believes that every child has a right to receive support from both parents. If you wish to establish a new child support order in the Commonwealth of Virginia, the Department of Social Services Division of Child Support Enforcement (DCSE) can help. You may also file a Petition for Custody in the Juvenile and Domestic Relations Court in the city where the child resides or contact a private attorney.

### SECTION I: CUSTODY & VISITATION

#### 1. Uniform Child Custody Jurisdiction & Enforcement Act

Virginia has adopted the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) which restricts Virginia's ability to make or alter a custody decree. Virginia has jurisdiction to make or alter a custody decree if:

- a. Virginia is the child's home state at the time the proceedings begin; or
- b. Virginia was the child's home state within six months before the proceedings begin and the child is not in Virginia because of his removal or retention by a person claiming custody or for other reasons, and a parent still lives in Virginia; or
- c. The child and at least one parent have a significant connection with Virginia, and it is in the child's best interest for Virginia to act, and substantial evidence is available in Virginia concerning the child's present or future care, protection, training, and personal relationships; or
- d. The child is in Virginia and has been abandoned or it is necessary in an emergency to protect the child because he has been subjected to or threatened with mistreatment, abuse, or neglect; or
- e. It appears no other state has or wants jurisdiction by the tests in (a-d) above and it is in the child's best interest for Virginia to act.

#### 2. Establishing Custody and Visitation

There is no presumption in the law favoring the mother over the father in choosing a custodial parent. The court's main focus is what is in the best interests of the child. The best interests of the child may call for sole custody in one parent, joint custody, or awarding custody or visitation to another person with a legitimate interest in the child (e.g. grandparents, step-parents). Regardless of who gets

custody, both parents have complete access to the child's medical and academic records.

In determining custody and visitation, the court will consider the following factors:

- a. The age and physical and mental condition of the child;
- b. The age and physical and mental condition of both parents;
- c. The relationship existing between the child and each parent;
- d. The needs of the children;
- e. The role each parent has played and will play in the future in the upbringing and care of the children;
- f. Any history of family abuse;
- g. Other factors necessary to consider the best interests of the child.

#### 3. Modification of Virginia Custody Order

A Virginia court can change or modify its own custody order at any time as the circumstances require. Again, the courts look at the best interests of the child and any changed circumstances. *Note, you may lose primary custody of your child if you intentionally withhold visitation from the other parent without just cause.*

The Virginia Military Parents Equal Protection Act limits a court's ability to permanently modify orders regarding the custody, visitation, or support of a child due to changed circumstances resulting from one parent's deployment. Any modifications made to such orders are only effective for the length of the parent's deployment.

#### 4. Modification of Another State's Custody Order

Virginia will modify another state's custody order if the state that issued the order no longer has jurisdiction, **and** Virginia does have jurisdiction. (See UCCJEA discussion above).

### SECTION II: CHILD SUPPORT

#### 1. Establishing the Child Support Order

If you have physical custody of a child or are owed support from when you did have physical custody of a child, you can request DCSE's assistance by completing and returning an application for services. If you do not want to open a case with DCSE, you will need to work with the court and/or a private attorney.

To open a case with DCSE, if you are not receiving Temporary Assistance to Needy Families (TANF) benefits, you must complete and submit an application for services.

See

<http://www.dss.virginia.gov/family/dcse/index.cgi> for more information.

DCSE Customer Service Number: 1-800-468-8894

#### Required Information & Documentation

- Yours and your child's social security number
- Copy of child's birth certificate
- Copies of any previous child support orders
- Copies of any child custody, protective or visitation orders
- Your most recent paycheck stub or W-2s from prior tax year
- Picture ID

DCSE needs to know:

- If you are in the process of obtaining a divorce
- If you have received or are receiving any government assistance for you or your child

You do not necessarily need to go to court because Virginia law allows many child support orders to be established administratively, allowing DCSE to arrange it for you.

Virginia has, by law, a table that establishes the amount of monthly support required. The table is presumed to list the correct amount, but can be challenged. To successfully challenge the table, the court must make special findings to show why the amount on the table is incorrect. See VA Code Section 20-108.2 for the updated table.

Child support will continue as long as the child is a full-time high school student, not self-supporting, and living in the home of the parent seeking or receiving child support until the child reaches the age of nineteen or graduates from high school, whichever comes first.

## **2. Determining Support Obligation**

Determining support depends on several variables, but here are a few factors to keep in mind:

- Gross income of parent
- Work-related child care expenses
- Child healthcare expenses
- Other children

## **3. Payment Methods**

You can collect payment directly from your ex-spouse. If the ex-spouse paying support is a military member, and there is an order to substantiate the award, the parent awarded the support is entitled to receive direct payments from the military, regardless of the length of the marriage.

Contact the Defense Finance and Account Service (888-332-7411) for more information.

## **4. Enforcing the Support Order**

The support order must be legally served on the noncustodial parent before it can take effect. When a noncustodial parent fails to pay his or her child support order on a timely basis, DCSE will usually begin proceedings to enforce the order. Typically, enforcement proceedings begin when payments are 30 days overdue.

All states pursue child support across state lines. Virginia's process is based on the Uniform Interstate Family Support Act which helps establish paternity, establish child support orders, and collect support from noncustodial parents across state line. If the noncustodial parent does not live in the United States, the case can only be enforced if DCSE has an international agreement with the country where the noncustodial parent lives.

## **5. Modification of Child Support**

The court may revise or alter its decree of child support if there is a material change of circumstances. However, once an obligation has become due, the court cannot modify it; the court can only modify future child support obligations.

## **6. Air Force Policy**

The Air Force expects its members to provide regular and adequate support for its dependents based on the needs of the dependents and the ability of the member to provide support. Commanders may take disciplinary action or administrative action against members who fail to comply with support requirements. Commanders cannot, however, order a member to pay support. The finance office will terminate BAQ at "with dependents" rate if the member refuses to use the money to support family members. Problems with inadequate support should be addressed to the member's commander or first sergeant.

**Note: The information in this handout is general in nature. It is not to be used as a substitute for legal advice from an attorney regarding individual situations.**