



**ITINERARY FOR THE OCTOBER 20, 2010 MEETING OF THE
GEORGE MASON AMERICAN INN OF COURT**

Relocating Children After Divorce: The Law, Effects, and Solutions

STUDENT PRESENTERS:

Nathan Chubb
Andrey Kuznetsov
Christine Park
Kandace Stroup
Sasha Ward

MASTERS OF THE INN:

Hon. Gayl Carr
FAIRFAX COUNTY, DISTRICT COURT
JUVENILE & DOMESTIC RELATIONS
4110 Chain Bridge Road
Fairfax, Virginia 22030

Deborah Olin
LAW OFFICE OF DEBORAH S. OLIN
8001 Braddock Road
Springfield, Virginia 22151

-
1. Introduction
(Deborah Olin) (7:30 pm - 7:35pm) (.08 hour)
 2. Relocation Law in Virginia
(Sasha Ward) (7:35 pm - 7:45pm) (.17 hour)
 3. Survey of Relocation Law in the United States
(Kandace Stroup) (7:45 pm - 7:55pm) (.17 hour)
 4. Psychological Effects of Relocation on Children
(Christine Park) (7:55 pm - 8:05pm) (.17 hour)
 5. Virtual Visitation
(Nathan Chubb) (8:05 pm - 8:15pm) (.17 hour)
 5. Recent and Important Relocation Cases and Conclusion
(Andrey Kuznetsov) (8:15 pm - 8:25pm) (.17 hour)

Section 1: Virginia Relocation Law

1. **Statutory Basis:**

- a. No Virginia statute specifically addresses how the courts should determine issues related to the relocation of a custodial parent. However, Virginia Code § 20-124.5 requires custodial parent to provide 30 days advance written notice to the court and the other party of his or her intention to relocate and intended address, unless the court orders otherwise.
 - i. References: Petry v. Petry, 41 Va.App. 782, 789 (2003)

2. **Court's Role:**

- a. Courts do have the power to decide relocation cases under the same rubric as custody and visitation cases.
 - i. References: Virginia Code §20-107.2 provides that courts may decide matters "concerning the custody or visitation and support of the minor children of the parties."

3. **There are two ways in which a relocation issue may come before the court:**

- a. First, if the court has previously entered a final custody or visitation order, it may not be modified absent:
 - i. A showing of changed circumstances under Virginia Code § 20-108; and
 - ii. Proof that modification of the order will serve the child's best interests under Virginia Code §20-124.3
- b. Second, when the court has not entered a final custody or visitation order, the court need only analyze whether or not relocation will serve the child's best interests under §20-124.3.

4. **Trial court's Discretion:**

- a. Because the decision is based on the totality of the circumstances after weighing a variety of factors, the trial court will only be reversed if "plainly wrong or without evidence to support it."
 - i. References: Petry, 41 Va.App. at 790 , quoting Sullivan v. Knick, 38 Va.App. 773, 783 (2002).

5. **Burden of Proof:**

- a. The burden of proof is on the party requesting the relocation.
 - i. References: Cloutier v. Queen, 35 Va.App. 413, 427 (2001)
- b. The custodial parent must show:
 - i. **Affirmative benefits** to the child from the relocation; and
 - ii. That relocation will not "**substantially impair**" the relationship between the children and the other parent.
 1. Note – *the difficulty of maintaining a parental relationship with the children is not alone enough to deny the custodial parent the ability to relocate. This would effectively allow the non-custodial parent to determine the custodial parent's residence.* Scinaldi v. Scinaldi, 2 Va.App., 571, 575 (1986).

2. Reference: Judd v. Judd, 53 Va.App. 578, 588, 673 S.E.2d 913, 917 (2009); Cloutier, 35 Va.App. at 429-30; Scinaldi, 2 Va.App. at 575.
3. *A parent's past and future involvement in the child's life may be considered in several ways, such as:*
 - a. If the non-custodial parent has not maintained a close relationship with the child, courts may consider this a factor in favor of relocation.
 - b. Where the non-custodial parent has been an active participant in the child's life on a daily basis, the court will be less likely to grant relocation, because relocation would likely substantially impair the non-custodial parent's relationship with his child.
 - i. Reference: Scinaldi, 2 Va.App. at 575.

6. Best Interests - §20-124.3

- a. Factors from the Virginia Code:
 - i. The **age and physical and mental condition of the child**, giving due consideration to the child's changing developmental needs;
 - ii. The **age and physical and mental condition of each parent**;
 - iii. The **relationship existing between each parent and each child**, giving due consideration to the positive involvement with the child's life, the ability to accurately assess and meet the emotional, intellectual and physical needs of the child;
 - iv. The **needs of the child**, giving due consideration to other important relationships of the child, including but not limited to siblings, peers and extended family members;
 - v. The **role that each parent has played and will play** in the future, in the upbringing and care of the child;
 - vi. The **propensity of each parent to actively support the child's contact and relationship with the other parent**, including whether a parent has unreasonably denied the other parent access to or visitation with the child;
 - vii. The **relative willingness and demonstrated ability of each parent to maintain a close and continuing relationship with the child**, and the ability of each parent to cooperate in and resolve disputes regarding matters affecting the child;
 - viii. The **reasonable preference of the child**, if the court deems the child to be of reasonable intelligence, understanding, age and experience to express such a preference;
 - ix. Any **history of family abuse** as that term is defined in § 16.1-228 or sexual abuse. If the court finds such a history, the court may disregard the factors in subdivision 6; and
 - x. Such **other factors as the court deems necessary and proper** to the determination.

- b. *These factors make each relocation case a different, factually-specific determination for the trial court. The test involves considering and balancing many factors which may vary from case to case.*
- c. Distinguishing the Child's Best Interests from the Custodial Parent's Best Interests
 - i. Often the best interests of the child and the custodial parent will be the same; however courts must focus on the child's best interests.
 - 1. "Courts may only consider a benefit to the parent form relocation only if the move independently benefits the child" as well.
 - a. References: Goodhand v. Kildoo, 37 Va.App. 591, 599-600 (2002), quoting Cloutier, 35 Va.App. at 430.
- d. Examples of Relocation Factors Courts have Considered in Determining a Child's Best Interests:
 - i. Financial Security in new location.
 - 1. Judd v. Judd, 53 Va.App. 578 (2009)
 - 2. Wheeler v. Wheeler, 42 Va.App. 282, 293 (2004)
 - 3. Scinaldi, 2 Va.App. at 574.
 - ii. Extended family in new location
 - 1. Id.
 - iii. Child's development in school and in their current environment overall
 - 1. Scinaldi, 2 Va.App. at 576
 - iv. Whether the non-custodial parent's relationship with the child can be maintained through extended visitation rather than regular visitation
 - 1. Judd, 53 Va.App. at 589
 - 2. Scinaldi, 2 Va.App. at 576
 - v. Financial security and stability of the child
 - 1. Simmons v. Simmons, 1 Va.App. 358, 364 (1986)
 - vi. Whether the custodial parent is seeking to relocate out of spite towards non-custodial parent
 - 1. Simmons, 1 Va.App. at 361
 - vii. Potential for emotional stability for the child
 - 1. Parish v. Spaulding, 26 Va.App. 566, 572 (1998).
 - viii. How the present custodial arrangement is working
 - 1. Cloutier, 35 Va.App. at 428.
 - ix. Wishes of the child
 - 1. Goodhand, 37 Va.App. at 600-01.

7. **Retroactive Relocation Requests**

- a. Retroactive Relocation requests are allowed.
 - i. Sullivan v. Jones, 42 Va.App. 794, 809 (2004); Parish, 26 Va.App. at 571-72.
- b. Custodial parents have relocated, then moved for modification of the existing custody or visitation order, using the voluntary relocation as evidence of changed circumstances.

- c. The rationale for allowing retroactive requests, even if the relocation was in violation of a court order, is that the court's primary concern is assessing the best interests of the child. If remaining in the new location would serve the child's best interests, the court may approve a retroactive relocation request.
 - i. Id.
 - d. The appropriate remedy for the non-custodial parent is to seek sanctions against the custodial parent.
 - i. Id.
- 8. Important Cases in Virginia Relocation Law**
- a. Carpenter v. Carpenter, 220 Va. 299, 257 S.E.2d 845 (1979)
 - i. Court denied mother's request to relocate to NY with children because father had been involved in childrens' upbringing, they were developing well in Virginia and mother's job opportunities in NY were speculative.
 - b. Scinaldi v. Scinaldi, 2 Va.App. 571, 347 S.E.2d 149 (1986)
 - i. Court allowed mother's relocation to NY with children because of father's likelihood of his own relocation, his relationship with another woman, the sale of the marital home, the anticipated bankruptcy of mother's employer in Virginia Beach and mother's extended family support system in NY.
 - c. Parish v. Spaulding, 26 Va.App. 566, 496 S.E.2d 91 (1998)
 - i. The court held that a custodial parent's voluntary move does not bar her from seeking the court's approval of the relocation retroactively or from seeking a modification of a final order based on changed circumstances.
 - ii. Court retroactively approved mother's move to Indiana because she was the primary caregiver who offered the most stable home for the children, her children had a relationship with other children by mother's second marriage, economic stability, the move occurred over the summer and did not disrupt the childrens' schooling.
 - d. Judd v. Judd, 53 Va.App. 578, 673 S.E.2d 914 (2009)
 - i. The court allowed the mother's relocation to Wisconsin because the mother had always encouraged the childrens' relationship with their father, the father had played a "limited" role in the childrens' lives until very recently, the mother had more job opportunities in Wisconsin and the and children were familiar with Wisconsin because of previous visits.

Other References:

McGregor, Katharine, "Relocation in Custody Cases: A history and present state of the law." The Journal of the Virginia Trial Lawyers Association, Summer 2004.

Section 2: General Relocation Law

1. Introduction:

- a. One-fifth of Americans change their residence each year.
 - i. Source: *In re Marriage of Burgess*, 913 P2d 473 (1996).
- b. When a divorced parent chooses to relocate, it often involves moving a child to a different state from that in which the noncustodial parent resides.
 - i. If the noncustodial parent has a relationship with the child, he or she will often seek intervention of the courts to prevent the relocation.
 - ii. Source: Honorable Connie Peterson, *Relocation of Children by the Custodial Parent*, 65 Am. Jur. Trials 127 (April 2010).

2. General Judicial Response to Relocation:

- a. The judicial response to the relocation of a child by the custodial parent varies drastically from state to state. Responses range from:
 - i. Highly restrictive measures requiring exceptional circumstances to permit the relocation of the child, to
 - ii. Less restrictive measures deferring almost entirely to the decision of the custodial parent.
 - iii. Source: Honorable Connie Peterson, *Relocation of Children by the Custodial Parent*, 65 Am. Jur. Trials 127 (April 2010).
- b. However, the trend in the law generally is towards making relocation decisions on the facts of each individual case rather than on the basis of strong presumptions for or against relocation.
 - i. Source: Atkinson, Jeff, *Overview of Law of Relocation in the 50 States*, American Bar Association Section of Family Law 2006 Spring CLE Conference (June 2006).

3. General Presumptions and Burden of Proof

- a. Distribution as of June 28, 2006:
 - i. 5 states have a general presumption in favor of relocation
 - A. AR, MN, OK, SD, WA
 - ii. 1 state has a general presumption against relocation
 - A. AL
 - iii. 3 states have a general presumption based on the amount of time spent with the child by each party
 - A. TN, WV, WI
 - iv. 6 states split the burden of proof by initially placing it on the party seeking relocation to show a good faith reason to move and then shifting the burden to the party opposing the relocation to show why the move is not in the child's best interest
 - A. AL, CT, NV, NH, NJ, PA
 - v. 5 states place the burden of proof on the party opposing relocation
 - A. AR, CA, KY, MT, WY

- vi. 6 (or more) states have no general presumptions or place the burden equally on both parents
 - A. Co, FL, GA, NM, NY, SC
- b. It is important to note that states may fall into more than one category.
- c. Source: Atkinson, Jeff, *Overview of Law of Relocation in the 50 States*, American Bar Association Section of Family Law 2006 Spring CLE Conference (June 2006).

4. General Notice Requirements

- a. General requirements as of June 28, 2006:
 - i. Of the 33 states that have relocation statutes, 18 of those statutes explicitly require the parent seeking relocation to provide notice to the other parent.
 - ii. Most state relocation statutes require a notice period between 30 and 60 days.
 - iii. There may be a duty to update information if relocation plans change.
 - iv. Notice must generally include the address of the intended relocation, date of planned relocation, reason for the relocation, proposed revised visitation schedule, and the rights of the other parent to object to the relocation.
 - v. Most jurisdictions allow a court to waive or modify notification requirements in exceptional circumstances, including threat to the safety of the child or parent.
- b. Source: Atkinson, Jeff, *Overview of Law of Relocation in the 50 States*, American Bar Association Section of Family Law 2006 Spring CLE Conference (June 2006).

5. General Factors Considered in Deciding Whether to Allow Relocation

- a. Most states use some type of balancing of factors in deciding whether to allow relocation of a child. Although the various factors are provided below, there is often overlap between each of the factors and the weight that a court places on each.
- b. **Factors:**
 - i. Custodial parent's right to travel and relocate (this right is almost always outweighed by the best interest of the child);
 - ii. Motive of the custodial parent in seeking to move;
 - iii. Motive of the noncustodial parent in opposing the move;
 - iv. Quality of the relationship and frequency of contact between the child and the noncustodial parent;
 - v. History or threats of domestic violence in either home;
 - vi. Likelihood of improving the quality of life for the child;
 - vii. Degree to which a benefit in the quality of life for the custodial parent will directly benefit the child;
 - viii. Feasibility of restructuring visitation (virtual visitation) in order to preserve the relationship between the child and noncustodial parent;

- ix. Interest of the state in protecting the best interest of the child
- c. Sources: Honorable Connie Peterson, *Relocation of Children by the Custodial Parent*, 65 Am. Jur. Trials 127 (April 2010); Atkinson, Jeff, *Overview of Law of Relocation in the 50 States*, American Bar Association Section of Family Law 2006 Spring CLE Conference (June 2006).

6. Relocation Laws in Important or Interesting States

a. California

- i. Cal. Fam. Code § 7501 provides that the custodial parent has a right to relocate the child, “subject to the power of the court to restrain a removal that would prejudice the rights or welfare of the child.”
- ii. The noncustodial parent bears a substantial initial burden of showing that the proposed relocation would cause “detriment” to the child and that the likely impact of the proposed relocation on the relationship between the noncustodial parent and child would cause detriment to the child. *See In re Marriage of Lmausga*, 32 Cal. 4th 1072, 88 P.3d 81 (2004).

b. Florida

- i. Fl. Stat. § 61.13(2)(d) provides that there is no presumption in favor of or against relocation.
- ii. The best interest of the child is the prime consideration when determining whether to allow relocation, although the court does take into consideration other factors. *See Hill v. Hill*, 548 So. 2d 417 (Fl. 1993).

c. Maryland

- i. Md. Fam. Law § 9-106 allows relocation, but requires 45 days notice unless the child or parent would be exposed to abuse.
- ii. Relocation may be a sufficient change in circumstances to warrant a modification of custody. *Domingues v. Johnson*, 23 Md. 486 (1991).

d. Massachusetts

- i. Mass. Gen. Laws Ann. ch. 208, § 30 allows relocation without the consent of both parents only “upon cause shown.” The statute additionally provides that if the minor child who is of suitable age to signify his consent and who has resided in the commonwealth for at least five years, may not be removed without his or her consent unless sufficient cause is provided.
- ii. Courts generally consider the best interests of the child and the interest of custodial parent in determining whether sufficient cause for the relocation has been shown. *Rosenthal v. Maney*, 51 Mass. Ct. App. 257 (2001).

e. New York

- i. At one time, New York was the state with the most difficult test for removal.
- ii. In *Tropea v. Tropea*, the Court of Appeals lightened this test. *Tropea v. Tropea*, 87 N.Y. 2d 727 (1996).

- A. The Court replaced the previous requirement that the custodial parent prove “exception circumstances” for the relocation with a general test focusing on the best interest of the child and weighing numerous other factors.
 - B. Generally the Court accepted a standard that each relocation request should be considered on its own merits with no single factor treated as dispositive.
- f. **Texas**
- i. Relocation cases are governed by a determination of the best interest of the child. Additionally, courts have held that a jury determining whether to permit relocation may consider evidence of the possibility and feasibility of a parallel move by a committed noncustodial parent as an alternative solution to denying the proposed relocation. *Lenz v. Lenz*, 79 S.W.3d 10 (Tex. 2002).
 - g. For an overview of the relocation laws in each of the 50 states see *Relocation of Children by the Custodial Parent* by Honorable Connie Peterson.

General Sources:

Honorable Connie Peterson, *Relocation of Children by the Custodial Parent*, 65 Am. Jur. Trials 127 (April 2010).

Atkinson, Jeff, *Overview of Law of Relocation in the 50 States*, American Bar Association Section of Family Law 2006 Spring CLE Conference (June 2006).

Section 3: Psychological Impacts of Relocation on Children

1. Effects of Divorce:

- a. Divorce of parents significantly undermines a child’s sense of security and stability
 - i. The two people upon whom the child depends on the most are no longer equally accessible to the child
 - ii. The best possible post-divorce scenario includes:
 - A. Parents who are amicable
 - B. Do not display overt hostility
 - C. Can communicate with each other about the child,
 - D. *Live close enough to each other so that child can have the same playmates when with either parent*

2. Effects of Relocation:

- a. Relocation does not occur in a vacuum → is associated with other significant life events that may have positive or negative consequences for the family members

- b. When a parent seeks to move after a divorce, this best post-divorce scenario for the child is threatened and creates conflicting needs and wishes:
 - i. Child does not wish to leave the familiar environment in which they leave
 - ii. Child does not wish to leave their noncustodial parent
- c. Relocation to a new area may be experienced as the final representation of the family break-up for the child

3. Relevant Psychological Factors

- a. 80% of divorce situations – residential parent is the mother, non-residential parent is the father
- b. Consensus among mental health professionals is that children are better off if they have contact and good relationships with both parents
- c. While children with parents absent because of death or divorce generally have more problems than children in intact families, children in divorced families have more problems than those who lost a parent through death
- d. Younger children may not be able to develop and maintain a close relationship with a non-residential parent, if geographically separated

4. Negative Effects of Relocation After Divorce (compared with divorced families in which neither parent moved away)

- a. Empirical study found that children who experienced relocation after divorce:
 - i. Received less financial support from parents
 - ii. Worried more about financial support
 - iii. Felt more hostility in their interpersonal relations
 - iv. Suffered more distress related to their parents' divorce
 - v. Perceived their parents less favorably as sources of emotional support and as role models
 - vi. Believed the quality of their parents' relations with each other to be worse
 - vii. Rated themselves less favorably on their general physical health, general life satisfaction, and their personal and emotional adjustment

5. Role of Fathers

- a. Early research on father absence → the younger the child, the greater the negative impact of the father's absence on the child
 - i. Following divorce, more than 20% of children have no or infrequent contact with their fathers
 - ii. Non-custodial mothers more likely to stay in contact with their children than non-custodial fathers

6. Implications of Research Findings

- a. Nature of contact and relationship = more significant than frequency of contact

- b. The major implication of findings is that, subsequent to divorce, children need the nonresidential parent to fulfill the customary parental roles of monitoring homework, attending school events, spending holidays together, making decisions, and disciplining them. Being a “vacation” parent may not be sufficient
- c. The greater the geographic distance between the child and the nonresidential parent, the less likely that the nonresidential parent can assume the traditional parental roles or participate in the ordinary activities of the child’s life
 - i. Contact with the nonresidential parent becomes special and takes both the child and parent away from their normal routines

7. American Psychological Association (APA) guidelines for custody evaluations according to “best interest of the child” standard

- a. All factors must be considered on a case-by-case basis
 - i. Mental health professional conducting evaluations must look at the fit of research findings and their own clinical experiences to the individual set of circumstances
- b. A family systems perspective must be maintained
 - i. A parent who believes that his rights or needs are discounted may not be able to parent effectively or encourage the child’s relationship with the other parent.
 - ii. While the best interests of the child need to be primary, they will be served if the solution is also in the best interests of the family.
- c. Psychological residue of relocation issue must be considered
 - i. Steps must be taken to minimize the negative impact
 - A. If relocation is to occur, age-appropriate plans need to be developed for preparing the children for the move
 - B. Specific arrangements need to be in place so that the child and the left-behind parent know when and how they will maintain their relationship

****Greatest danger to the well-being of children may be inherent in the legal system, which allows for appeals and reversals of previous court orders**

- a. Children (and adults as well) thrive when their lives are consistent and stable.
- b. The threat of being moved from one geographic locale to another because of changing court decisions can disrupt the healthy psychological development of the children.

Section 4: Virtual Visitation

1. Mechanics of Virtual Visitation

a. What it is

- i. Virtual visitation “refers to the use of email, instant messaging, webcams and other internet tools to provide regular contact between a noncustodial parent and his or her child.” David Welsh, Note, *Virtual Parents: How Virtual Visitation Legislation is Shaping the Future of Custody Law*, 11 J. L. & FAM. STUD. 215, 215 (2008).
 - A. Focus in this presentation is on webcams and live, interactive communication between parents and children.
 - B. Virtual visitation is a means of connecting parents and children when distance or schedule impedes consistent, in person visitation.
- ii. Virtual visitation tends to be relatively short in any given encounter, similar to a phone call.
 - A. Michael Gough, a driving force behind virtual visitation, discussed how his initial attempts in virtual visitation lasted an average of five minutes when his daughter was young (four and one-half years old) but increased over time to an average of about fifteen minutes. Welsh, *Virtual Parent*, at 218.
 - a. But anecdotal evidence from both Gough, and Tawny Sniderman, a noncustodial mother, suggest that virtual visitation is “far superior to telephone calls and letters,” because of the greater ability to interact, and view expressions and other nonverbal communications. Welsh, *Virtual Parent*, at 218.

b. How virtual visitation works

- i. In modern technical age, virtual visitation can be easily set up with minimal costs.
- ii. Equipment needed consists of:
 - A. Internet access
 - B. Webcams (hardware)
 - a. Most new laptops come with preinstalled cameras and software for marginal additional costs. See dell.com.
 - b. Companies like Logitech, Microsoft, and HP produce reliable and affordable cameras.
 - i. Best Buy sells over thirty different types of webcams, with more than twenty-five having built in microphones, and twenty costing less than fifty dollars. See bestbuy.com.
 - C. Software
 - a. Most internet calling options include videoconferencing
 - i. Windows Live and Skype are probably the most used videoconferencing software for families and private use. See software.informer.com.

- ii. Software may often be packaged with hardware to reduce costs.
 - c. Potential opportunities to use virtual visitation
 - i. In the context of this discussion, virtual visitation offers the greatest benefit when children are geographically removed from non-custodial parents to distances not easily travelled in the normal course of ones activities (i.e. out of state or from one end of a large state to another). Welsh, *Virtual Parent*, at 216-17.
 - A. However it can also be part of a custody agreement when parents work difficult schedules that prevent them from working a consistent visitation schedule. Ofelia Casillas, *Divorced Parents Using Virtual Visitation*, CHICAGO TRIB. (Jan. 22, 2010).
 - B. There is also the potential for application “in cases where a parent should not have physical proximity to his or her children but would still like to visit and have a relationship.” Casillas, *Divorced Parents Using Virtual Visitation*. One such situation is when a parent is incarcerated. Jeffery M. Leving, *Virtual Visitation for Incarcerated Fathers*, DIVORCE MAG. (Mar. 31, 2009).

2. Where is it virtual visitation statutorily available:

- a. As of July 2009, six states have passed virtual visitation laws, including:
 - i. Florida (2007), Illinois (2009), North Carolina (2009), Texas (2007), Utah (2004), and Wisconsin (2005). See Internetvisitation.org, Legislation, http://internetvisitation.org/web_pages/legislation.html. Utah’s virtual visitation law is available at <http://www.le.state.ut.us/~2004/bills/hbillenr/hb0082.pdf>.
 - A. Hawaii is likely to pass a bill regarding virtual visitation within the next year. See internetvisitation.org., Legislation.
 - ii. And there are another twenty states with bills drafted or being drafted. See internetvisitation.org., Legislation.
- b. States without virtual visitation laws
 - i. Virginia is one of forty-four states without virtual visitation laws, and one of twenty-two states without current bills or proposals. See internetvisitation.org., Legislation. See appendix for proposed Virginia Virtual Visitation law.
 - ii. In 2007, Jay O’Brien proposed a bill to include a virtual visitation law in Virginia, however the bill failed in Committee. Senate Bill No. 1036 (2007); available at <http://leg1.state.va.us/cgi-bin/legp504.exe?071+sum+SB1036>
 - A. Bill’s features would have allowed courts to order virtual visitation under certain conditions. See Senate Bill No. 1036 (2007).

- B. Strict limits placed on how the courts could consider of virtual visitation. Specifically, it could not be
 - a. A factor in determining child support
 - b. A factor in determining permissibility of relocation
 - iii. Bill also included a notice of relocation provision requiring 30 days notice prior to moving the child, which would have modified Va. Code Ann. § 20-124.5 (1994).
 - c. Is an explicit law necessary in Virginia for Courts to order virtual visitation?
 - i. No statute exists in Virginia that explicitly covers relocation rights of noncustodial parents. *See supra* Section section by Sasha.
 - ii. Courts rely on “best interests” determination when deciding terms of relocation. *See supra* Section 1.1(a).
 - A. Courts likely have inherent power to order virtual visitation as part of a relocation/custodial arrangement under the umbrella reasoning of a child’s best interests.

3. Benefits and Concerns with Virtual Visitation

- a. Virtual visitation helps connect parents separated by distance who might have visitation schedules lumped into only one or two periods in a year (often around breaks in the school year). Sarah L. Gottfried, Note, *Virtual Visitation: The New Wave of Communication Between Children and Non-Custodial Parents in Relocation Cases*, 9 CARDOZO WOMEN’S L.J. 567, 591-92 (2003).
 - i. “Many children struggle to maintain a relationship with each of their parents when their families divide.” Welsh, *Virtual Parent*, at 217
 - A. Parent/child bond is not solidified until about the age of six. Welsh, *Virtual Parent*, at 217.
 - B. “[A] child does better in every aspect of adjustment that has been measured, both long-term and short-term, if there is active [parental] involvement [from both parents.]” Kenneth Waldron, *A Review of Social Science Research on Post Divorce Relocation*, 19 J. AM. ACAD. MATRIMONIAL L. 337, 353 (2005).
 - ii. Virtual visitation “can facilitate the communication process for [noncustodial parents] seeking to foster more meaningful relationships with their children. Welsh, *Virtual Parent*, at 217.
 - A. “[T]he use of this technology can enhance both the quantity and quality of parental contacts.” Welsh, *Virtual Parent*, at 217
 - B. It has been described as a “gap filling measure,” which can be taken in both a positive and pejorative tone. See Anne LeVasseur, Note, *Virtual Visitation: How will Courts Respond to a New and Emerging Issue?*, 17 QUINNIIAC PROB. L.J. 362, 368 (2004).
- b. Importance of nonverbal communication
 - i. Over ninety percent of communication is nonverbal. Inn of Court Presentation, *Body Language and Telling Appearances:*

- ii. *Effective Courtroom Preparation* (Feb. 17, 2010).
 - A. Communication consists of three parts, the words spoken, the tone and inflection of voice, and physical mannerisms (body language). IOC Presentation, *Body Language*.
- iii. Virtual visitation allows the opportunity for the child and parent to see the expressions on the other's face, hear inflections in tone of voice not available in email or letters, and observe mannerisms and other nonverbal communication to reinforce the communicator's message. Welsh, *Virtual Parent*, at 218.
 - A. "With videoconferencing, I was able to read bedtime stories, help her with her homework and even watch her open up a present,' said Gough . . ." Jill Brooke, *Do Men Become Better or Worse Fathers After Divorce?*, THE HUFFINGTON POST (July 16, 2009).

4. Concerns with Virtual Visitation

a. Potential for abuse by courts

- i. Critics have expressed concern that courts will award less actual visitation days if virtual visitation allowed, and make up the difference in virtual visitation meetings. Elisabeth Bach-Van Horn, *Virtual Visitation: Are Webcams Being Used as an Excuse to Allow Relocation*, 21 J. AM. ACAD. MATRIM. LAW 171 (2008).
 - A. A court in Massachusetts "replaced the non-custodial parents' regular weekday visits with 'virtual visits.'" Welsh, *Virtual Parents*, at 220.
 - B. Some have argued that "the trend of easing relocation requirements is exacerbated by virtual visitation." Welsh, *Virtual Parents*, at 220.
 - a. If this becomes a reality, there is a concern that moving a child to another state could become a strategic move by parents to remove the other parent from the child's life. Welsh, *Virtual Parents*, at 220.
- ii. Critics are also concern that courts when deciding if a move is in the best interest of a child, will weight virtual visitation as a mitigating factor in allowing a relocation. Casillas, *Divorced Parents*.
 - A. "Critics point out that virtual visitation can be improperly used by courts to justify relocating a child away from the non-custodial parent." Welsh, *Virtual Parent*, at 220.
 - a. "[S]taying connected by the internet is never a substitute for face-to-face contact." *Graham v. Graham*, 794 A.2d 912, 915 (Pa. Super. Ct. 2002).
 - B. Although the availability of virtual visitation can never be in the best interests of a child, in increasingly shrinking world, virtual visitation's ability to keep individuals connected "face-

to-face” even when 3,000 miles apart may factor into determining the harms created by relocation.

- a. The proper role of virtual visitation in a court’s decision making is thus open to serious debate, and in Virginia will remain unclear unless the legislature renews the virtual visitation bill.
- b. Potential for abuse by parents
 - i. Generally there are two concerns related to virtual visitation by children:
 - A. The opportunity for the ex-spouse to “spy” though the extent of this concern is unexplored and likely minor. *See* divorcehelpforparents.com, *Virtual Visitation: Using the Internet to See Your Kids*, (2005), <http://www.divorcehelpforparents.com/virtual-visitiation.html>
 - B. The opportunity for the ex-spouse to “control” visitation with the other parent by requiring extensive and inconvenient access to the child under the guise of virtual visitation. Elizabeth Millard, *Live-Action Interaction: Virtual Visitation Diminishes Distance Between Divorced Parents and Their Kids*, ABA JOURNAL (Nov. 2005), *available at* <http://www.abajournal.com/magazine/issue/2005/11/>.

Section 5: Relocation Cases: Relationship between Improving One Parent’s Welfare and the Best Interest of the Children

1. Case #1 – Mother’s Deteriorating Economic Circumstances

a. Relevant Facts:

- i. Father was in the military; had to often relocate; was assigned to NOVA.
- ii. After divorce Mother’s financial circumstances began to deteriorate (moved from family home to cheaper one; depleted her savings; came to depend on charity and gifts from family and friends to cover family expenses; worked part time for \$15/hr for a year, then determining the financial benefit to be negligible gave up trying to seek employment).
- iii. Both parties testified the other is an excellent parent and that each has a close, warm, loving and caring relationship with their children. Children are well-adjusted, healthy and excel academically.
- iv. Mother planned to be a stay-at-home mom in FL and was no seeking employment there. Real estate listings in FL were substantially affordable than comparable properties in North Virginia. Grandmother on mother’s side was relocating to FL as well.

- v. As of hearing date, fiancé did not own a home in FL and had no employment there.
- b. Legal standard for modifying trial court's decree: 1) Threshold matter – “material change in circumstances” (“‘Changed circumstances’ is a broad concept and incorporated a broad range of positive and negative developments in the lives of children.”); 2) If the court finds there is “material change in circumstances”, the court must then “evaluate whether relocation would be in the best interest of the children” by considering the factors provided in Va. Code Ann. § 20-124.3.¹
- c. Question for the Audience: Based on applying the legal standard to the facts here, do you think Mother would be granted permission to relocate to Florida and bring the children with her? (Yes/No).
- d. Holding: Affirmed the decision of trial court to grant Mother’s petition for leave to relocate out of state with parties’ children.
- e. Reasoning:
 - i. “Simply put it is the conclusion of the court that the best interest of the children will be served by permitting their relocation with their mother. Their economic circumstances will improve. They will have financial security. They will have a suitable and stable home environment. They will not be living on the edge.”
 - ii. Children will remain with primary care giver, a stay-at-home mother, which is of great benefit to them. Otherwise, they will lose this benefit.
 - iii. Due to deteriorating economic situation, status quo is changing. Relocation is going to occur if not to FL then to Prince William, to Manassas Park or elsewhere.
 - iv. “[T]he issue is not whether father is devoted to his children, but whether, instead, the benefit of the relationship can continue upon the children’s relocation to Florida.”

¹ In determining best interests of a child for purposes of determining custody or visitation arrangements including any pendente lite orders pursuant to § 20-103, the court shall consider the following:

1. The age and physical and mental condition of the child, giving due consideration to the child's changing developmental needs;
 2. The age and physical and mental condition of each parent;
 3. The relationship existing between each parent and each child, giving due consideration to the positive involvement with the child's life, the ability to accurately assess and meet the emotional, intellectual and physical needs of the child;
 4. The needs of the child, giving due consideration to other important relationships of the child, including but not limited to siblings, peers and extended family members;
 5. The role that each parent has played and will play in the future, in the upbringing and care of the child;
 6. The propensity of each parent to actively support the child's contact and relationship with the other parent, including whether a parent has unreasonably denied the other parent access to or visitation with the child;
 7. The relative willingness and demonstrated ability of each parent to maintain a close and continuing relationship with the child, and the ability of each parent to cooperate in and resolve disputes regarding matters affecting the child;
 8. The reasonable preference of the child, if the court deems the child to be of reasonable intelligence, understanding, age and experience to express such a preference;
 9. Any history of family abuse as that term is defined in § 16.1-228 or sexual abuse. If the court finds such a history, the court may disregard the factors in subdivision 6; and
 10. Such other factors as the court deems necessary and proper to the determination.
- The judge shall communicate to the parties the basis of the decision either orally or in writing.

- v. No risk of loss of beneficial relationship of Father: Although his relationship may be inconvenienced, Father's bond is not going to be broken or suffer because the bond is so strong.
- f. Case: *Wheeler v. Wheeler*, 42 Va. App. 282, 591 S.E.2d 698 (2004).

2. Cf. Case #2 – What's Good for the Mother is Good for the Children?

- a. Relevant Facts:
 - i. March 12, 1996: Mother informs Father she intends to relocate with children to Buffalo, NY for the following reasons: (i) lower cost of living; (ii) emotional support from friends and family there. Thus, children would share in her increased emotional strength, which would result from her greater financial stability and her proximity with family members.
 - ii. May 28, 1996: a final decree of divorced was entered on the ground of Father's adultery.
 - iii. Fact Findings Accepted by Court of Appeals:
 - A. Father will be able to maintain "some relationship" with his children if they moved to Buffalo, NY and that "the financial cost of doing so would be inconsequential relative to its importance and his financial resources."
 - B. Having a happier mother would make the children's lives easier.
 - C. Father "has been very far from model father (or husband)."
- b. Legal standard: "[I]n deciding whether to permit or prohibit the custodial parent from moving to another state, a court must be concerned not so much with the relative costs and benefits that would insure to either parent as with the best interests of the child."
- c. Question for the Audience: Applying the legal standard to the facts here, do you think Mother would be enjoined from relocating to Buffalo, NY, and taking the children with her? (Yes or No).
- d. Question for the Audience – Differences in Outcomes: What facts or factors are responsible for the Court of Appeals permitting Mother's relocation in *Wheeler* but enjoining Mother's relocation in *Pavel*? (Effect on bond with Father; length of time that elapsed between divorce and relocation; economic situation of Mother back in VA).
- e. Holding: Judgment of trial court enjoining Mother's relocation is affirmed.
- f. Reasoning:
 - i. Benefits from moving to NY must be "weighed against the single, important detriment to such a move: the reduction, if not loss, of a significant relationship with their father."

- ii. Benefits of a good relationship between Father and his children cannot be accomplished adequately if Mother moves to Buffalo, NY at the present time.
- iii. Any relationship that the children would have with their father in Buffalo would be qualitatively inferior to the relationship they could develop if they lived close by; we should not jeopardize the children's newly found stability and adjustment to their parent's divorce.
- g. Case: Pavel v. Pavel, No. 1343-96-4, 1997 WL 52296 (Va. App. Feb. 11, 1997).

3. Case #3 – The Depressed Despondent Mother

a. Relevant Facts:

- i. During one of Father's visits, Father argued with Mother and allegedly shoved and hit her in the shoulder in front of their children, ages 2 and 4 (Mother was pregnant at the time). Mother petitioned the court for a protection from abuse order.
- ii. Mother became increasingly depressed and isolated in her surroundings in PA.
 - A. Deteriorating physiological state resulting from confrontation with her husband, perceived animosity from her in-laws, a lack of emotional support in the absence of friends and family, anxiety about having to move from her apartment which no longer was going to be available through her in-laws.
 - B. Mother testified she was treated for depression and anxiety by her obstetrician.
 - C. Most of child support (\$625) went to paying for room and board.
- iii. Mother's brother and his wife offered to have her and the children live with them in their home in IL. They have promised support for the present and aid in securing employment in the future. Mother hoped to get back in touch with her past friends in IL.
- b. Legal Standard: "When a custodial parent seeks to relocate at a geographical distance and the non-custodial parent challenges the move, the custodial parent has the initial burden of showing that the move is likely to significantly improve the quality of life of that parent and the child. In addition, each parent has the burden of establishing the integrity of his or her motive in either desiring to move or seeking to prevent it."
- c. Question to the Audience: Based on applying the legal standard to the facts here, do you think Mother should be granted permission to relocate to PA and bring the children with her? (Yes/No).
- d. Holding: Superior Court of Pennsylvania reversed the Court of Common Pleas – Mother is entitled to move out of state to Illinois with the children and still retain primary custody of children.
- e. Reasoning:

- i. “We stress that we consider the children’s well being and best interests inextricably joined to the health and happiness of the custodial parent. We think it is indisputable, under the circumstances of this case, that appellant’s ability to be an effective parent to her children is seriously undermined by the difficulty and unhappiness of her life in Pennsylvania the move to Illinois is likely substantially to promote the well being of the mother and, consequently make her a more effective, superior parent.”
- f. Case: Gruber v. Gruber, 400 Pa. Super. 174, 583 A.2d 434 (1990).

4. Case #4 – Effect of Parents’ Relocation Abroad on their Custody Rights

a. Relevant Facts:

- i. Mother appealed the trial court’s final custody decree, which awarded sole legal custody to Father, in response to Mother’s notification to Father that she is moving to Egypt and taking the children with her.
- ii. Father conceded at oral argument that the sole changed circumstance involved Mother’s proposed move to Egypt. Father filed a petition for custody on May 20, 1993.
- iii. Mother’s counsel stated that Mother and her new husband had each recently completed their higher education, had no source of income in the U.S. and they had found sources of income in Egypt.
- iv. Mother had written stories for the two small children that were designed to prepare the children “to start to bond [the] idea [of moving to Egypt].” Mother stated both children were “fully prepared to go to Egypt.” The girl remarked, “Well, when are we gonna go, when are we gonna go? What are we waiting for?”
- v. August 20, 1993: Mother abandoned all plans to move to Egypt, and instead decided to remain in Blacksburg, VA.

b. Legal Standard: “In determining whether a change in custody is warranted, the trial court must apply a two-part test: (1) whether there has been a change of circumstances following the most recent custody award, and (2) whether a change of custody would be in best interest of the child.” Keel v. Keel, 225 Va. 606, 303 S.E.2d 917 (1983).

c. Question for the Audience: Do you think the grant of custody order to Father would be upheld?

d. Holding: The trial court did not err in determining that there was a “material change in circumstances” warranting re-examination of the custody issue. Grant of sole legal custody to Father is affirmed.

e. Reasoning:

- i. “We conclude that this reversal in plans was a circumstance that the trial court could and did validly take into account.”
- ii. “[T]he issue of whether Mother and her new husband could provide continuing stability for Dana and Eric became a critical issue, not only at the time Mother announced her plans to move to Egypt, but also after she canceled those plans.”

- f. Case: Laing v. Walker, No. 1693-94-3, 1995 WL 421421 (Va. App. July 18, 1995).

Appendix

Virginia's Proposed Virtual Visitation Law:

1. That §§ 16.1-274, 16.1-278.15, 20-124.1, 20-124.2, and 20-124.5 of the Code of Virginia are amended and reenacted as follows:

§ 16.1-274. Time for filing of reports; copies furnished to attorneys; amended reports; fees.

A. Whenever any court directs an investigation pursuant to subsection A of § 16.1-237, § 16.1-273, or § 9.1-153, or an evaluation pursuant to § 16.1-278.5, the probation officer, court-appointed special advocate, or other agency conducting such investigation shall file such report with the clerk of the court directing the investigation. The clerk shall furnish a copy of such report to all attorneys representing parties in the matter before the court no later than seventy-two hours, and in cases of child custody, 15 days, prior to the time set by the court for hearing the matter. If such probation officer or other agency discovers additional information or a change in circumstance after the filing of the report, an amended report shall be filed forthwith and a copy sent to each person who received a copy of the original report. Whenever such a report is not filed or an amended report is filed, the court shall grant such continuance of the proceedings as justice requires. All attorneys receiving such report or amended report shall return such to the clerk upon the conclusion of the hearing and shall not make copies of such report or amended report or any portion thereof. However, the chief judge of each juvenile and domestic relations district court may provide for an alternative means of copying and distributing reports or amended reports filed pursuant to § 9.1-153.

B. Notwithstanding the provisions of §§ 16.1-69.48:2 and 17.1-275, when the court directs the appropriate local department of social services to conduct supervised visitation or directs the appropriate local department of social services or court services unit to conduct an investigation pursuant to § 16.1-273 or to provide mediation services in matters involving a child's custody, visitation, or support, the court shall assess a fee against the petitioner, the respondent, or both, in accordance with fee schedules established by the appropriate local board of social services when the service is provided by a local department of social services and by the State Board of Juvenile Justice when the service is provided by a court services unit. The fee schedules shall include (i) standards for determining the paying party's or parties' ability to pay and (ii) a scale of fees based on the paying party's or parties' income and family size and the actual cost of the services provided. The fee charged shall not exceed the actual cost of the service. The fee shall be assessed as a cost of the case and shall be paid as prescribed by the court to the local department of social services, locally operated court services unit or Department of Juvenile Justice, whichever performed the service, unless payment is waived. The method and medium for payment for such services shall be determined by the local department of social services, Department of Juvenile Justice, or the locally operated court services unit that provided the services.

C. When a local department of social services or any court services unit is requested by another local department or court services unit in the Commonwealth or by a similar department or entity in another state to conduct an investigation involving a child's custody, visitation or support pursuant to § 16.1-273 or, in the case of a request from another state pursuant to a provision corresponding to § 16.1-273, or to provide mediation services, or for a local department of social services to provide supervised visitation, the local department or the court services unit performing the service may require payment of fees prior to conducting the investigation or providing mediation services or supervised visitation, *including providing electronic communication as defined in § 20-124.1*.

§ 16.1-278.15. Custody or visitation, child or spousal support generally.

A. In cases involving the custody, visitation or support of a child pursuant to subdivision 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. The parties to any petition where a child whose custody, visitation, or support is contested shall show proof that they have attended within the 12 months prior to their court appearance or that they shall attend within 45 days thereafter an educational seminar or other like program conducted by a qualified person or organization approved by the court. The court may require the parties to attend such seminar or program in uncontested cases only if the court finds good cause. The seminar or other program shall be a minimum of four hours in length and shall address the effects of separation or divorce on children, parenting responsibilities, options for conflict resolution and financial responsibilities. Once a party has completed one educational seminar or other like program, the required completion of additional programs shall be at the court's discretion. Parties under this section shall include natural or adoptive parents of the child, or any person with a legitimate interest as defined in § 20-124.1. The fee charged a party for participation in such program shall be based on the party's ability to pay; however, no fee in excess of \$50 may be charged. Whenever possible, before participating in mediation or alternative dispute resolution to address custody, visitation or support, each party shall have attended the educational seminar or other like program. The court may grant an exemption from attendance of such program for good cause shown or if there is no program reasonably available. Other than statements or admissions by a party admitting criminal activity or child abuse or neglect, no statement or admission by a party in such seminar or program shall be admissible into evidence in any subsequent proceeding. If support is ordered for a child, the order shall also provide that support will continue to be paid for a child over the age of 18 who is (i) a full-time high school student, (ii) not self-supporting, and (iii) living in the home of the parent seeking or receiving child support, until the child reaches the age of 19 or graduates from high school, whichever occurs first. The court may also order the continuation of support for any child over the age of 18 who is (a) severely and permanently mentally or physically disabled, (b) unable to live independently and support himself, and (c) resides in the home of the parent seeking or receiving child support.

B. In any case involving the custody or visitation of a child, the court may award custody, visitation rights, or *electronic communication as defined in § 20-124.1* upon petition to any

party with a legitimate interest therein, including, but not limited to, grandparents, stepparents, former stepparents, blood relatives and family members. The term "legitimate interest" shall be broadly construed to accommodate the best interest of the child. The authority of the juvenile court to consider a petition involving the custody of a child shall not be proscribed or limited where the custody of the child has previously been awarded to a local board of social services.

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

D. In cases involving charges for 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.

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

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

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

H. When deemed appropriate by the court in any custody or visitation matter, the court may order drug testing of any parent, guardian, legal custodian or person standing in loco parentis to the child. The court may enter such orders as it deems appropriate for the payment of the costs of the testing by the parties.

§ 20-124.1. Definitions.

As used in this chapter:

"Electronic communication" means visitation facilitated by tools such as telephones, electronic mail, instant messaging, video conferencing, the Internet, and other wired or wireless technologies.

"Joint custody" means (i) joint legal custody where both parents retain joint responsibility for the care and control of the child and joint authority to make decisions concerning the child even though the child's primary residence may be with only one parent, (ii) joint physical custody where both parents share physical and custodial care of the child, or (iii) any combination of joint legal and joint physical custody which the court deems to be in the best interest of the child.

"Person with a legitimate interest" shall be broadly construed and includes, but is not limited to grandparents, stepparents, former stepparents, blood relatives and family members provided any such party has intervened in the suit or is otherwise properly before the court. The term shall be broadly construed to accommodate the best interest of the child. A party with a legitimate interest shall not include any person (i) whose parental rights have been terminated by court order, either voluntarily or involuntarily, (ii) whose interest in the child derives from or through a person whose parental rights have been terminated, either voluntarily or involuntarily, including but not limited to grandparents, stepparents, former stepparents, blood relatives and family members, if the child subsequently has been legally adopted, except where a final order of adoption is entered pursuant to § 63.2-1241, or (iii) who has been convicted of a violation of subsection A of § 18.2-61, § 18.2-63, subsection B of § 18.2-366, or an equivalent offense of another state, the United States, or any foreign jurisdiction, when the child who is the subject of the petition was conceived as a result of such violation.

"Sole custody" means that one person retains responsibility for the care and control of a child and has primary authority to make decisions concerning the child.

"Visitation" means in-person time spent between a child and a parent including any in-person time facilitated by any electronic communication.

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

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

B. In determining custody, the court shall give primary consideration to the best interests of the child. The court shall assure minor children of frequent and continuing contact with both parents, when appropriate, and encourage parents to share in the responsibilities of

rearing their children. As between the parents, there shall be no presumption or inference of law in favor of either. The court shall give due regard to the primacy of the parent-child relationship but may upon a showing by clear and convincing evidence that the best interest of the child would be served thereby award custody or visitation to any other person with a legitimate interest. The court may award joint custody or sole custody.

C. The court may order that support be paid for any child of the parties. The court shall also order that support will continue to be paid for any child over the age of 18 who is (i) a full-time high school student, (ii) not self-supporting, and (iii) living in the home of the party seeking or receiving child support until such child reaches the age of 19 or graduates from high school, whichever first occurs. The court may also order the continuation of support for any child over the age of 18 who is (i) severely and permanently mentally or physically disabled, (ii) unable to live independently and support himself, and (iii) resides in the home of the parent seeking or receiving child support. In addition, the court may confirm a stipulation or agreement of the parties which extends a support obligation beyond when it would otherwise terminate as provided by law. The court shall have no authority to decree support of children payable by the estate of a deceased party. The court may make such further decree as it shall deem expedient concerning support of the minor children, including an order that any party provide health care coverage. *The amount of electronic communication ordered shall not be a factor in the calculation of child support.*

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

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

F. Upon motion of either parent, the court may grant a reasonable amount of electronic communication at reasonable hours to a parent when the child is not in that parent's custody. The court may order the custodial parent, or the noncustodial parent during his visitation time, to facilitate electronic communication with the child if the equipment is reasonably available. If the parties cannot agree on whether the equipment is reasonably available, the court shall make this determination.

G. Any ordered electronic communication with the child may only be used to supplement the periods of visitation to which a parent is entitled and may not be used as a substitute for such periods.

H. Any order for supervised visitation shall include a provision for electronic communication.

§ 20-124.5. Notification of relocation.

A. In any proceeding involving custody or visitation, the court shall include as a condition of any custody or visitation order a requirement that thirty days' advance written notice be given to the court and the other party by any party intending to relocate and of any intended change of address, unless the court, for good cause shown, orders otherwise. The court may require that the notice be in such form and contain such information as it deems proper and necessary under the circumstances of the case.

B. The court may not use the availability of electronic communication as a factor in support of or to justify a petition by the custodial parent to relocate with the child either within or outside of the Commonwealth.