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**WEST VIRGINIA CODE CHAPTER 48**  
**ARTICLE 1**

WV Legislature

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**PART 1. GENERAL PROVISIONS.**

**§48-1-101. Short title; intent of recodification.**

(a) This chapter sets forth the "West Virginia Domestic Relations Act."

(b) The recodification of this chapter during the regular session of the Legislature in the year 2001 is intended to embrace in a revised, consolidated, and codified form and arrangement the laws of the State of West Virginia relating to domestic relations at the time of that enactment.

**§48-1-102. Legislative intent; continuation of existing statutory provisions.**

In recodifying the domestic relations law of this state during the regular session of the Legislature in the year 2001 through the passage of House Bill 2199 it is intended by the Legislature that each specific reenactment of a substantively similar prior statutory provision will be construed as continuing the intended meaning of the corresponding prior statutory provision and any existing judicial interpretation of the prior statutory provision. It is not the intent of the Legislature, by recodifying the domestic relations law of this state during the regular session of the Legislature in the year 2001 through the passage of House Bill 2199 to alter the substantive law of this state as it relates to domestic relations.

**§48-1-103. Operative date of enactment; effect on existing law.**

The amendment and reenactment of chapter forty-eight of this code and the repeal of chapters forty-eight-a, forty-eight-b and forty-eight-c of this code pursuant to the provisions of Enrolled Committee Substitute for House Bill No. 2199, as enacted by the Legislature during the regular session, 2001, are operative on September 1, 2001. The prior enactments of chapters forty-eight, forty-eight-a, forty-eight-b and forty-eight-c of this code, whether amended and reenacted or repealed by the passage of Enrolled Committee Substitute for House Bill No. 2199 have full force and effect until the provisions of Enrolled Committee Substitute for House Bill No. 2199 are operative on September 1, 2001, unless after the effective date of Enrolled Committee Substitute for House Bill No. 2199 and prior to the operative date of September 1, 2001, the provisions of Enrolled Committee Substitute for House Bill No. 2199 are otherwise repealed or amended and reenacted

**§48-1-104. West Virginia code replacement.**

The Department of Human Services is not required to change any form or letter that contains a citation to this code that is changed or otherwise affected by the recodification of this chapter.

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**PART 2. DEFINITIONS.**

**§48-1-201. Applicability of definitions.**

For the purposes of this chapter the words or terms defined in this article, and any variation of those words or terms required by the context, have the meanings ascribed to them in this article. These definitions are applicable unless a different meaning clearly appears from the context.

WV Legislature

## **PART 2. DEFINITIONS.**

### **§48-1-202. Adjusted gross income defined.**

(a) "Adjusted gross income" means gross income less the payment of previously ordered child support, spousal support or separate maintenance.

(b) A further deduction from gross income for additional dependents may be allowed by the court if the parent has legal dependents other than those for whom support is being determined. An adjustment may be used in the establishment of a child support order or in a review of a child support order. However, in cases where a modification is sought, the adjustment should not be used to the extent that it results in a support amount lower than the previously existing order for the children who are the subject of the modification. The court may elect to use the following adjustment because it allots equitable shares of support to all of the support obligor's legal dependents. Using the income of the support obligor only, determine the basic child support obligation (from the table of basic child support obligations in section 13-301 of this chapter) for the number of additional legal dependents living with the support obligor. Multiply this figure by 0.75 and subtract this amount from the support obligor's gross income.

(c) As used in this section, the term "legal dependents" means:

- (1) Minor natural or adopted children who live with the parent; and
- (2) Natural or adopted adult children who are totally incapacitated because of physical or emotional disabilities and for whom the parent owes a duty of support.

**§48-1-203. Antenuptial or prenuptial agreement defined.**

"Antenuptial agreement" or "prenuptial agreement" means an agreement between a man and woman before marriage, but in contemplation and generally in consideration of marriage, by which the property rights and interests of the prospective husband and wife, or both of them, are determined, or where property is secured to either or both of them, to their separate estate, or to their children or other persons. An antenuptial agreement may include provisions that define the respective property rights of the parties during the marriage, or upon the death of either or both of the parties. The agreement may provide for the disposition of marital property upon an annulment of the marriage or a divorce or separation of the parties. A prenuptial agreement is void if at the time it is made either of the parties is a minor.

**§48-1-204. Arrearages or past due support defined.**

"Arrearages" or "past due support" means the total of any matured, unpaid installments of child support required to be paid by an order entered or modified by a court of competent jurisdiction, or by the order of a magistrate court of this state, and shall stand, by operation of law, as a decretal judgment against the obligor owing such support. The amount of unpaid support shall bear interest from the date it accrued, at a rate of five percent per annum, and proportionately for a greater or lesser sum, or for a longer or shorter time. Except as provided in rule 23 of rules of practice and procedure for family law and as provided in section 1-302, a child support order may not be retroactively modified so as to cancel or alter accrued installments of support.

**§48-1-205. Attributed income defined.**

(a) "Attributed income" means income not actually earned by a parent, but which may be attributed to the parent because he or she is unemployed, is not working full time, or is working below full earning capacity, or has nonperforming or underperforming assets. Income may be attributed to a parent if the court evaluates the specific circumstances of the parent to the extent known, including such factors as the parent's assets, residence, employment and earnings history, job skills, educational attainment, literacy, age, physical and mental health, criminal record, and other employment barriers, and record of seeking work, as well as the local job market, the availability of employers willing to hire the parent, prevailing earnings level in the local community, and other relevant background factors in the case. Income may also be attributed to a parent if the court finds that the obligor has nonperforming or underperforming assets.

(b) If an obligor: (1) Voluntarily leaves employment or voluntarily alters his or her pattern of employment so as to be unemployed, underemployed, or employed below full earning capacity; (2) is able to work and is available for full-time work for which he or she is fitted by prior training or experience; and (3) is not seeking employment in the manner that a reasonably prudent person in his or her circumstances would do, then an alternative method for the court to determine gross income is to attribute to the person an earning capacity based on his or her previous income. If the obligor's work history, qualifications, education, or physical or mental condition cannot be determined, or if there is an inadequate record of the obligor's previous income, the court may, as a minimum, base attributed income on full-time employment (at 40 hours per week) at the federal minimum wage in effect at the time the support obligation is established. In order for the court to consider attribution of income, it is not necessary for the court to find that the obligor's termination or alteration of employment was for the purpose of evading a support obligation.

(c) Income shall not be attributed to an obligor who is unemployed, underemployed, or is otherwise working below full earning capacity if any of the following conditions exist:

(1) The parent is providing care required by the children to whom both of the parties owe a legal responsibility for support and the children are of preschool age, or are handicapped, or otherwise in a situation requiring particular care by the parent;

(2) The parent is pursuing a plan of economic self-improvement which will result, within a reasonable time, in an economic benefit to the children to whom the support obligation is owed, including, but not limited to, self-employment or education: *Provided*, That if the parent is involved in an educational program, the court shall ascertain that the person is making substantial progress toward completion of the program;

(3) The parent is, for valid medical reasons, earning an income in an amount less than previously earned; or

(4) The court makes a written finding that other circumstances exist which would make the

attribution of income inequitable: *Provided*, That in the case the court may decrease the amount of attributed income to an extent required to remove inequity.

(d) The court may attribute income to a parent's nonperforming or underperforming assets, other than the parent's primary residence. Assets may be considered to be nonperforming or underperforming to the extent that they do not produce income at a rate equivalent to the current six-month certificate of deposit rate or any other rate that the court determines is reasonable.

(e) Income shall not be attributed to an obligor who is incarcerated. Incarceration shall not be treated as voluntary unemployment in establishing or modifying a support obligation.

**§48-1-206. Automatic data processing and retrieval system defined.**

"Automatic data processing and retrieval system" means a computerized data processing system designed to do the following:

- (1) To control, account for and monitor all of the factors in the support enforcement collection and paternity determination process, including, but not limited to:
  - (A) Identifiable correlation factors (such as social security numbers, names, dates of birth, home addresses and mailing addresses of any individual with respect to whom support obligations are sought to be established or enforced and with respect to any person to whom such support obligations are owing) to assure sufficient compatibility among the systems of different jurisdictions to permit periodic screening to determine whether such individual is paying or is obligated to pay support in more than one jurisdiction;
  - (B) Checking of records of such individuals on a periodic basis with federal, interstate, intrastate and local agencies;
  - (C) Maintaining the data necessary to meet applicable federal reporting requirements on a timely basis; and
  - (D) Delinquency and enforcement activities;
- (2) To control, account for and monitor the collection and distribution of support payments (both interstate and intrastate) the determination, collection and distribution of incentive payments (both interstate and intrastate), and the maintenance of accounts receivable on all amounts owed, collected and distributed;
- (3) To control, account for and monitor the costs of all services rendered, either directly or by exchanging information with state agencies responsible for maintaining financial management and expenditure information;
- (4) To provide access to the records of the Department of Human Services in order to determine if a collection of a support payment causes a change affecting eligibility for or the amount of aid under such program;
- (5) To provide for security against unauthorized access to, or use of, the data in such system;
- (6) To facilitate the development and improvement of the income withholding and other procedures designed to improve the effectiveness of support enforcement through the monitoring of support payments, the maintenance of accurate records regarding the payment of support and the prompt provision of notice to appropriate officials with respect to any arrearage in support payments which may occur; and
- (7) To provide management information on all cases from initial referral or application through collection and enforcement.

**§48-1-207. Basic child support obligation defined.**

"Basic child support obligation" means the base amount of child support due by both parents as determined by the table of basic child support obligations set forth in section 13-301 of this chapter, based upon the combined adjusted gross income of the parents and the number of children to whom support is due.

WV Legislature

**§48-1-208. Bureau for child support enforcement defined.**

"Bureau for child support enforcement" means the agency created under the provisions of article eighteen of this chapter, or any public or private entity or agency contracting to provide a service. The "Bureau for Child Support enforcement" is that agency intended by the Legislature to be the single and separate organizational unit of state government administering programs of child and spousal support enforcement and meeting the staffing and organizational requirements of the secretary of the federal department of health and human services. A reference in this chapter and elsewhere in this code to the "child advocate office" or the child support enforcement division shall be interpreted to refer to the Bureau for Child Support enforcement.

**§48-1-209. Bureau for child support enforcement attorney defined.**

"Bureau for child support enforcement attorney" means those persons or agencies or entities providing services under the direction of or pursuant to a contract with the Bureau for Child Support enforcement as provided in article eighteen of this chapter.

WV Legislature

**§48-1-210. Caretaker and caretaking functions defined.**

(a) "Caretaker" means a person who performs one or more caretaking functions for a child. The term "caretaking functions" means activities that involve interaction with a child and the care of a child. Caretaking functions also include the supervision and direction of interaction and care provided by other persons.

(b) Caretaking functions include the following:

(1) Performing functions that meet the daily physical needs of the child. These functions include, but are not limited to, the following:

(A) Feeding;

(B) Dressing;

(C) Bedtime and wake-up routines;

(D) Caring for the child when sick or hurt;

(E) Bathing and grooming;

(F) Recreation and play;

(G) Physical safety; and

(H) Transportation.

(2) Direction of the child's various developmental needs, including the acquisition of motor and language skills, toilet training, self-confidence and maturation;

(3) Discipline, instruction in manners, assignment and supervision of chores and other tasks that attend to the child's needs for behavioral control and self-restraint;

(4) Arrangements for the child's education, including remedial or special services appropriate to the child's needs and interests, communication with teachers and counselors and supervision of homework;

(5) The development and maintenance of appropriate interpersonal relationships with peers, siblings and adults;

(6) Arrangements for health care, which includes making medical appointments, communicating with health care providers and providing medical follow-up and home health care;

(7) Moral guidance; and

(8) Arrangement of alternative care by a family member, baby-sitter or other child care provider or facility, including investigation of alternatives, communication with providers and supervision.

WV Legislature

**§48-1-211. Chief judge defined.**

"Chief judge" means the circuit judge of the circuit court in a judicial circuit that has only one circuit judge, or the chief judge of the circuit court in a judicial circuit that has two or more circuit judges.

WV Legislature

**§48-1-212. Clergy defined.**

"Clergy" includes a minister, priest, rabbi or other clergy who has qualified as such before the county commission or the clerk of the county commission as provided for in section 2-402 of this chapter.

WV Legislature

**§48-1-213. Combined adjusted gross income defined.**

"Combined adjusted gross income" means the combined monthly adjusted gross incomes of both parents.

WV Legislature

**§48-1-214. Commissioner defined.**

" Commissioner" means any person appointed pursuant to section 18-102, who directs all child support establishment and enforcement services for the Bureau for Child Support enforcement.

WV Legislature

**§48-1-215. Contingent fee agreement defined.**

(a) "Contingent fee agreement" means a contract under which an attorney may be compensated for work in progress, dependent on the occurrence of some future event which is not certain and absolute. As such, a contingent fee agreement is not an asset, but is potential income or income capacity. This potential income may have current value, and a portion of that current value, if any, may be considered to be a marital asset. In the event a party seeks to quantify the current value of a particular contingent fee agreement for the purpose of establishing the value of the agreement as marital property, the court must find that the party has proved such value by a preponderance of the evidence. Factors to be considered by the court include, but are not limited to, the following:

- (1) The nature of the particular case or claim which underlies the agreement;
- (2) The jurisdiction or venue of any projected trial or proceeding;
- (3) Any historical data relevant to verdicts or settlements within the jurisdiction where the case or claim is pending or may be brought;
- (4) The terms and particulars of the agreement;
- (5) The status of the case or claim at valuation date;
- (6) The amount of time spent working on the case or claim prior to the valuation date, and an analysis of the nature of how that time was spent, including, but not limited to, such activities such as investigation, research, discovery, trial or appellate practice;
- (7) The extent of the person's active role in the work in process, whether as an actual participant or as an indirect participant such as a partner, local counsel or other ancillary role;
- (8) The age of the case or claim;
- (9) The expenses accrued or projected to bring the case or claim to resolution, including any office overhead attributable to case or claim; and
- (10) The probable tax consequences attendant to a successful resolution of the case or claim.

(b) The provisions of this section as enacted during the regular session of the Legislature, one thousand nine hundred ninety-six, are to be applied prospectively and shall have no application to any action for annulment, divorce or separate maintenance that was commenced on or before June 7, 1996.

**§48-1-216. Court defined.**

"Court" means a family court of this state unless the context in which such term is used clearly indicates that reference to some other court is intended.

WV Legislature

**§48-1-217. Court of competent jurisdiction defined.**

"Court of competent jurisdiction" means a circuit court or family court within this state or a court or administrative agency of another state having jurisdiction and due legal authority to deal with the subject matter of the establishment and enforcement of support obligations. Whenever in this chapter reference is made to an order of a court of competent jurisdiction, or similar wording, such language shall be interpreted so as to include orders of an administrative agency entered in a state where enforceable orders may by law be properly made and entered by such administrative agency.

WV Legislature

**§48-1-218. Custodial parent defined.**

"Custodial parent" or "custodial parent of a child" means a parent who has been granted custody of a child by a court of competent jurisdiction. "Noncustodial parent" means a parent of a child with respect to whom custody has been adjudicated with the result that such parent has not been granted custody of the child.

WV Legislature

**§48-1-219. Custodial responsibility defined.**

"Custodial responsibility" refers to physical custodianship and supervision of a child. It usually includes, but does not necessarily require, the exercise of residential or overnight responsibility.

WV Legislature

**§48-1-220. Decision-making responsibility defined.**

“Decision-making responsibility” refers to authority for making significant life decisions on behalf of a child, including, but not limited to, the child’s education, spiritual guidance and health care: Provided, That with regard to healthcare, both parents in any shared parenting plan, regardless of the relative ratio of parenting time allocated between the parents, shall have the authority to make emergency or other non-elective healthcare decisions concerning their child necessary for the child’s health or welfare during such parent’s parenting time.

WV Legislature

**§48-1-221. Divorce defined.**

"Divorce" means the judicial termination of a marriage contract. The termination of a marriage contract must be based on misconduct or other statutory cause arising after the marriage. A divorce is established by the order of a family court or circuit court that changes the status of a husband and wife from a state of marriage to that of single persons.

WV Legislature

## **PART 2. DEFINITIONS.**

### **§48-1-222. Domestic relations action defined.**

"Domestic relations action" means an action:

- (1) To obtain a divorce;
- (2) To have a marriage annulled;
- (3) To be granted separate maintenance;
- (4) To establish paternity;
- (5) To establish and enforce child or spousal support, including actions brought under the provisions of the uniform interstate family support act; and
- (6) To allocate custodial responsibility and determine decision-making responsibility, or to otherwise determine child custody, as in an action petitioning for a writ of habeas corpus wherein the issue is child custody.

**§48-1-223. Earnings defined.**

"Earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments pursuant to a pension or retirement program. "Disposable earnings" means that part of the earnings of any individual remaining after the deduction from those earnings of any amounts required by law to be withheld.

WV Legislature

**§48-1-224. Employer defined.**

"Employer" means any individual, sole proprietorship, partnership, association, public or private corporation, the United States or any federal agency, this state or any political subdivision of this state, any other state or a political subdivision of another state and any other legal entity which hires and pays an individual for his services.

WV Legislature

**§48-1-225. Extraordinary medical expenses defined.**

"Extraordinary medical expenses" means uninsured medical expenses in excess of \$250 per year per child which are recurring and can reasonably be predicted by the court at the time of establishment or modification of a child support order. Such expenses shall include, but not be limited to, insurance copayments and deductibles, reasonable costs for necessary orthodontia, dental treatment, asthma treatments, physical therapy, prescription pharmaceuticals, vision therapy and eye care and any uninsured chronic health problem.

**§48-1-226. Family court judge defined.**

"Family court judge" means a family court judge appointed or elected and authorized to hear certain domestic relations actions as provided in article two-a, chapter fifty-one of this code.

WV Legislature

**§48-1-227. Final divorce or final annulment order defined.**

"Final divorce order" or "final annulment order" means an order that grants or denies the judicial termination of a marriage contract.

WV Legislature

**§48-1-228. Gross income defined.**

(a) "Gross income" means all earned and unearned income. The word "income" means gross income unless the word is otherwise qualified or unless a different meaning clearly appears from the context. When determining whether an income source should be included in the child support calculation, the court shall consider the income source if it would have been available to pay child-rearing expenses had the family remained intact or, in cases involving a nonmarital birth, if a household had been formed.

(b) "Gross income" includes, but is not limited to, the following:

(1) Earnings in the form of salaries, wages, commissions, fees, bonuses, profit sharing, tips and other income;

(2) Any payment from a pension plan, an insurance contract, an annuity, social security benefits, unemployment compensation, supplemental employment benefits, workers' compensation benefits and state lottery winnings and prizes;

(3) Interest, dividends or royalties;

(4) In kind payments such as business expense accounts, business credit accounts and tangible property such as automobiles and meals, to the extent that they provide the parent with property or services he or she would otherwise have to provide: Provided, That reimbursement of actual expenses incurred and documented shall not be included as gross income;

(5) Attributed income of the parent, calculated in accordance with the provisions of section 1-205;

(6) An amount equal to fifty percent of the average compensation paid for personal services as overtime compensation during the preceding thirty-six months: Provided, That overtime compensation may be excluded from gross income if the parent with the overtime income demonstrates to the court that the overtime work is voluntarily performed and that he or she did not have a previous pattern of working overtime hours prior to separation or the birth of a nonmarital child;

(7) Income from self-employment or the operation of a business, minus ordinary and necessary expenses which are not reimbursable, and which are lawfully deductible in computing taxable income under applicable income tax laws, and minus FICA and Medicare contributions made in excess of the amount that would be paid on an equal amount of income if the parent was not self-employed: Provided, That the amount of monthly income to be included in gross income shall be determined by averaging the income from such employment during the previous thirty-six-month period or during a period beginning with the month in which the parent first received such income, whichever period is shorter;

(8) Income from seasonal employment or other sporadic sources: Provided, That the amount

of monthly income to be included in gross income shall be determined by averaging the income from seasonal employment or other sporadic sources received during the previous thirty-six-month period or during a period beginning with the month in which the parent first received such compensation, whichever period is shorter; and

(9) Spousal support and separate maintenance receipts.

(c) Depending on the circumstances of the particular case, the court may also include severance pay, capital gains and net gambling, gifts or prizes as gross income.

(d) "Gross income" does not include:

(1) Income received by other household members such as a new spouse;

(2) Child support received for the children of another relationship;

(3) Means-tested assistance such as temporary assistance for needy families, supplemental security income and food stamps; and

(4) A child's income unless the court determines that the child's income substantially reduces the family's living expenses.

**§48-1-229. Guardian of the property of a child defined.**

"Guardian of the property of a child" means a person lawfully invested with the power, and charged with the duty, of managing and controlling the estate of a child.

WV Legislature

**§48-1-230. Income defined.**

"Income" includes, but is not limited to, the following:

- (1) Commissions, earnings, salaries, wages and other income due or to be due in the future to an individual from his or her employer and successor employers;
- (2) Any payment due or to be due in the future to an individual from a profit-sharing plan, a pension plan, an insurance contract, an annuity, Social Security, unemployment compensation, supplemental employment benefits, workers' compensation benefits, state lottery winnings and prizes and overtime pay;
- (3) Any amount of money which is owing to an individual as a debt from an individual, partnership, association, public or private corporation, the United States or any federal agency, this state or any political subdivision of this state, any other state or a political subdivision of another state or any other legal entity which is indebted to the obligor;
- (4) Any amount of money which is held by the Regional Jail Authority for an inmate in an inmate's concession account.

**§48-1-231. Individual entitled to support enforcement services under the provisions of this chapter and the provisions of Title IV-D of the federal Social Security Act defined.**

(a) "Individual entitled to support enforcement services under the provisions of this chapter and the provisions of Title IV-D of the federal Social Security Act" means:

(1) An individual who has applied for or is receiving services from the Bureau for Child Support enforcement and who is the parent of a child, or the caretaker of a child, or the guardian of the property of a child when:

(A) The child has a parent and child relationship with an obligor who is not a custodial parent, a caretaker or a guardian; and

(B) The obligor with whom the child has a parent and child relationship is not meeting an obligation to support the child, or has not met such obligation in the past; or

(2) An individual who has applied for or is receiving services from the Bureau for Child Support enforcement and who is an adult or an emancipated minor whose spouse or former spouse has been ordered by a court of competent jurisdiction to pay spousal support to the individual, whether such support is denominated spousal support or separate maintenance, or is identified by some other terminology, thus establishing a support obligation with respect to such spouse, when the obligor required to pay such spousal support is not meeting the obligation, or has not met such obligation in the past; or

(3) Any individual who is an obligee in a support order, entered by a court of competent jurisdiction after December 31, 1993.

(b) The filing of an action wherein the establishment or enforcement of child support is an issue constitutes an application to receive services from the Bureau for Child Support enforcement, if the individual filing the action is otherwise eligible for such services: Provided, That any such individual has the option to decline the receipt of such services.

**§48-1-232. Legal parent defined.**

"Legal parent" means an individual defined as a parent, by law, on the basis of biological relationship, presumed biological relationship, legal adoption or other recognized grounds.

WV Legislature

**§48-1-233. Marital property defined.**

"Marital property" means:

(1) All property and earnings acquired by either spouse during a marriage, including every valuable right and interest, corporeal or incorporeal, tangible or intangible, real or personal, regardless of the form of ownership, whether legal or beneficial, whether individually held, held in trust by a third party, or whether held by the parties to the marriage in some form of coownership such as joint tenancy or tenancy in common, joint tenancy with the right of survivorship, or any other form of shared ownership recognized in other jurisdictions without this state, except that marital property does not include separate property as defined in section 1-238; and

(2) The amount of any increase in value in the separate property of either of the parties to a marriage, which increase results from: (A) An expenditure of funds which are marital property, including an expenditure of such funds which reduces indebtedness against separate property, extinguishes liens, or otherwise increases the net value of separate property; or (B) work performed by either or both of the parties during the marriage.

The definition of "marital property" contained in this section has no application outside of the provisions of this article, and the common law as to the ownership of the respective property and earnings of a husband and wife, as altered by the provisions of article 29 of this chapter and other provisions of this code, are not abrogated by implication or otherwise, except as expressly provided for by the provisions of this article as such provisions are applied in actions brought under this article or for the enforcement of rights under this article.

**§48-1-233.1. Mediation defined.**

"Mediation" means a method of alternative dispute resolution in which a neutral third person helps resolve a dispute. Mediation is an informal, nonadversarial process whereby the neutral third person, the mediator, assists parties to a dispute to resolve, by agreement, some or all of the differences between them. The mediator has no authority to render a judgment on any issue of the dispute.

WV Legislature

**§48-1-233.2. Mediator defined.**

"Mediator" means a neutral third person who interposes between two contending parties, with their consent, for the purpose of assisting them in settling their differences.

WV Legislature

§48-1-233.3

Repealed

Acts, 2017 Reg. Sess., Ch.

WV Legislature

§48-1-233.4

Repealed

Acts, 2017 Reg. Sess., Ch. 66.

WV Legislature

**§48-1-234. Obligee defined.**

"Obligee" means:

- (1) An individual to whom a duty of support is or is alleged to be owed or in whose favor a support order has been issued or a judgment determining parentage has been rendered;
- (2) A state or political subdivision to which the rights under a duty of support or support order have been assigned or which has independent claims based on financial assistance provided to an individual obligee; or
- (3) An individual seeking a judgment determining parentage of the individual's child.

**§48-1-235. Obligor defined.**

"Obligor" means an individual or the estate of a decedent:

- (1) Who owes or is alleged to owe a duty of support;
- (2) Who is alleged, but has not been adjudicated, to be a parent of a child; or
- (3) Who is liable under a support order.

**§48-1-235.1. Parent defined.**

"Parent" means a legal parent as defined in section 1-232 unless otherwise specified.

WV Legislature

**§48-1-235.2. Parenting functions defined.**

"Parenting functions" means tasks that serve the needs of the child or the child's residential family. Parenting functions include caretaking functions, as defined in section 1-210. Parenting functions also include functions that are not caretaking functions, including:

- (A) Provision of economic support;
- (B) Participation in decision-making regarding the child's welfare;
- (C) Maintenance or improvement of the family residence, home or furniture repair, home-improvement projects, yard work and house cleaning;
- (D) Financial planning and organization, car repair and maintenance, food and clothing purchasing, cleaning and maintenance of clothing, and other tasks supporting the consumption and savings needs of the family; and
- (E) Other functions usually performed by a parent or guardian that are important to the child's welfare and development.

**§48-1-235.3. Parenting plan defined.**

"Parenting plan" means a temporary parenting plan as defined in subdivision (22) of this section or a permanent parenting plan as defined in subdivision (17) of this section.

WV Legislature

**§48-1-235.4. Permanent parenting plan defined.**

"Permanent parenting plan" means a plan for parenting a child that is incorporated into a final order or subsequent modification order in a domestic relations action. The plan principally establishes, but is not limited to, the allocation of custodial responsibility and significant decision-making responsibility and provisions for resolution of subsequent disputes between the parents.

WV Legislature

**§48-1-235.5. Rehabilitative spousal support defined.**

"Rehabilitative spousal support" means spousal support payable for a specific and determinable period of time, designed to cease when the payee is, after the exercise of reasonable efforts, in a position of self-support.

WV Legislature

**§48-1-236. Secretary defined.**

"Secretary" means the secretary of the Department of Human Services.

WV Legislature

**§48-1-237. Separate property defined.**

"Separate property" means:

- (1) Property acquired by a person before marriage;
- (2) Property acquired by a person during marriage in exchange for separate property which was acquired before the marriage;
- (3) Property acquired by a person during marriage, but excluded from treatment as marital property by a valid agreement of the parties entered into before or during the marriage;
- (4) Property acquired by a party during marriage by gift, bequest, devise, descent or distribution;
- (5) Property acquired by a party during a marriage but after the separation of the parties and before ordering an annulment, divorce or separate maintenance; or
- (6) Any increase in the value of separate property as defined in subdivision (1), (2), (3), (4) or (5) of this section which is due to inflation or to a change in market value resulting from conditions outside the control of the parties.

**§48-1-238. Separation defined.**

"Separation" or "separation of the parties" means the uninterrupted separation of a husband and wife for some continuous period of time during which they do not cohabit or otherwise live together as husband and wife. When a separation is required as a predicate for filing an action under this article, the separation must continue through the date of filing.

WV Legislature

**§48-1-239. Shared parenting defined.**

- (a) "Shared parenting" means either basic shared parenting or extended shared parenting.
- (b) "Basic shared parenting" means an arrangement under which one parent keeps a child or children overnight for less than 35 percent of the year and under which both parents contribute to the expenses of the child or children in addition to the payment of child support.
- (c) "Extended shared parenting" means an arrangement under which each parent keeps a child or children overnight for more than 35 percent of the year and under which both parents contribute to the expenses of the child or children in addition to the payment of child support.
- (d) In any case where, in the absence of an agreement between the parents, a court orders shared parenting; the order shall be in writing and include specific findings of fact supporting the Court's determination.

**§48-1-239a. Shared legal custody defined.**

“Shared legal custody” means a continued mutual responsibility and involvement by both parents in major decisions regarding the child’s welfare including matters of education, medical care, and emotional, moral, and religious development consistent with the provisions of §48-9-207 of this code.

WV Legislature

**§48-1-239b. Sole legal custody defined.**

“Sole legal custody” means that one parent has the right and responsibility to make major decisions regarding the child’s welfare including matters of education, non-emergency medical care, and emotional, moral, and religious development.

WV Legislature

**§48-1-240. Source of income defined.**

"Source of income" means an employer or successor employer or any other person who owes or will owe income to an obligor.

WV Legislature

**§48-1-241. Split physical custody defined.**

"Split physical custody" means a situation where there is more than one child and where each parent has physical custody of at least one child.

WV Legislature

**§48-1-241a. Shared physical custody defined.**

“Shared physical custody” means a child has periods of residing with, and being under the supervision of, each parent consistent with the provisions of §48-9-206 of this code:

*Provided*, That physical custody shall be shared by the parents in such a way as to assure a child has frequent and continuing contact with both parents. Such frequent and continuing contact with both parents is rebuttably presumed to be in the best interests of the child unless the evidence shows otherwise.

WV Legislature

**§48-1-241b. Sole physical custody defined.**

“Sole physical custody” means a child resides with and is under the supervision of one parent, subject to reasonable visitation by the other parent, unless the court determines that the visitation would not be in the best interests of the child.

WV Legislature

**§48-1-242. Spousal support defined.**

"Spousal support" means an allowance that a person may be ordered to pay for the support and maintenance of a spouse or a former spouse, while they are living separate and apart or after an order for divorce, annulment or separate maintenance.

WV Legislature

**§48-1-243. Spousal support in gross defined.**

"Spousal support in gross" means spousal support payable either in a lump sum, or in periodic payments of a definite amount over a specific period of time. A spousal support award is "spousal support in gross" only if the award grants spousal support in such terms that a determination can be made of the total amount to be paid as well as the time such payments will cease.

WV Legislature

**§48-1-244. Support defined.**

"Support" means the payment of money, including interest:

- (1) For a child or spouse, ordered by a court of competent jurisdiction, whether the payment is ordered in an emergency, temporary, permanent or modified order, the amount of unpaid support shall bear simple interest from the date it accrued, at a rate of five percent per annum, and proportionately for a greater or lesser sum, or for a longer or shorter time;
- (2) To third parties on behalf of a child or spouse, including, but not limited to, payments to medical, dental or educational providers, payments to insurers for health and hospitalization insurance, payments of residential rent or mortgage payments, payments on an automobile or payments for day care; or
- (3) For a mother, ordered by a court of competent jurisdiction, for the necessary expenses incurred by or for the mother in connection with her confinement or of other expenses in connection with the pregnancy of the mother.

**§48-1-245. Support order defined.**

(a) For cases being enforced pursuant to Title IV-D of the Social Security Act, "support order" means a judgment, decree or order, whether temporary, final, or subject to modification, issued by a court or an administrative agency of competent jurisdiction, for the support and maintenance of a child, including a child who has attained the age of majority under the law of the issuing state, or a child and the parent with whom the child is living, which provides for monetary support, health care, arrearage or reimbursements, and which may include related costs and fees, interest and penalties, income withholding, attorneys' fees and other relief.

(b) For all other cases, "support order" means an order as defined in subsection (a) of this section and, in addition, an order for the support and maintenance of a spouse or former spouse.

**§48-1-246. Unreimbursed health care expenses defined.**

"Unreimbursed health care expenses" means the child's portion of health insurance premiums and extraordinary medical expenses.

WV Legislature

**§48-1-247. Work-related child care costs defined.**

"Work-related child care costs" shall mean the cost of child care the parent incurs due to employment or the search for employment.

WV Legislature

## **PART III. MISCELLANEOUS PROVISIONS**

### **RELATING TO DOMESTIC RELATIONS.**

§48-1-301. Communications between clergy and party.

(a) A party to a domestic relations action cannot compel a member of the clergy to testify regarding any communications or statements made to the member of the clergy in his or her capacity as spiritual counselor or spiritual adviser by a party to the action, if the following conditions exist:

(1) Both the clergy and the party making such communications or statements claim that the communications or statements were made to the clergy in his capacity as a clergy and spiritual counselor or spiritual adviser to such party;

(2) No person, other than a member of the clergy, a party and the spouse of the party, was present when such communications or statements were made; and

(3) The party making such communications or statements does not either consent to their disclosure or otherwise waive the privilege granted by this section.

(b) The privilege granted by this section shall be in addition to and not in derogation of any other privileges recognized by law.

**§48-1-302. Calculation of interest.**

(a) Notwithstanding any other provisions of the code, if an obligation to pay interest arises under this chapter, the rate of interest is five percent per annum and proportionate thereto for a greater or lesser sum, or for a longer or shorter time. Interest awarded shall only be simple interest and nothing in this section may be construed to permit awarding of compound interest. Interest accrues only upon the outstanding principal of such obligation.

(b) Notwithstanding any other provision of law, no court may award or approve prejudgment interest in a domestic relations action against a party unless the court finds, in writing, that the party engaged in conduct that would violate subsection (b), Rule 11 of the West Virginia Rules of Civil Procedure. If prejudgment interest is awarded, the court shall calculate prejudgment interest from the date the offending representation was presented to the court pursuant to subsection (a) of this section.

(c) Upon written agreement by both parties, an obligor may petition the court to enter an order conditionally suspending the collection of all or part of the interest that has accrued on past-due child support prior to the date of the agreement: Provided, That said agreement shall also establish a reasonable payment plan which is calculated to fully discharge all arrearages within sixty months. Upon successful completion of the payment plan, the court shall enter an order which permanently relieves the obligor of the obligation to pay the accrued interest. If the obligor fails to comply with the terms of the written agreement, then the court shall enter an order which reinstates the accrued interest.

(d) Amendments to this section enacted by the Legislature during the 2006 regular session shall become effective January 1, 2007.

### **PART 3. MISCELLANEOUS PROVISIONS RELATING TO DOMESTIC RELATIONS.**

#### **§48-1-303. Confidentiality of domestic relations court files.**

- (a) All orders in domestic relations actions entered in the civil order books by circuit clerks are public records.
- (b) Upon the filing of a domestic relations action, all pleadings, exhibits or other documents, other than orders, that are contained in the court file are confidential and not open for public inspection either during the pendency of the case or after the case is closed.
- (c) When sensitive information has been disclosed during a hearing or in pleadings, evidence or documents filed in the record, the court may, sua sponte or upon motion of a party, order such information sealed in the court file. Sealed documents or court files can only be opened by order of a circuit or family court judge.
- (d) The parties, their designees, their attorneys, a duly appointed guardian ad litem or any other person who has standing to seek modification or enforcement of a support order has the right to examine and copy any document in a confidential court file that has not been sealed by court order. Upon motion and for good cause shown, the court may permit a person who is not a party to the action to examine and copy any documents that are necessary to further the interests of justice.
- (e) The clerk of the circuit court shall keep a written log of all persons who examine confidential documents as provided for in this section. Every person who examines confidential documents shall first sign the clerk's written log, except for a circuit judge or family court judge before whom the case is pending, or court personnel acting within the scope of their duties. The clerk shall record the time and date of every examination of confidential documents. The log must be retained by the clerk and must be available upon request for inspection by the circuit judge or the family court judge.

**§48-1-304. Proceedings in contempt.**

(a) Upon a verified petition for contempt, notice of hearing and hearing, if the petition alleges criminal contempt or the court informs the parties that the matter will be treated and tried as a criminal contempt, the matter shall be tried in the circuit court before a jury, unless the party charged with contempt shall knowingly and intelligently waive the right to a jury trial with the consent of the court and the other party. If the jury, or the circuit court sitting without a jury, shall find the defendant in contempt for willfully failing to comply with an order of the court made pursuant to the provisions of article three, four, five, eight, nine, eleven, twelve, fourteen or fifteen of this chapter, as charged in the petition, the court may find the person to be in criminal contempt and may commit such person to the county jail for a determinate period not to exceed six months.

(b) If trial is had under the provisions of subsection (a) of this section and the court elects to treat a finding of criminal contempt as a civil contempt and the matter is not tried before a jury and the court finds the defendant in contempt for willfully failing to comply with an order of the court made pursuant to the provisions of article three, four, five, eight, nine, eleven, twelve, fourteen or fifteen of this chapter, and if the court further finds the person has the ability to purge himself of contempt, the court shall afford the contemnor a reasonable time and method whereby he may purge himself of contempt. If the contemnor fails or refuses to purge himself of contempt, the court may confine the contemnor to the county jail for an indeterminate period not to exceed six months or until such time as the contemnor has purged himself whichever shall first occur. If the petition alleges civil contempt, the matter shall be heard by the family court. The family court has the same power and authority as the circuit court under the provisions of this section for criminal contempt proceedings which the circuit court elects to treat as civil contempt.

(c) In the case of a charge of contempt based upon the failure of the defendant to pay alimony, child support or separate maintenance, if the court or jury finds that the defendant did not pay because he was financially unable to pay, the defendant may not be imprisoned on charges of contempt of court.

(d) Regardless of whether the court or jury finds the defendant to be in contempt, if the court shall find that a party is in arrears in the payment of alimony, child support or separate maintenance ordered to be paid under the provisions of this chapter, the court shall enter judgment for such arrearage and award interest on such arrearage from the due date of each unpaid installment. Following any hearing wherein the court finds that a party is in arrears in the payment of alimony, child support or separate maintenance, the court may, if sufficient assets exist, require security to ensure the timely payment of future installments.

(e) At any time during a contempt proceeding the court may enter an order to attach forthwith the body of, and take into custody, any person who refuses or fails to respond to the lawful process of the court or to comply with an order of the court. Such order of attachment shall require the person to be brought forthwith before the court or the judge thereof in any county in which the court may then be sitting.

**§48-1-305. Suit money, counsel fees and costs.**

(a) Costs may be awarded to either party as justice requires and in all cases the court, in its discretion, may require payment of costs at any time and may suspend or withhold any order until the costs are paid.

(b) The court may compel either party to pay attorney's fees and court costs reasonably necessary to enable the other party to prosecute or defend the action. An order for temporary relief awarding attorney's fees and court costs may be modified at any time during the pendency of the action, as the exigencies of the case or equity and justice may require, including, but not limited to, a modification which would require full or partial repayment of fees and costs by a party to the action to whom or on whose behalf payment of such fees and costs was previously ordered. If an appeal is taken or an intention to appeal is stated, the court may further order either party to pay attorney's fees and costs on appeal.

(c) When it appears to the court that a party has incurred attorney fees and costs unnecessarily because the opposing party has asserted unfounded claims or defenses for vexatious, wanton or oppressive purposes, thereby delaying or diverting attention from valid claims or defenses asserted in good faith, the court may order the offending party, or his or her attorney, or both, to pay reasonable attorney fees and costs to the other party.

**§48-1-306. Proceeding for release of support lien.**

If any person deem that his or her interest, or that of any person for whom he or she may act in a fiduciary or representative capacity, will be promoted by a release, in full or in part, of a lien created upon his or her real or personal property for the support or maintenance of another person or persons, or for spousal or child support, he or she may apply by petition, in a summary way, to the court that entered the order or decree creating such lien for relief from said order. The petition shall be verified and shall describe said lien, the circumstances of the petitioner or the person for whom he is acting, the name or names of the person or persons holding such lien, and the circumstances calculated to show the propriety of the release requested. All persons interested shall be made defendants and shall be given ten days' notice before hearing upon the petition. If authorized by the court, the release may be so conditioned as to promote substantial justice, but the release may only be prospective in effect, and may not operate to deprive the person secured by the lien of the right to receive spousal or child support payments accrued to the date of the hearing.

**§48-1-307. Collection of child or spousal support by collection agencies.**

(a) Any person attempting to collect a child or spousal support obligation or arrearage on behalf of a resident or from a resident of this state is subject to the provisions of article sixteen, chapter forty-seven of this code and the provisions of this section and is otherwise subject to the jurisdiction of this state.

(b) The amount of delinquent child or spousal support or arrearage established by order of a court of competent jurisdiction in this state is not subject to waiver or compromise, either by agreement of the parties or by a collection agency acting on behalf of a party and may only be modified by an order of a court of competent jurisdiction.

(c) No child or spousal support or arrearage of child or spousal support collected by the state IV-D agency may be redirected to any collection agency.

(d) No collection agency attempting to collect a child or spousal support obligation or arrearage on behalf of a resident or from a resident of this state may include any funds collected by a IV-D agency in the amount from which their fee is determined or collected.

(e) No collection agency, other than an attorney licensed to practice law in this state, attempting to collect a child support or spousal support obligation or arrearage may engage in conduct which is considered the practice of law, including, but not limited to:

(1) The performance of legal services, the offering of legal advice or the making of a false representation, directly or by implication, that a person is an attorney;

(2) Any communication with persons in the name of an attorney or upon stationery or other written matter bearing an attorney's name; and

(3) Any demand for or payment of money constituting a share of compensation for services performed or to be performed by an attorney in collecting a claim.

(f) No collection agency may collect or attempt to collect any money alleged to be due and owing by any threat, coercion or attempt to coerce, including, but not limited to:

(1) The use, or the express or implicit threat of use, of violence or other criminal means, to cause harm to the person, reputation or property of any person;

(2) The accusation or threat to accuse any person of fraud, of any crime, or of any conduct which, if true, would tend to disgrace the other person or in any way subject them to ridicule or contempt of society;

(3) False accusations made to another person, including any credit reporting agency, that a person is willfully refusing to pay a just claim, or the threat to make such false accusations;

(4) The threat that nonpayment of an alleged claim will result in the arrest of any person, or

of the taking of any other action requiring judicial sanction, without informing the person that there must be in effect a court order permitting the action before it can be taken; and

(5) The threat to take any action prohibited by this section or other law regulating the conduct of a collection agency.

(g) No collection agency may unreasonably oppress or abuse any person in connection with the collection of or attempt to collect any child or spousal support obligation or arrearage, including, but not limited to:

(1) The use of profane or obscene language or language that is intended to unreasonably abuse the listener or reader;

(2) The placement of telephone calls without disclosure of the caller's identity and with the intent to annoy, harass or threaten any person at the called number;

(3) Causing expense to any person in the form of long distance telephone tolls, telegram fees or other charges incurred by a medium of communication by concealment of the true purpose of the communication; and

(4) Causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously, or at unusual times or at times known to be inconvenient, with intent to annoy, abuse, oppress or threaten any person at the called number.

(h) No collection agency may unreasonably publicize information relating to any alleged child or spousal support obligation or arrearage, including, but not limited to:

(1) The communication to any employer or his or her agent of any information relating to an employee's indebtedness other than through proper legal action, process or proceeding;

(2) The disclosure, publication or communication of information relating to a child or spousal support obligation or arrearage to any relative or family member of the obligor, except through proper legal action or process or at the express and unsolicited request of the obligor;

(3) The disclosure, publication or communication of any information relating to an obligor's child or spousal support obligation or arrearage to any other person other than a credit reporting agency, by publishing or posting any list of persons, commonly known as "deadbeat lists", or in any manner other than through proper legal action, process or proceeding; and

(4) The use of any form of communication to the obligor, which ordinarily may be seen by any other person, that displays or conveys any information about the alleged claim other than the name, address and telephone number of the collection agency.

(i) No collection agency may use any fraudulent, deceptive or misleading representation or

means to collect or attempt to collect claims or to obtain information concerning support obligors, including, but not limited to:

- (1) The use of any business, company or organization name while engaged in the collection of claims, other than the true name of the collection agency's business, company or organization;
  - (2) Any false representation that the collection agency has in its possession information or something of value for the obligor with the underlying purpose of soliciting or discovering information about the person;
  - (3) The failure to clearly disclose the name of the person to whom the claim is owed, at the time of making any demand for money;
  - (4) Any false representation or implication of the character, extent or amount of a claim against an obligor or of the status of any legal proceeding;
  - (5) Any false representation or false implication that any collection agency is vouched for, bonded by, affiliated with an agency, instrumentality, agent or official of this state or of the federal or local government;
  - (6) The use, distribution or sale of any written communication which simulates or is falsely represented to be a document authorized, issued or approved by a court, an official or any other legally constituted or authorized authority, or which creates a false impression about its source, authorization or approval;
  - (7) Any representation that an existing obligation of the obligor may be increased by the addition of attorney's fees, investigation fees, service fees or any other fees or charges when in fact the fees or charges may not legally be added to the existing obligation; and
  - (8) Any false representation or false impression about the status or true nature of the services rendered by the collection agency.
- (j) No collection agency may use unfair or unconscionable means to collect or attempt to collect any claim, including, but not limited to:
- (1) The collection of or the attempt to collect any interest in excess of that interest authorized by the provisions of this chapter, or other charge, fee or expense incidental to the principal obligation that exceeds ten percent of the principal amount from an obligor or obligee; and
  - (2) Any communication with an obligor whenever it appears the obligor is represented by an attorney and the attorney's name and address are known, or could be easily ascertained, unless the attorney fails to answer correspondence, return telephone calls or discuss the obligation in question, or unless the attorney and the obligor consent to direct communication.

- (k) No collection agency may use, distribute, sell or prepare for use any written communication which violates or fails to conform to United States postal laws and regulations.
- (l) No collection agency may place a telephone call or otherwise communicate by telephone with an obligor at any place, including a place of employment, falsely stating that the call is "urgent" or an "emergency".
- (m) No collection agency may attempt to collect any portion of a fee from any money collected by any other entity or authority. The collection agency may only collect a fee from funds procured solely through its collection activities.
- (n) A collection agency must provide the state IV-D agency with an accounting of any money collected and forwarded to the obligee as child support, spousal support or arrearages every sixty days until the collection agency ceases all collection activity.
- (o) Any resident of this state who contracts for services with a collection agency to collect current or past-due child support or spousal support may, upon thirty days' written notice, cancel the contract for collection. The notice must be mailed to the collection agency by first-class mail. All contracts signed by residents of this state must include written notification of this right of cancellation.
- (p) Any person who violates the provisions of this section is subject to the penalties set forth in section 47-16-5 and section 11-12-9 of this code.
- (q) Any person who violates the provisions of this section is liable to the injured party in a civil action. Additionally, any person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$1,000 nor more than \$5,000 for each separate incident.
- (r) For any action filed pursuant to this section alleging illegal, fraudulent or unconscionable conduct or any prohibited debt collection practice, the court, in its discretion, may award all or a portion of the costs of litigation, including reasonable attorney fees, court costs and fees, to the injured party. Upon a finding by the court that an action filed pursuant to this section on the grounds of illegal, fraudulent or unconscionable conduct or any prohibited debt collection practice was brought in bad faith and for the purposes of harassment, the court may award the defendant reasonable attorney fees.