WEST VIRGINIA CODE: §48-18-114

§48-18-114. Amounts collected as support to be disbursed to person having custody; procedure for redirecting disbursement of payments where physical custody transferred to a person other than the custodial parent.

(a) Where physical custody of the child has been transferred from the custodial parent to another person, the Bureau for Child Support enforcement may redirect disbursement of support payments to such other person, on behalf of the child, in the following circumstances:

(1) Where the noncustodial parent has physical custody of the child, excluding visitation, upon filing with the Bureau for Child Support enforcement:

(A) An affidavit attesting that the noncustodial parent has obtained physical custody of the child, describing the circumstances under which the transfer of physical custody took place and stating that he or she anticipates that his or her physical custody of the child will continue for the foreseeable future; and

(B) Documentary proof that the noncustodial parent has instituted proceedings in court for a modification of legal custody or a certified copy of the custodial parent's death certificate.

(2) Where a person other than the custodial or noncustodial parent has physical custody of the child, excluding visitation, filing with the Bureau for Child Support enforcement:

(A) An affidavit attesting that the person has obtained physical custody of the child, describing the circumstances under which the transfer of physical custody took place and stating that he or she anticipates that his or her physical custody of the child will continue for the foreseeable future; and

(B) Documentary proof that the person claiming physical custody is currently the person responsible for the child by producing at least one of the following:

(i) School records demonstrating that school authorities consider the person claiming physical custody the adult responsible for the child;

(ii) Medical records demonstrating that the person claiming physical custody is empowered to make medical decisions on behalf of the child;

(iii) Documents from another public assistance agency showing that the person claiming physical custody is currently receiving other public assistance on behalf of the child;

(iv) A notarized statement from the custodial parent attesting to the fact that he or she has transferred physical custody to the person;

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(v) A verifiable order of a court of competent jurisdiction transferring physical or legal custody to the person;

(vi) Documentation that the person claiming physical custody has filed a petition in court to be appointed the child's guardian;

(vii) Documentation that the child, if over the age of fourteen, has instituted proceedings in court to have the person claiming physical custody nominated as his or her guardian; or

(viii) Any other official documents of a federal, state or local agency or governing body demonstrating that the person currently has physical custody of the child and has taken action indicating that he or she anticipates such physical custody to continue in the foreseeable future.

(b) The Bureau for Child Support enforcement shall mail, by first-class mail, a copy of the affidavit and supporting documentary evidence required under subsection (a) of this section to the circuit court which issued the support order being enforced by and to the parties to the order, at their last known addresses, together with a written notice stating that any party has ten days to object to the redirection of support payments by filing an affidavit and evidence showing that the person seeking redirection of the payments does not have physical custody of the child. If no objection is received by the Bureau for Child Support enforcement by the end of the ten-day period, the bureau may order payments redirected to the person claiming physical custody for the benefit of the child. If a responsive affidavit and supporting evidence is filed within the ten-day period and, in the opinion of the Bureau for Child Support enforcement, either disproves the claim of the person seeking redirection of support payments or raises a genuine issue of fact as to whether the person has actual physical custody of the child, the Bureau for Child Support enforcement shall continue to forward support payments to the custodial parent. Any person who disagrees with the determination of the Bureau for Child Support enforcement may petition the court for modification of the child support order.

(c) Any person who files a false affidavit pursuant to this section shall be guilty of false swearing and, upon conviction thereof, shall be punished as provided by law for such offense.

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