

No: 531

WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1987



ENROLLED

SENATE BILL NO. 531

(By Senator Tan Rossick, Mr. President, et al)
(By Request)



PASSED March 14 1987

In Effect ninty days from Passage



ENROLLED
Senate Bill No. 531

(BY SENATORS TONKOVICH, MR. PRESIDENT (BY REQUEST), AND HARMAN)

[Passed March 14, 1987; in effect ninety days from passage.]

AN ACT to amend article one, chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section nineteen; to amend and reenact sections seven and twenty-two, article two, chapter forty-eight-a; to amend and reenact section two, article five of said chapter forty-eight-a; to further amend said article five by adding thereto a new section, designated section three-a; and to amend article seven of said chapter forty-eight-a by adding thereto a new section, designated section twenty-nine-a, relating to the enforcement of child support obligations generally.

Be it enacted by the Legislature of West Virginia:

That article one, chapter fifty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section nineteen; that sections seven and twenty-two, article two, chapter forty-eight-a be amended and reenacted; that section two, article five of said chapter forty-eight-a be amended and reenacted; that said article five be further amended by adding thereto a new section, designated section three-a; and that article seven of said chapter forty-eight-a be amended by adding thereto a new section, designated section twenty-nine-a, all to read as follows:

CHAPTER 51. COURTS AND THEIR OFFICERS.

ARTICLE 1. SUPREME COURT OF APPEALS.

§51-1-19. Assistant director of family law masters.

1 (a) The court shall appoint an assistant director in the
2 administrative office of the supreme court of appeals whose
3 sole duties shall be the supervision and direction of
4 administrative and other matters relating to the offices of
5 the family law masters.

6 (b) The assistant director shall annually prepare a
7 proposed budget for the family law masters operations for
8 the next fiscal year, and submit such budget to the director
9 of the administrative office of the supreme court of appeals.
10 Such budget shall include all sums necessary to support the
11 activities of the family law masters throughout the state.

12 (c) The assistant director shall:

13 (1) Develop and recommend guidelines for the conduct,
14 operations and procedures of the offices of the family law
15 masters and the masters' employees, including, but not
16 limited to, the following:

17 (A) Docket scheduling and the performance of clerical
18 functions.

19 (B) Resolution of conflicts and the transfer of part or all
20 of the responsibilities for a case from one office to another
21 in situations considered appropriate.

22 (C) The hours of employment and location of places of
23 employment.

24 (2) Provide training programs for the family law
25 masters and other employees of the office to better enable
26 them to carry out the duties described in article four,
27 chapter forty-eight-a of this code.

28 (3) Gather and monitor relevant statistics.

CHAPTER 48A. ENFORCEMENT OF FAMILY OBLIGATIONS.

ARTICLE 2. WEST VIRGINIA CHILD ADVOCATE OFFICE.

§48A-2-7. Powers and duties of the director; advisory council.

1 (a) The director may promulgate legislative rules in
2 accordance with the provisions of article three, chapter
3 twenty-nine-a of this code where such rules are required to
4 implement the provisions of this chapter.

5 (b) The director shall annually prepare a proposed
6 budget for the next fiscal year, and submit such budget to
7 the commissioner. Such budget shall include all sums
8 necessary to support the activities of the child advocate
9 office.

10 (c) In addition to any other duties required by this
11 chapter, the director shall:

12 (1) Develop and recommend guidelines for the conduct,
13 operations and procedures of the office and his or her
14 employees, including, but not limited to, the following:

15 (A) Case load and staffing standards for employees who
16 perform investigation and recommendation functions,
17 enforcement functions and clerical functions.

18 (B) Orientation programs for clients of the office.

19 (C) Public educational programs regarding domestic
20 relations law and community resources, including financial
21 and other counseling, and employment opportunities.

22 (D) Model pamphlets and procedural forms, which shall
23 be distributed to each local office serving clients.

24 (2) Provide training programs for the children's
25 advocates and other employees of the office, to better
26 enable them to carry out the duties described in this
27 chapter.

28 (3) Gather and monitor relevant statistics.

29 (4) Develop and recommend guidelines to be used in
30 determining whether or not visitation has been wrongfully
31 denied or custody has been abused.

32 (5) Develop standards and procedures for the transfer of
33 part or all of the responsibilities for a case from one office to
34 another in situations considered appropriate.

35 (d) The commissioner of the department of human
36 services shall appoint a nine-person advisory committee,
37 serving without compensation except as provided in
38 subsection (e) of this section, composed of the following:

39 (A) Three public members who are eligible for services
40 with an office of the children's advocate;

41 (B) Three attorneys who are members of the West
42 Virginia state bar with experience in domestic relations
43 law, not more than two of whom may be employees of the
44 department: *Provided*, That one of the attorneys appointed
45 shall be a children's advocate selected by the children's
46 advocates throughout the state; and

47 (C) Three human service professionals who provide
48 family counseling, not more than two of whom may be
49 employees of the department.

50 Of the nine members initially appointed, one public
51 member, one attorney and one professional shall be
52 appointed for a term of one year; one public member, one
53 attorney and one professional shall be appointed for a term
54 of two years; and one public member, one attorney and one
55 professional shall be appointed for a term of three years.
56 After the expiration of the initial terms, appointments
57 thereafter shall be made for terms of three years. The
58 commissioner shall fill any vacancies resulting from death
59 or resignation by appointment for the unexpired term.
60 Members of the advisory council may be reappointed.

61 (e) The advisory committee established under
62 subsection (d) of this section shall advise the director in the
63 performance of his or her duties under this section.
64 Advisory committee members shall be reimbursed for their
65 actual expenses for mileage, meals, and, if necessary,
66 lodging.

§48A-2-22. Family law masters fund.

1 The office and the clerks of the circuit courts shall, on or
2 before the last day of each month, transmit all fees and costs
3 received for the services of the office or the family law
4 master under this chapter to the state treasurer for deposit
5 in the state treasury to the credit of a special revenue fund to
6 be known as the "family law masters fund," which is hereby
7 created. All moneys collected and received under this
8 chapter and paid into the state treasury and credited to the
9 "family law masters fund" shall be used solely for paying
10 the costs associated with the duties imposed upon the
11 family law masters under the provisions of this chapter.
12 Such moneys shall not be treated by the auditor and
13 treasurer as part of the general revenue of the state.

ARTICLE 5. REMEDIES FOR THE ENFORCEMENT OF SUPPORT OBLIGATIONS AND VISITATION.

§48A-5-2. Arrearages; enforcement through writ of execution, suggestion or suggestee execution.

1 (a) The total of any matured, unpaid installments of
2 child support required to be paid by an order entered or

3 modified by a court of competent jurisdiction, or by the
4 order of a magistrate court of this state under the prior
5 enactments of this code, shall stand, by operation of law, as
6 a decretal judgment against the obligor owing such support.
7 A child support order shall not be retroactively modified so
8 as to cancel or alter accrued installments of support. When
9 an obligor is in arrears in the payment of support which is
10 required to be paid by the terms of such order, an obligee
11 may file an "Affidavit of Accrued Support" with the clerk
12 of the circuit court, setting forth the particulars of such
13 arrearage, and requesting a writ of execution, suggestion or
14 suggestee execution. If the duty of support is based upon a
15 foreign support order, the obligee shall first register the
16 foreign support order with the clerk in the same manner and
17 with the same effect as such orders are registered in actions
18 under the revised uniform reciprocal enforcement of
19 support act, sections thirty-four, thirty-five, thirty-seven
20 and thirty-eight, article seven of this chapter: *Provided*,
21 That a copy of the reciprocal enforcement of support law of
22 the state in which the order was made need not be filed with
23 the clerk.

24 (b) The affidavit may be filed in the county wherein the
25 obligee or the obligor resides, or where the obligor's source
26 of income is located.

27 (c) The affidavit may be filed when a payment required
28 by such order has been delinquent, in whole or in part, for a
29 period of fourteen days.

30 (d) The affidavit shall:

31 (1) Identify the obligee and obligor by name and
32 address, and shall list the obligor's social security number
33 or numbers, if known;

34 (2) Name the court which entered the support order and
35 set forth the date of such entry;

36 (3) State the total amount of accrued support which has
37 not been paid by the obligor;

38 (4) List the date or dates when support payments should
39 have been paid but were not, and the amount of each such
40 delinquent payment; and

41 (5) If known, the name and address of the obligor's
42 source of income.

43 (e) Upon receipt of the affidavit, the clerk shall issue a
44 writ of execution, suggestion or suggestee execution, and
45 shall mail a copy of the affidavit and a notice of the filing of

46 the affidavit to the obligor, at his last known address. If the
47 children's advocate is not acting on behalf of the obligee in
48 filing the affidavit, the clerk shall forward a copy of the
49 affidavit and the notice of the filing to the children's
50 advocate.

51 (f) The notice provided for in subsection (e) of this
52 section shall inform the obligor that if he or she desires to
53 contest the affidavit on the grounds that the amount
54 claimed to be in arrears is incorrect or that a writ of
55 execution, suggestion or suggestee execution is not proper
56 because of mistakes of fact, he or she must, within fourteen
57 days of the date of the notice, inform the children's advocate
58 in writing of the reasons why the affidavit is contested and
59 must request a meeting with the children's advocate.

60 (g) Upon being informed by an obligor that he or she
61 desires to contest the affidavit, the children's advocate shall
62 inform the court of such fact, and the court shall require the
63 obligor to give security, post a bond, or give some other
64 guarantee to secure payment of overdue support.

65 (h) The clerk of the circuit court shall make available
66 form affidavits for use under the provisions of this section.
67 Such form affidavits shall be provided to the clerk by the
68 child advocate office. The notice of the filing of an affidavit
69 shall be in a form prescribed by the child advocate office.

**§48A-5-3a. Withholding from income of amounts payable as
support — location of meeting with children's
advocate; venue for proceedings.**

1 (a) When, under the provisions of section three of this
2 article, a meeting is required between the obligor and the
3 children's advocate, if the obligee is a resident of this state,
4 such meeting shall be held with the children's advocate in
5 the county wherein the obligee resides. If the obligee is a
6 nonresident of this state, such meeting shall be held with
7 the children's advocate in the county wherein the obligor
8 resides or where the obligor's source of income is located.

9 (b) When, under the provisions of section three of this
10 article, a hearing is required before the family law master,
11 such hearing shall be held in the county wherein the
12 meeting between the obligor and the children's advocate
13 was scheduled in accordance with the provisions of
14 subsection (a) of this section.

**ARTICLE 7. REVISED UNIFORM RECIPROCAL ENFORCEMENT OF
SUPPORT ACT.**

**§48A-7-29a. Effect of support order made under another law or
by court of another state.**

1 A support order made by a court of this state pursuant to
2 this article does not nullify and is not nullified by a support
3 order made by a court of this state pursuant to any other law
4 or by a support order made by a court of any other state
5 pursuant to a substantially similar law or any other law,
6 regardless of priority of issuance, unless otherwise
7 specifically provided by the court. Amounts paid for a
8 particular period pursuant to any support order made by
9 the court of another state shall be credited against amounts
10 accruing or accrued for the same period under any support
11 order made by the court of this state.

[Handwritten signatures and initials, including "S. B. No. 531" and "Enr. S. B. No. 531"]

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signature]
Chairman Senate Committee

[Signature]
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

[Signature]
Clerk of the Senate

[Signature]
Clerk of the House of Delegates

[Signature]
President of the Senate

[Signature]
Speaker House of Delegates

The within *approved* this the *28th*
thru
day of 1987.

[Signature]
Governor



PRESENTED TO THE
GOVERNOR

Date 3/23/87

Time 3:17 p.m.

RECEIVED

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OFFICE OF THE ATTORNEY GENERAL
SERVICES DIVISION