

SB 2003

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SECOND EXTRAORDINARY SESSION, 1999

ENROLLED

Committee Substitute for
SENATE BILL NO. 2003

(By Senator TAMMUN, Mr. President, and)
Sprouse, by request of the Executive)

PASSED May 20, 1999
In Effect From Passage

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SECRETARY OF STATE

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COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 2003

(BY SENATORS TOMBLIN, MR. PRESIDENT, AND SPROUSE,
BY REQUEST OF THE EXECUTIVE, *original sponsors*)

[Passed May 20, 1999; in effect from passage.]

AN ACT to repeal section ten-b, article two, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to repeal sections one, two, three, four, five and six, article four, chapter forty-eight-a of said code; to amend and reenact sections one, four-a, fifteen, sixteen, thirty-two and thirty-seven, article two, chapter forty-eight of said code; to amend and reenact sections three and six, article two-a of said chapter; to amend and reenact section four-c, article two-c of said chapter; to further amend said chapter by adding thereto a new article, designated article eleven; to amend and reenact section three, article one, chapter forty-eight-a of said code; to amend and reenact sections nineteen and twenty-one, article one-a of said chapter; to amend and reenact sections three, six, seven, eleven, fourteen and sixteen, article one-b of said chapter; to further amend said article by adding thereto a new section, designated section seventeen; to amend article two of said

chapter by adding thereto a new section, designated section seventeen; to amend and reenact section thirty-eight of said article; to amend and reenact sections nine, twenty and twenty-three, article four of said chapter; to amend chapter fifty-one of said code by adding thereto a new article, designated article two-a; to amend and reenact section fourteen, article three of said chapter; to amend and reenact sections eleven and twenty-eight-a, article one, chapter fifty-nine of said code; to amend and reenact section one, article two of said chapter; and to amend and reenact section twenty-nine, article five, chapter sixty-one of said code, all relating to revising the law of domestic relations generally; defining terms used in divorce, annulment and separate maintenance cases; establishing the styles of petitions in domestic cases; establishing effective date for style change; denominating parties in domestic actions; establishing presumptions regarding certain forms of alimony; providing for the reduction or termination of certain forms of alimony when de facto marriage exists; establishing effective date of change in alimony eligibility; establishing criteria for the award of alimony; eliminating certain property allocated by equitable distribution from availability for alimony payments; exceptions; establishing mandatory reporting of income changes; providing for the disposition of marital property; establishing a spouse's entitlement to future or contingent payments; establishing applicability of future or contingent provisions; providing for calculation of interest and effective date; precluding prejudgment interest in domestic relations matters; exceptions; establishing date magistrate court jurisdiction in domestic violence cases is to be limited; establishing a fee upon issuance of a protective order; requiring promulgation of time-keeping rules for magistrate courts in child support matters; transfer of jurisdiction to family court and circuit court judges; revising allocations to domestic violence legal services fund; allocation of custodial and decision-making responsibility for children in domestic relations cases; establishing best interests of the child as primary objective; establishing criteria for being a party in an action for custody or decisionmaking; establishing mandatory parent education programs; requiring temporary and permanent parenting plans and agreements; providing for court-ordered services; mediation; limits on mediation; court-ordered investigations; appointment of guardians; judicial interviews of minor

children; allocation of decision-making responsibility; modification of parenting plans; providing for dispute resolution; relocation of a parent constituting a material change of circumstances with regard to parental rights and responsibilities; enforcing parenting plans; providing for civil monetary sanctions for violations; providing for parental access to a child's records; requiring notice to obligor; designation of custody for purposes of other state and federal statutes; providing for effect of enactment and operative dates; calculation of interest; limitation on overtime pay for calculation of child support; excluding reimbursed moneys from definition of gross income; clarifying eligibility for certain federal services; creating updated guidelines for child support; requiring employers of obligors to report change of circumstance to agency; computation of child support; promulgating worksheets for determination of support obligations; providing for adjustment of child support in shared physical custody cases; providing for modification of child support; establishing notice requirements; documenting claims for modification; providing for an expedited process for modification; authorizing a court to disregard child support formula in some circumstances; requiring judicial findings regarding investment of child support moneys; establishing operative date of amendments; providing for notice to unemployed obligors; reporting employment income; proceedings before a family law master; requiring family law master to assess certain fees and costs; limiting continuances of scheduled final hearings; circuit court review of recommended order; providing for the family court fund; establishing family court division of circuit courts; initial appointments; effective dates; reporting requirements for enforcement division; assignment of family law masters by family law circuits; establishing qualifications for family law masters; establishing terms of office of family law masters; schedule of elections; criteria for handling vacancies in office; disciplinary procedures; grounds for discipline; appeal procedures; setting compensation for family law masters and staff members; applicability of rules of practice and procedure and rules of evidence; authorizing promulgation of local circuit rules of practice and procedure; jurisdiction of family law masters; establishing contempt powers of family law masters; effect of repealers and reenactments; imposition of fees for modification proceedings and providing for the disposition thereof; creation of family court fund; providing

for the transfer of court security funds to the family court fund; increasing certain filing fees; mandating financially able litigants to pay applicable fees and costs; providing for criminal penalties; and establishing inability to pay as an affirmative defense in actions for past due child support and alimony.

Be it enacted by the Legislature of West Virginia:

That section ten-b, article two, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that sections one, two, three, four, five and six, article four, chapter forty-eight-a of said code be repealed; that sections one, four-a, fifteen, sixteen, thirty-two and thirty-seven, article two, chapter forty-eight of said code be amended and reenacted; that sections three and six, article two-a of said chapter be amended and reenacted; that section four-c, article two-c of said chapter be amended and reenacted; that said chapter be further amended by adding thereto a new article, designated article eleven; that section three, article one, chapter forty-eight-a of said code be amended and reenacted; that sections nineteen and twenty-one, article one-a of said chapter be amended and reenacted; that sections three, six, seven, eleven, fourteen and sixteen, article one-b of said chapter be amended and reenacted; that said article be further amended by adding thereto a new section, designated section seventeen; that section thirty-eight, article two of said chapter be amended and reenacted; that said article be further amended by adding thereto a new section, designated section seventeen; that sections nine, twenty and twenty-three, article four of said chapter be amended and reenacted; that chapter fifty-one of said code be amended by adding thereto a new article, designated article two-a; that section fourteen, article three of said chapter be amended and reenacted; that sections eleven and twenty-eight-a, article one, chapter fifty-nine of said code be amended and reenacted; that section one, article two of said chapter be amended and reenacted; and that section twenty-nine, article five, chapter sixty-one of said code be amended and reenacted, all to read as follows:

CHAPTER 48. DOMESTIC RELATIONS.

ARTICLE 2. DIVORCE, ANNULMENT AND SEPARATE MAINTENANCE.

§48-2-1. Definitions.

1 For the purposes of this chapter and chapter forty-eight-
 2 a of this code, the words and phrases defined in the
 3 following subdivisions of this section, and any variation of
 4 those words and phrases required by the context, have the
 5 meanings ascribed to them in this section. These defini-
 6 tions are applicable unless a different meaning clearly
 7 appears from the context.

8 (1) "Alimony" means the allowance which a person pays
 9 to or in behalf of the support of his or her spouse or
 10 divorced spouse while they are separated or after they are
 11 divorced. The payment of alimony may be required by
 12 court order or by the terms of a separation agreement.
 13 Alimony may be paid in a lump sum or paid in install-
 14 ments as periodic alimony. Alimony includes temporary
 15 alimony as that term is used in section thirteen of this
 16 article, as well as alimony as that term is used in section
 17 fifteen of this article and elsewhere throughout this article.

18 (2) "Alimony in gross" means alimony payable either in
 19 a lump sum, or in periodic payments of a definite amount
 20 over a specific period of time. An alimony award is
 21 "alimony in gross" only if the award grants alimony in
 22 such terms that a determination can be made of the total
 23 amount to be paid as well as the time such payments will
 24 cease.

25 (3) "Antenuptial agreement" or "prenuptial agreement"
 26 means an agreement between a man and woman before
 27 marriage, but in contemplation and generally in consider-
 28 ation of marriage, whereby the property rights and
 29 interests of the prospective husband and wife, or both of
 30 them, are determined, or where property is secured to
 31 either or both of them, to their separate estate, or to their
 32 children or other persons. An antenuptial agreement may
 33 include provisions which define the respective property
 34 rights of the parties during the marriage, or in the event of
 35 the death of either or both of the parties, and may provide
 36 for the disposition of marital property upon an annulment
 37 of the marriage or a divorce or separation of the parties.
 38 A prenuptial agreement is void if at the time it is made
 39 either of the parties is a minor.

40 (4) "Caretaking functions" means tasks that involve
41 interaction with the child or care of the child, including
42 the direction of interaction and care by others. Caretaking
43 functions include the following:

44 (A) Feeding, bedtime and wake-up routines, care of the
45 child when sick or hurt, bathing, grooming, personal
46 hygiene, dressing, recreation and play, physical safety,
47 transportation and other functions that meet the daily
48 physical needs of the child;

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

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

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

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

61 (F) Arrangements for health care, including making
62 appointments, communication with health care providers,
63 medical follow-up and home health care;

64 (G) Moral guidance; and

65 (H) Arrangement of alternative care by a family member,
66 baby-sitter or other child care provider or facility, includ-
67 ing investigation of alternatives, communication with
68 providers and supervision.

69 (5) "Custodial responsibility" refers to physical custodi-
70 anship and supervision of a child. It usually includes, but
71 does not necessarily require, the exercise of residential or
72 overnight responsibility.

73 (6) "Decision-making responsibility" refers to authority
74 for making significant life decisions on behalf of a child,

75 including, but not limited to, the child's education, spiri-
76 tual guidance and health care.

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

84 (8) "Family law master" means a commissioner of the
85 circuit court appointed or elected and authorized to hear
86 certain domestic relations actions under section ten, article
87 two-a, chapter fifty-one of this code.

88 (9) "Income" includes, but is not limited to, the follow-
89 ing:

90 (A) Commissions, earnings, salaries, wages and other
91 income due or to be due in the future to an individual from
92 his employer and successor employers;

93 (B) Any payment due or to be due in the future to an
94 individual from a profit-sharing plan, a pension plan, an
95 insurance contract, an annuity, social security, unemploy-
96 ment compensation, supplemental employment benefits,
97 workers' compensation benefits, state lottery winnings and
98 prizes and overtime pay; and

99 (C) Any amount of money which is owing to an individ-
100 ual as a debt from an individual, partnership, association,
101 public or private corporation, the United States or any
102 federal agency, this state or any political subdivision of
103 this state, any other state or a political subdivision of
104 another state, or any other legal entity which is indebted
105 to the obligor.

106 (10) "Legal parent" means an individual defined as a
107 parent, by law, on the basis of biological relationship,
108 presumed biological relationship, legal adoption or other
109 recognized grounds.

110 (11) "Marital property" means:

111 (A) All property and earnings acquired by either spouse
112 during a marriage, including every valuable right and
113 interest, corporeal or incorporeal, tangible or intangible,
114 real or personal, regardless of the form of ownership,
115 whether legal or beneficial, whether individually held,
116 held in trust by a third party, or whether held by the
117 parties to the marriage in some form of co-ownership such
118 as joint tenancy or tenancy in common, joint tenancy with
119 the right of survivorship, or any other form of shared
120 ownership recognized in other jurisdictions without this
121 state, except that marital property shall not include
122 separate property as defined in subdivision (16) of this
123 section; and

124 (B) The amount of any increase in value in the separate
125 property of either of the parties to a marriage, which
126 increase results from: (i) An expenditure of funds which
127 are marital property, including an expenditure of such
128 funds which reduces indebtedness against separate
129 property, extinguishes liens, or otherwise increases the net
130 value of separate property; or (ii) work performed by
131 either or both of the parties during the marriage.

132 The definitions of "marital property" and "separate
133 property" contained in this section shall have no applica-
134 tion outside of the provisions of this article, and the
135 common law as to the ownership of the respective property
136 and earnings of a husband and wife, as altered by the
137 provisions of article three of this chapter and other
138 provisions of this code, are not abrogated by implication
139 or otherwise, except as expressly provided for by the
140 provisions of this article as such provisions are applied in
141 actions brought under this article or for the enforcement
142 of rights under this article.

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

150 (13) "Mediator" means a neutral third person who
151 interposes between two contending parties, with their
152 consent, for the purpose of assisting them in settling their
153 differences.

154 (14) "Parent" means a legal parent as defined in subdivi-
155 sion (10) of this section unless otherwise specified.

156 (15) "Parenting functions" means tasks that serve the
157 needs of the child or the child's residential family.
158 Parenting functions include caretaking functions, as
159 defined in subdivision (4) of this section. Parenting
160 functions also include functions that are not caretaking
161 functions, including:

162 (A) Provision of economic support;

163 (B) Participation in decisionmaking regarding the child's
164 welfare;

165 (C) Maintenance or improvement of the family residence,
166 home or furniture repair, home-improvement projects,
167 yard work and house cleaning;

168 (D) Financial planning and organization, car repair and
169 maintenance, food and clothing purchasing, cleaning and
170 maintenance of clothing, and other tasks supporting the
171 consumption and savings needs of the family; and

172 (E) Other functions usually performed by a parent or
173 guardian that are important to the child's welfare and
174 development.

175 (16) "Parenting plan" means a temporary parenting plan
176 as defined in subdivision (22) of this section or a perma-
177 nent parenting plan as defined in subdivision (17) of this
178 section.

179 (17) "Permanent parenting plan" means a plan for
180 parenting a child that is incorporated into a final order or
181 subsequent modification order in a domestic relations
182 action. The plan principally establishes, but is not limited
183 to, the allocation of custodial responsibility and signifi-
184 cant decision-making responsibility and provisions for
185 resolution of subsequent disputes between the parents.

186 (18) "Rehabilitative alimony" means alimony payable
187 for a specific and determinable period of time, designed to
188 cease when the payee is, after the exercise of reasonable
189 efforts, in a position of self-support.

190 (19) "Separate property" means:

191 (A) Property acquired by a person before marriage; or

192 (B) Property acquired by a person during marriage in
193 exchange for separate property which was acquired before
194 the marriage; or

195 (C) Property acquired by a person during marriage, but
196 excluded from treatment as marital property by a valid
197 agreement of the parties entered into before or during the
198 marriage; or

199 (D) Property acquired by a party during marriage by
200 gift, bequest, devise, descent or distribution; or

201 (E) Property acquired by a party during a marriage but
202 after the separation of the parties and before the granting
203 of a divorce, annulment or decree of separate maintenance;
204 or

205 (F) Any increase in the value of separate property as
206 defined in paragraph (A), (B), (C), (D) or (E) of this subdi-
207 vision which is due to inflation or to a change in market
208 value resulting from conditions outside the control of the
209 parties.

210 (20) "Separation" or "separation of the parties" means
211 the separation of the parties next preceding the filing of an
212 action under the provisions of this article, which separa-
213 tion continues, without the parties cohabiting or otherwise
214 living together as husband and wife, and without interrup-
215 tion.

216 (21) "Separation agreement" means a written agreement
217 entered into by a husband and wife whereby they agree to
218 live separate and apart from each other and, in connection
219 therewith, agree to settle their property rights; or to
220 provide for the custody and support of their minor child or
221 children, if any; or to provide for the payment or waiver of
222 alimony by either party to the other; or to otherwise settle

223 and compromise issues arising out of their marital rights
224 and obligations. Insofar as an antenuptial agreement as
225 defined in subdivision (3) of this section affects the
226 property rights of the parties or the disposition of property
227 upon an annulment of the marriage, or a divorce or
228 separation of the parties, such antenuptial agreement shall
229 be regarded as a separation agreement under the provi-
230 sions of this article.

231 (22) "Temporary parenting plan" means a plan incorpo-
232 rated into a temporary or interlocutory order that provides
233 for the parenting of a child pending final resolution of a
234 domestic relations action.

**§48-2-4a. Petition instituting a domestic relations action;
answer.**

1 (a) A domestic relations action is instituted by the filing
2 of a verified petition. On and after the first day of Octo-
3 ber, one thousand nine hundred ninety-nine, the formal
4 style of a domestic relations petition and the caption for
5 all subsequent pleadings is as follows:

6 (1) In an action for divorce, separate maintenance or
7 annulment, the action may be styled "In Re the marriage
8 of _____ and _____"; and

9 (2) In an action to establish a child support obligation or
10 to allocate custodial responsibility and decision-making
11 responsibility when the parties are not married, the action
12 may be styled "In Re the Child(ren) of _____ and
13 _____".

14 The parties are identified in all pleadings as "petitioner"
15 and "respondent".

16 (b) The responsive pleading to a petition instituting a
17 domestic relations action is denominated an answer. The
18 form and requisites for an answer to a petition for divorce
19 or any other responsive pleading shall be verified in
20 accordance with the provisions of section ten, article two
21 of this chapter and are governed by the rules of civil
22 procedure.

23 (c) The provisions of this section will become effective on
24 the first day of October, one thousand nine hundred
25 ninety-nine.

§48-2-15. Relief upon ordering divorce or annulment or granting decree of separate maintenance.

1 (a) Upon ordering a divorce or granting a decree of
2 separate maintenance, the court may require either party
3 to pay alimony in the form of periodic installments, or a
4 lump sum, or both, for the maintenance of the other party.
5 Payments of alimony are to be ordinarily made from a
6 party's income, but when the income is not sufficient to
7 adequately provide for those payments, the court may,
8 upon specific findings set forth in the order, order the
9 party required to make those payments to make them from
10 the corpus of his or her separate estate. An award of
11 alimony shall not be disproportionate to a party's ability
12 to pay as disclosed by the evidence before the court.

13 (b) Upon ordering the annulment of a marriage or a
14 divorce or granting of decree of separate maintenance, the
15 court may further order all or any part of the following
16 relief:

17 (1) The court may provide for the custody of minor
18 children of the parties, subject to such rights of visitation,
19 both in and out of the residence of the custodial parent or
20 other person or persons having custody, as may be appropriate under the circumstances. In every action where
21 visitation is awarded, the court shall specify a schedule for
22 visitation by the noncustodial parent: *Provided*, That with
23 respect to any existing order which provided for visitation
24 but which does not provide a specific schedule for visitation
25 by the noncustodial parent, upon motion of any party,
26 notice of hearing and hearing, the court shall issue an
27 order which provides a specific schedule of visitation by
28 the noncustodial parent;
29

30 (2) When the action involves a minor child or children,
31 the court shall require either party to pay child support in
32 the form of periodic installments for the maintenance of
33 the minor children of the parties in accordance with
34 support guidelines promulgated pursuant to article one-b,

35 chapter forty-eight-a of this code. Payments of child
36 support are to be ordinarily made from a party's income,
37 but in cases when the income is not sufficient to ade-
38 quately provide for those payments, the court may, upon
39 specific findings set forth in the order, order the party
40 required to make those payments to make them from the
41 corpus of his or her separate estate;

42 (3) When the action involves a minor child or children,
43 the court shall provide for medical support for any minor
44 children in accordance with section fifteen-a of this
45 article;

46 (4) As an incident to requiring the payment of alimony or
47 child support, the court may order either party to continue
48 in effect existing policies of insurance covering the costs of
49 health care and hospitalization of the other party: *Pro-*
50 *vided*, That if the other party is no longer eligible to be
51 covered by such insurance because of the granting of an
52 annulment or divorce, the court may require a party to
53 substitute such insurance with a new policy to cover the
54 other party or may consider the prospective cost of such
55 insurance in awarding alimony to be paid in periodic
56 installments. Payments made to an insurer pursuant to
57 this subdivision, either directly or by a deduction from
58 wages, shall be deemed to be alimony or installment
59 payments for the distribution of marital property, in such
60 proportion as the court shall direct: *Provided, however*,
61 That if the court does not set forth in the order that a
62 portion of such payments is to be deemed installment
63 payments for the distribution of marital property, then all
64 such payments made pursuant to this subdivision shall be
65 deemed to be alimony: *Provided further*, That the designa-
66 tion of insurance coverage as alimony under the provisions
67 of this subdivision shall not, in and of itself, give rise to a
68 subsequent modification of the order to provide for
69 alimony other than insurance for covering the costs of
70 health care and hospitalization;

71 (5) The court may grant the exclusive use and occupancy
72 of the marital home to one of the parties, together with all
73 or a portion of the household goods, furniture and furnish-
74 ings reasonably necessary for such use and occupancy.

75 Such use and occupancy shall be for a definite period,
76 ending at a specific time set forth in the order, subject to
77 modification upon the petition of either party. Except in
78 extraordinary cases supported by specific findings set
79 forth in the order granting relief, a grant of the exclusive
80 use and occupancy of the marital home shall be limited to
81 those situations when such use and occupancy is reason-
82 ably necessary to accommodate the rearing of minor
83 children of the parties. The court may require payments
84 to third parties in the form of home loan installments, land
85 contract payments, rent, property taxes and insurance
86 coverage if the amount of such coverage is reduced to a
87 fixed monetary amount set forth in the court's order.
88 When such third party payments are ordered, the court
89 shall specify whether such payments or portions of pay-
90 ments are alimony, child support, a partial distribution of
91 marital property or an allocation of marital debt: *Pro-*
92 *vided*, That if the court does not set forth in the order that
93 a portion of such payments is to be deemed child support
94 or installment payments for the distribution of marital
95 property, then all such payments made pursuant to this
96 subdivision shall be deemed to be alimony. When such
97 third party payments are ordered, the court shall specify
98 whether such payments or portions of payments are
99 alimony, child support, a partial distribution of marital
100 property or an allocation of marital debt. If the payments
101 are not designated in an order and the parties have waived
102 any right to receive alimony, the court may designate the
103 payments upon motion by any party. Nothing contained
104 in this subdivision shall abrogate an existing contract
105 between either of the parties and a third party or affect the
106 rights and liabilities of either party or a third party under
107 the terms of such contract;

108 (6) As an incident to requiring the payment of alimony,
109 the court may grant the exclusive use and possession of
110 one or more motor vehicles to either of the parties. The
111 court may require payments to third parties in the form of
112 automobile loan installments or insurance coverage if
113 available at reasonable rates, and any such payments made
114 pursuant to this subdivision for the benefit of the other
115 party shall be deemed to be alimony or installment

116 payments for the distribution of marital property, as the
117 court may direct. Nothing contained in this subdivision
118 shall abrogate an existing contract between either of the
119 parties and a third party or affect the rights and liabilities
120 of either party or a third party under the terms of such
121 contract;

122 (7) When the pleadings include a specific request for
123 specific property or raise issues concerning the equitable
124 division of marital property as defined in section one of
125 this article, the court shall order such relief as may be
126 required to effect a just and equitable distribution of the
127 property and to protect the equitable interests of the
128 parties therein;

129 (8) Unless a contrary disposition is ordered pursuant to
130 other provisions of this section, then upon the motion of
131 either party, the court may compel the other party to
132 deliver to the moving party any of his or her separate
133 estate which may be in the possession or control of the
134 respondent party and may make such further order as is
135 necessary to prevent either party from interfering with the
136 separate estate of the other;

137 (9) When allegations of abuse have been proven, the
138 court shall enjoin the offending party from molesting or
139 interfering with the other, or otherwise imposing any
140 restraint on the personal liberty of the other or interfering
141 with the custodial or visitation rights of the other. Such
142 order may permanently enjoin the offending party from
143 entering the school, business or place of employment of the
144 other for the purpose of molesting or harassing the other;
145 or from contacting the other, in person or by telephone, for
146 the purpose of harassment or threats; or from harassing or
147 verbally abusing the other in a public place; and

148 (10) The court may order either party to take necessary
149 steps to transfer utility accounts and other accounts for
150 recurring expenses from the name of one party into the
151 name of the other party or from the joint names of the
152 parties into the name of one party. Nothing contained in
153 this subdivision shall affect the liability of the parties for
154 indebtedness on any such account incurred before the
155 transfer of such account.

156 (c) When an annulment or divorce is denied, the court
157 shall retain jurisdiction of the case and may order all or
158 any portion of the relief provided for in subsections (a) and
159 (b) of this section which has been demanded or prayed for
160 in the pleadings.

161 (d) When a divorce or annulment is granted in this state
162 upon constructive service of process and personal jurisdic-
163 tion is thereafter obtained of the defendant in such case,
164 the court may order all or any portion of the relief pro-
165 vided for in subsections (a) and (b) of this section which
166 has been demanded or prayed for in the pleadings.

167 (e) After the entry of an order pursuant to the provisions
168 of this section, the court may revise the order concerning
169 the maintenance of the parties and enter a new order
170 concerning the same, as the circumstances of the parties
171 may require.

172 The court may also from time to time afterward, upon
173 motion of either of the parties and upon proper service,
174 revise such order to grant relief pursuant to subdivision
175 (9), subsection (b) of this section, and enter a new order
176 concerning the same, as the circumstances of the parties
177 and the benefit of children may require. The court may
178 also from time to time afterward, upon the motion of
179 either of the parties or other proper person having actual
180 or legal custody of the minor child or children of the
181 parties, revise or alter the order concerning the custody
182 and support of the children, and make a new order con-
183 cerning the same, issuing it forthwith, as the circum-
184 stances of the parents or other proper person or persons
185 and the benefit of the children may require: *Provided,*
186 That all orders modifying child support shall be in confor-
187 mance with the requirements of support guidelines
188 promulgated pursuant to article one-b, chapter
189 forty-eight-a of this code: *Provided, however,* That an
190 order providing for child support payments may be revised
191 or altered for the reason, inter alia, that the existing order
192 provides for child support payments in an amount that is
193 less than eighty-five percent or more than one hundred
194 fifteen percent of the amount that would be required to be
195 paid under the child support guidelines promulgated

196 pursuant to the provisions of said section: *Provided*
197 *further*, That the child support enforcement division may
198 review a child support order and, if appropriate, file a
199 motion with the circuit court for modification of the child
200 support order pursuant to the provisions of section thirty-
201 five, article two, chapter forty-eight-a of this code.

202 In granting relief under this subsection, the court may,
203 when other means are not conveniently available, alter any
204 prior order of the court with respect to the distribution of
205 marital property, if such property is still held by the
206 parties, and if necessary to give effect to a modification of
207 alimony, child support or child custody or necessary to
208 avoid an inequitable or unjust result which would be
209 caused by the manner in which the modification will affect
210 the prior distribution of marital property.

211 (f) (1) When a separation agreement is the basis for an
212 award of alimony, the court, in approving the agreement,
213 shall examine the agreement to ascertain whether it
214 clearly provides for alimony to continue beyond the death
215 of the payor or the payee or to cease in such event. When
216 alimony is to be paid pursuant to the terms of a separation
217 agreement which does not state whether the payment of
218 alimony is to continue beyond the death of the payor or
219 payee or is to cease, or when the parties have not entered
220 into a separation agreement and alimony is awarded, the
221 court shall have the discretion to determine, as a part of its
222 order, whether such payments of alimony are to be contin-
223 ued beyond the death of the payor or payee or cease. In
224 the event neither an agreement nor an order makes
225 provision for the death of the payor or payee, alimony
226 other than rehabilitative alimony or alimony in gross shall
227 cease on the death of the payor or payee. In the event
228 neither an agreement nor an order makes provision for the
229 death of the payor, rehabilitative alimony continues
230 beyond the payor's death, in the absence of evidence that
231 the payor's estate is likely to be insufficient to meet other
232 obligations or that other matters would make continuation
233 after death inequitable. Rehabilitative alimony ceases
234 with the payee's death. In the event neither an agreement
235 nor an order makes provision for the death of the payor or

236 payee, alimony in gross continues beyond the payor's or
237 payee's death.

238 (2) When a separation agreement is the basis for an
239 award of alimony, the court, in approving the agreement,
240 shall examine the agreement to ascertain whether it
241 clearly provides for alimony to continue beyond the
242 remarriage of the payee or to cease in such event. When
243 alimony is to be paid pursuant to the terms of a separation
244 agreement which does not state whether the payment of
245 alimony is to continue beyond the remarriage of the payee
246 or is to cease, or when the parties have not entered into a
247 separation agreement and alimony is awarded, the court
248 shall have the discretion to determine, as a part of its
249 order, whether such payments of alimony are to be contin-
250 ued beyond the remarriage of the payee. In the event
251 neither an agreement nor an order makes provision for the
252 remarriage of the payee, alimony other than rehabilitative
253 alimony or alimony in gross shall cease on the remarriage
254 of the payee. Rehabilitative alimony does not cease upon
255 the remarriage of the payee during the first four years of
256 a rehabilitative period. In the event neither an agreement
257 nor an order makes provision for the remarriage of the
258 payee, alimony in gross continues beyond the payee's
259 remarriage.

260 (g)(1) In the discretion of the court, an award of alimony
261 may be reduced or terminated upon specific written
262 findings by the court that since the granting of a divorce
263 and the award of alimony a de facto marriage has existed
264 between the alimony payee and another person.

265 (2) In determining whether an existing award of alimony
266 or spousal support should be reduced or terminated
267 because of an alleged de facto marriage between a payee
268 and another person, the court should elicit the nature and
269 extent of the relationship in question. The court should
270 give consideration, without limitation, to circumstances
271 such as the following in determining the relationship of an
272 ex-spouse to another person:

273 (A) The extent to which the ex-spouse and the other
274 person have held themselves out as a married couple by
275 engaging in conduct such as using the same last name,

276 using a common mailing address, referring to each other in
277 terms such as “my husband” or “my wife”, or otherwise
278 conducting themselves in a manner that evidences a stable
279 marriage-like relationship;

280 (B) The period of time that the ex-spouse has resided
281 with another person not related by consanguinity or
282 affinity in a permanent place of abode;

283 (C) The duration and circumstances under which the ex-
284 spouse has maintained a continuing conjugal relationship
285 with the other person;

286 (D) The extent to which the ex-spouse and the other
287 person have pooled their assets or income or otherwise
288 exhibited financial interdependence;

289 (E) The extent to which the ex-spouse or the other
290 person has supported the other, in whole or in part;

291 (F) The extent to which the ex-spouse or the other person
292 has performed valuable services for the other;

293 (G) The extent to which the ex-spouse or the other
294 person has performed valuable services for the other's
295 company or employer;

296 (H) Whether the ex-spouse and the other person have
297 worked together to create or enhance anything of value;

298 (I) Whether the ex-spouse and the other person have
299 jointly contributed to the purchase of any real or personal
300 property;

301 (J) Evidence in support of a claim that the ex-spouse and
302 the other person have an express agreement regarding
303 property sharing or support; or

304 (K) Evidence in support of a claim that the ex-spouse
305 and the other person have an implied agreement regarding
306 property sharing or support.

307 (7) On the issue of whether alimony should be reduced or
308 terminated under this subsection, the burden is on the
309 payor to prove by a preponderance of the evidence that a
310 de facto marriage exists. If the court finds that the payor

311 has failed to meet burden of proof on the issue, the court
312 may award reasonable attorney's fees to a payee who
313 prevails in an action that sought to reduce or terminate
314 alimony on the ground that a de facto marriage exists.

315 (8) The court shall order that a reduction or termination
316 of alimony is retroactive to the date of service of the
317 petition on the payee, unless the court finds that reim-
318 bursement of amounts already paid would cause an undue
319 hardship on the payee.

320 (9) An award of rehabilitative alimony shall not be
321 reduced or terminated because of the existence of a de
322 facto marriage between the alimony payee and another
323 person.

324 (10) An award of alimony in gross shall not be reduced
325 or terminated because of the existence of a de facto
326 marriage between the alimony payee and another person.

327 (11) An award of alimony shall not be reduced or
328 terminated under the provisions of this subsection for
329 conduct by an alimony payee that occurred before the first
330 day of October, one thousand nine hundred ninety-nine.

331 (12) Nothing in this subsection shall be construed to
332 abrogate the requirement that every marriage in this state
333 be solemnized under a license or construed to recognize a
334 common law marriage as valid.

335 (h) In addition to the disclosure requirements set forth in
336 section thirty-three of this article, the court may order
337 accounts to be taken as to all or any part of marital
338 property or the separate estates of the parties and may
339 direct that the accounts be taken as of the date of the
340 marriage, the date upon which the parties separated or any
341 other time in assisting the court in the determination and
342 equitable division of property.

343 (i) In determining whether alimony is to be awarded, or
344 in determining the amount of alimony, if any, to be
345 awarded under the provisions of this section, the court
346 shall consider and compare the fault or misconduct of
347 either or both of the parties and the effect of such fault or
348 misconduct as a contributing factor to the deterioration of

349 the marital relationship. However, alimony shall not be
350 awarded when both parties prove grounds for divorce and
351 are denied a divorce, nor shall an award of alimony under
352 the provisions of this section be ordered which directs the
353 payment of alimony to a party determined to be at fault,
354 when, as a grounds granting the divorce, such party is
355 determined by the court:

356 (1) To have committed adultery; or

357 (2) To have been convicted for the commission of a crime
358 which is a felony, subsequent to the marriage if such
359 conviction has become final; or

360 (3) To have actually abandoned or deserted his or her
361 spouse for six months.

362 (j) Whenever under the terms of this section or section
363 thirteen of this article a court enters an order requiring the
364 payment of alimony or child support, if the court antici-
365 pates the payment of such alimony or child support or any
366 portion thereof to be paid out of "disposable retired or
367 retainer pay" as that term is defined in 10 U. S. C. §1408,
368 relating to members or former members of the uniformed
369 services of the United States, the court shall specifically
370 provide for the payment of an amount, expressed in dollars
371 or as a percentage of disposable retired or retainer pay,
372 from the disposable retired or retainer pay of the payor
373 party to the payee party.

374 (k) Any order which provides for the custody or support
375 of a minor child shall include:

376 (1) The name of the custodian;

377 (2) The amount of the support payments;

378 (3) The date the first payment is due;

379 (4) The frequency of the support payments;

380 (5) The event or events which trigger termination of the
381 support obligation;

382 (6) A provision regarding wage withholding;

383 (7) The address where payments shall be sent;

384 (8) A provision for medical support; and

385 (9) When child support guidelines are not followed, a
386 specific written finding pursuant to section fourteen,
387 article one-b, chapter forty-eight-a of this code.

388 (1) Effective the first day of October, one thousand nine
389 hundred ninety-nine, any order entered that provides for
390 the payment of child support shall also include a statement
391 that requires both parties to report any changes in gross
392 income, either in source of employment or in the amount
393 of gross income, to the child support enforcement division
394 and to the other party. The notice shall not be required if
395 the change in gross income is less than a fifteen percent
396 change in gross income.

**§48-2-16. Effect of separation agreement; what considered in
awarding alimony, child support or separate
maintenance.**

1 (a) In cases where the parties to an action commenced
2 under the provisions of this article have executed a
3 separation agreement, if the court finds that the agreement
4 is fair and reasonable, and not obtained by fraud, duress
5 or other unconscionable conduct by one of the parties, and
6 further finds that the parties, through the separation
7 agreement, have expressed themselves in terms which, if
8 incorporated into a judicial order, would be enforceable by
9 a court in future proceedings, then the court shall conform
10 the relief which it is authorized to order under the provi-
11 sions of sections thirteen and fifteen of this article to the
12 separation agreement of the parties. The separation
13 agreement may contractually fix the division of property
14 between the parties and may determine whether alimony
15 shall be awarded, whether an award of alimony, other
16 than an award of rehabilitative alimony or alimony in
17 gross, may be reduced or terminated because a de facto
18 marriage exists between the alimony payee and another
19 person, whether a court shall have continuing jurisdiction
20 over the amount of an alimony award so as to increase or
21 decrease the amount of alimony to be paid, whether
22 alimony shall be awarded as a lump sum settlement in lieu
23 of periodic payments, whether alimony shall continue
24 beyond the death of the payor party or the remarriage of

25 the payee party, or whether the alimony award shall be
26 enforceable by contempt proceedings or other judicial
27 remedies aside from contractual remedies. Any award of
28 periodic payments of alimony shall be deemed to be
29 judicially decreed and subject to subsequent modification
30 unless there is some explicit, well expressed, clear, plain
31 and unambiguous provision to the contrary set forth in the
32 court-approved separation agreement or the order grant-
33 ing the divorce. Child support shall, under all circum-
34 stances, always be subject to continuing judicial modifica-
35 tion.

36 (b) In cases where the parties to an action commenced
37 under the provisions of this article have not executed a
38 separation agreement, or have executed an agreement
39 which is incomplete or insufficient to resolve the outstand-
40 ing issues between the parties, or where the court finds the
41 separation agreement of the parties not to be fair and
42 reasonable or clear and unambiguous, the court shall
43 proceed to resolve the issues outstanding between the
44 parties. The court shall consider the following factors in
45 determining the amount of alimony, child support or
46 separate maintenance, if any, to be ordered under the
47 provisions of sections thirteen and fifteen of this article, as
48 a supplement to or in lieu of the separation agreement:

49 (1) The length of time the parties were married;

50 (2) The period of time during the marriage when the
51 parties actually lived together as husband and wife;

52 (3) The present employment income and other recurring
53 earnings of each party from any source;

54 (4) The income-earning abilities of each of the parties,
55 based upon such factors as educational background,
56 training, employment skills, work experience, length of
57 absence from the job market and custodial responsibilities
58 for children;

59 (5) The distribution of marital property to be made under
60 the terms of a separation agreement or by the court under
61 the provisions of section thirty-two of this article, insofar
62 as the distribution affects or will affect the earnings of the

63 parties and their ability to pay or their need to receive
64 alimony, child support or separate maintenance: *Pro-*
65 *vided*, That for the purposes of determining a spouse's
66 ability to pay alimony, the court may not consider the
67 income generated by property allocated to the payor
68 spouse in connection with the division of marital property
69 unless the court makes specific findings that a failure to
70 consider income from the allocated property would result
71 in substantial inequity;

72 (6) The ages and the physical, mental and emotional
73 condition of each party;

74 (7) The educational qualifications of each party;

75 (8) Whether either party has foregone or postponed
76 economic, education or employment opportunities during
77 the course of the marriage;

78 (9) The standard of living established during the mar-
79 riage;

80 (10) The likelihood that the party seeking alimony, child
81 support or separate maintenance can substantially in-
82 crease his or her income-earning abilities within a reason-
83 able time by acquiring additional education or training;

84 (11) Any financial or other contribution made by either
85 party to the education, training, vocational skills, career or
86 earning capacity of the other party;

87 (12) The anticipated expense of obtaining the education
88 and training described in subdivision(10) above;

89 (13) The costs of educating minor children;

90 (14) The costs of providing health care for each of the
91 parties and their minor children;

92 (15) The tax consequences to each party;

93 (16) The extent to which it would be inappropriate for a
94 party, because said party will be the custodian of a minor
95 child or children, to seek employment outside the home;

96 (17) The financial need of each party;

97 (18) The legal obligations of each party to support
98 himself or herself and to support any other person;

99 (19) Costs and care associated with a minor or adult
100 child's physical or mental disabilities; and

101 (20) Such other factors as the court deems necessary or
102 appropriate to consider in order to arrive at a fair and
103 equitable grant of alimony, child support or separate
104 maintenance.

§48-2-32. Marital property disposition.

1 (a) Except as otherwise provided in this section, upon
2 every judgment of annulment, divorce or separation, the
3 court shall divide the marital property of the parties
4 equally between the parties.

5 (b) In cases where the parties to an action commenced
6 under the provisions of this article have executed a
7 separation agreement, then the court shall divide the
8 marital property in accordance with the terms of the
9 agreement, unless the court finds:

10 (1) That the agreement was obtained by fraud, duress or
11 other unconscionable conduct by one of the parties; or

12 (2) That the parties, in the separation agreement, have
13 not expressed themselves in terms which, if incorporated
14 into a judicial order, would be enforceable by a court in
15 future proceedings; or

16 (3) That the agreement, viewed in the context of the
17 actual contributions of the respective parties to the net
18 value of the marital property of the parties, is so inequita-
19 ble as to defeat the purposes of this section, and such
20 agreement was inequitable at the time the same was
21 executed.

22 (c) In the absence of a valid agreement, the court shall
23 presume that all marital property is to be divided equally
24 between the parties, but may alter this distribution,
25 without regard to any attribution of fault to either party
26 which may be alleged or proved in the course of the action,
27 after a consideration of the following:

28 (1) The extent to which each party has contributed to the
29 acquisition, preservation and maintenance, or increase in
30 value of marital property by monetary contributions,
31 including, but not limited to:

32 (A) Employment income and other earnings; and

33 (B) Funds which are separate property.

34 (2) The extent to which each party has contributed to the
35 acquisition, preservation and maintenance or increase in
36 value of marital property by nonmonetary contributions,
37 including, but not limited to:

38 (A) Homemaker services;

39 (B) Child care services;

40 (C) Labor performed without compensation, or for less
41 than adequate compensation, in a family business or other
42 business entity in which one or both of the parties has an
43 interest;

44 (D) Labor performed in the actual maintenance or
45 improvement of tangible marital property; and

46 (E) Labor performed in the management or investment
47 of assets which are marital property.

48 (3) The extent to which each party expended his or her
49 efforts during the marriage in a manner which limited or
50 decreased such party's income-earning ability or increased
51 the income-earning ability of the other party, including,
52 but not limited to:

53 (A) Direct or indirect contributions by either party to the
54 education or training of the other party which has in-
55 creased the income-earning ability of such other party;
56 and

57 (B) Foregoing by either party of employment or other
58 income-earning activity through an understanding of the
59 parties or at the insistence of the other party.

60 (4) The extent to which each party, during the marriage,
61 may have conducted himself or herself so as to dissipate or
62 depreciate the value of the marital property of the parties:

63 *Provided*, That except for a consideration of the economic
64 consequences of conduct as provided for in this subdivi-
65 sion, fault or marital misconduct shall not be considered
66 by the court in determining the proper distribution of
67 marital property.

68 (d) After considering the factors set forth in subsection
69 (c) of this section, the court shall:

70 (1) Determine the net value of all marital property of the
71 parties as of the date of the separation of the parties or as
72 of such later date determined by the court to be more
73 appropriate for attaining an equitable result. Where the
74 value of the marital property portion of a spouse's entitle-
75 ment to future payments can be determined at the time of
76 entering a final order in a domestic relations action, the
77 court may include it in reckoning the worth of the marital
78 property assigned to each spouse. In the absence of an
79 agreement between the parties, when the value of the
80 future payments is not known at the time of entering a
81 final order in a domestic relations action, if their receipt is
82 contingent on future events or not reasonably assured, or
83 if for other reasons it is not equitable under the circum-
84 stances to include their value in the property assigned at
85 the time of dissolution, the court may decline to do so; and

86 (A) Fix the spouses' respective shares in such future
87 payments if and when received; or

88 (B) If it is not possible and practical to fix their share at
89 the time of entering a final order in a domestic relations
90 action, reserve jurisdiction to make an appropriate order
91 at the earliest practical date;

92 If a valuation is made after a contingent or other future
93 fee has been earned through the personal services or skills
94 of a spouse, the portion that is marital property shall be in
95 the same proportion to the total fee that the personal
96 services or skills expended before the separation of the
97 parties bears to the total personal skills or services ex-
98 pended. The provisions of this subdivision apply to
99 pending cases when the issues of contingent fees or future
100 earned fees have not been finally adjudicated.

101 (2) Designate the property which constitutes marital
102 property, and define the interest therein to which each
103 party is entitled and the value of their respective interest
104 therein. In the case of an action wherein there is no
105 agreement between the parties and the relief demanded
106 requires the court to consider such factors as are described
107 in subdivisions (1), (2), (3) and (4), subsection (c) of this
108 section, if a consideration of factors only under said
109 subdivisions (1) and (2) would result in an unequal division
110 of marital property, and if an examination of the factors
111 described in said subdivisions (3) and (4) produce a finding
112 that a party: (A) Expended his or her efforts during the
113 marriage in a manner which limited or decreased such
114 party's income-earning ability or increased the income-
115 earning ability of the other party; or (B) conducted himself
116 or herself so as to dissipate or depreciate the value of the
117 marital property of the parties, then the court may, in the
118 absence of a fair and just alimony award under the
119 provisions of section fifteen of this article which ade-
120 quately takes into account the facts which underlie the
121 factors described in subdivisions (3) and (4), subsection (c)
122 of this section, equitably adjust the definition of the
123 parties' interest in marital property, increasing the interest
124 in marital property of a party adversely affected by the
125 factors considered under said subdivisions who would
126 otherwise be awarded less than one half of the marital
127 property, to an interest not to exceed one half of the
128 marital property;

129 (3) Designate the property which constitutes separate
130 property of the respective parties or the separate property
131 of their children;

132 (4) Determine the extent to which marital property is
133 susceptible to division in accordance with the findings of
134 the court as to the respective interests of the parties
135 therein;

136 (5) In the case of any property which is not susceptible to
137 division, ascertain the projected results of a sale of such
138 property;

139 (6) Ascertain the projected effect of a division or transfer
140 of ownership of income-producing property, in terms of

141 the possible pecuniary loss to the parties or other persons
142 which may result from an impairment of the property's
143 capacity to generate earnings; and

144 (7) Transfer title to such component parts of the marital
145 property as may be necessary to achieve an equitable
146 distribution of the marital property. To make such
147 equitable distribution, the court may:

148 (A) Direct either party to transfer their interest in
149 specific property to the other party;

150 (B) Permit either party to purchase from the other party
151 their interest in specific property;

152 (C) Direct either party to pay a sum of money to the
153 other party in lieu of transferring specific property or an
154 interest therein, if necessary to adjust the equities and
155 rights of the parties, which sum may be paid in install-
156 ments or otherwise, as the court may direct;

157 (D) Direct a party to transfer his or her property to the
158 other party in substitution for property of the other party
159 of equal value which the transferor is permitted to retain
160 and assume ownership of; or

161 (E) Order a sale of specific property and an appropriate
162 division of the net proceeds of such sale: *Provided*, That
163 such sale may be by private sale, or through an agent or by
164 judicial sale, whichever would facilitate a sale within a
165 reasonable time at a fair price.

166 (e) In order to achieve the equitable distribution of
167 marital property, the court shall, unless the parties
168 otherwise agree, order, when necessary, the transfer of
169 legal title to any property of the parties, giving preference
170 to effecting equitable distribution through periodic or
171 lump sum payments: *Provided*, That the court may order
172 the transfer of legal title to motor vehicles, household
173 goods and the former marital domicile without regard to
174 such preference where the court determines it to be
175 necessary or convenient. In any case involving the equita-
176 ble distribution of: (1) Property acquired by bequest,
177 devise, descent, distribution or gift; or (2) ownership
178 interests in a business entity, the court shall, unless the

179 parties otherwise agree, give preference to the retention of
180 the ownership interests in such property. In the case of
181 such business interests, the court shall give preference to
182 the party having the closer involvement, larger ownership
183 interest or greater dependency upon the business entity for
184 income or other resources required to meet responsibilities
185 imposed under this article, and shall also consider the
186 effects of transfer or retention in terms of which alterna-
187 tive will best serve to preserve the value of the business
188 entity or protect the business entity from undue hardship
189 or from interference caused by one of the parties or by the
190 divorce, annulment or decree of separate maintenance:
191 *Provided, however,* That the court may, unless the parties
192 otherwise agree, sever the business relationship of the
193 parties and order the transfer of legal title to ownership
194 interests in the business entity from one party to the other,
195 without regard to the limitations on the transfer of title to
196 such property otherwise provided in this subsection, if
197 such transfer is required to achieve the other purposes of
198 this article: *Provided further,* That in all such cases the
199 court shall order, or the agreement of the parties shall
200 provide for, equitable payment or transfer of legal title to
201 other property, of fair value in money or moneys' worth, in
202 lieu of any ownership interests in a business entity which
203 are ordered to be transferred under this subsection: *And*
204 *provided further,* That the court may order the transfer of
205 such business interests to a third party (such as the
206 business entity itself or another principal in the business
207 entity) where the interests of the parties under this article
208 can be protected and at least one party consents thereto.

209 (f) In any order which divides or transfers the title to any
210 property, determines the ownership or value of any
211 property, designates the specific property to which any
212 party is entitled or grants any monetary award, the court
213 shall set out in detail its findings of fact and conclusions
214 of law, and the reasons for dividing the property in the
215 manner adopted.

216 (g) If an order entered in accordance with the provisions
217 of this article requires the transfer of title to property and
218 a party fails or refuses to execute a deed or other instru-
219 ment necessary to convey title to such property, the deed

220 or other instrument shall be executed by a special commis-
221 sioner appointed by the court for the purpose of effecting
222 such transfer of title pursuant to section seven, article
223 twelve, chapter fifty-five of this code.

224 (h) As to any third party, the doctrine of equitable
225 distribution of marital property and the provisions of this
226 article shall be construed as creating no interest or title in
227 property until and unless an order is entered under this
228 article judicially defining such interest or approving a
229 separation agreement which defines such interest. Neither
230 this article nor the doctrine of equitable distribution of
231 marital property shall be construed to create community
232 property nor any other interest or estate in property except
233 those previously recognized in this state. A husband or
234 wife may alienate property at any time prior to the entry
235 of an order under the provisions of this article or prior to
236 the recordation of a notice of lis pendens in accordance
237 with the provisions of section thirty-five of this article,
238 and at anytime and in any manner not otherwise prohib-
239 ited by an order under this article, in like manner and with
240 like effect as if this article and the doctrine of equitable
241 distribution had not been adopted: *Provided*, That as to
242 any transfer prior to the entry of an order under the
243 provisions of this article, a transfer other than to a bona
244 fide purchaser for value shall be voidable if the court finds
245 such transfer to have been effected to avoid the applica-
246 tion of the provisions of this article or to otherwise be a
247 fraudulent conveyance. Upon the entry of any order under
248 this article or the admission to record of any notice with
249 respect to an action under this article, restraining the
250 alienation of property of a party, a bona fide purchaser for
251 value shall take such title or interest as he or she might
252 have taken prior to the effective date of this section and no
253 purchaser for value need see to the application of the
254 proceeds of such purchase except to the extent he or she
255 would have been required so to do prior to the effective
256 date of this section: *Provided, however*, That as to third
257 parties nothing in this section shall be construed to limit
258 or otherwise defeat the interests or rights to property
259 which any husband or wife would have had in property
260 prior to the enactment of this section or prior to the

261 adoption of the doctrine of equitable distribution by the
262 supreme court of appeals on the twenty-fifth day of May,
263 one thousand nine hundred eighty-three: *Provided*
264 *further*, That no order entered under this article shall be
265 construed to defeat the title of a third party transferee
266 thereof except to the extent that the power to effect such
267 a transfer of title or interest in such property is secured by
268 a valid and duly perfected lien and, as to any personal
269 property, secured by a duly perfected security interest.

270 (i) Notwithstanding the provisions of chapter eleven of
271 this code, no transfer of interest in or title to property
272 under this section shall be taxable as a transfer of property
273 without consideration nor, except as to alimony, create
274 liability for sales, use, inheritance and transfer or income
275 taxes due the state or any political subdivision nor require
276 the payment of the excise tax imposed under article
277 twenty-two, chapter eleven of this code.

278 (j) Whenever under the terms of this article a court enters
279 an order requiring a division of property, if the court
280 anticipates the division of property will be effected by
281 requiring sums to be paid out of "disposable retired or
282 retainer pay" as that term is defined in 10 U. S. C. §1408,
283 relating to members or former members of the uniformed
284 services of the United States, the court shall specifically
285 provide for the payment of an amount, expressed in dollars
286 or as a percentage of disposable retired or retainer pay,
287 from the disposable retired or retainer pay of the payor
288 party to the payee party.

289 (k) A court may not award alimony or order equitable
290 distribution of property between individuals who are not
291 married to one another in accordance with the provisions
292 of article one of this chapter.

293 (l) The amendments to this section effected by the
294 reenactment of this section during the regular session of
295 the Legislature, one thousand nine hundred ninety-six, are
296 to be applied prospectively and shall have no application
297 to any action for annulment, divorce or separate mainte-
298 nance that was commenced on or before the effective date
299 of this section.

§48-2-37. Calculation of interest; accumulation of simple interest; prejudgment interest.

1 (a) If an obligation to pay interest arises under this
 2 chapter and the rate is not specified, the rate is that
 3 specified in section thirty-one, article six, chapter fifty-six
 4 of this code. On or after the ninth day of June, one thou-
 5 sand nine hundred ninety-five, interest shall accrue only
 6 upon the outstanding principal of such obligation. This
 7 section shall be construed to permit the accumulation of
 8 simple interest, and may not be construed to permit the
 9 compounding of interest. Interest which has accrued on
 10 unpaid installments accruing before the ninth day of June,
 11 one thousand nine hundred ninety-five, may not be
 12 modified by any court, irrespective of whether such
 13 installment accrued simple or compound interest: *Pro-*
 14 *vided*, That unpaid installments upon which interest was
 15 compounded before the ninth day of June, one thousand
 16 nine hundred ninety-five, shall accrue only simple interest
 17 thereon on and after the ninth day of June, one thousand
 18 nine hundred ninety-five.

19 (b) Except as otherwise provided in this subsection,
 20 prejudgment interest shall not be awarded in a domestic
 21 relations action. The circuit court may only award
 22 prejudgment interest in a domestic relations action against
 23 a party if the court finds, in writing, that the party en-
 24 gaged in conduct that would violate subsection (b), rule
 25 eleven of the West Virginia rules of civil procedure. If
 26 prejudgment interest is awarded, the court shall calculate
 27 prejudgment interest from the date the offending represen-
 28 tation was presented to the court.

ARTICLE 2A. PREVENTION AND TREATMENT OF DOMESTIC AND FAMILY LAW VIOLENCE.

§48-2A-3. Jurisdiction; venue; effect of petitioner's leaving residence; priority of petitions filed under this article; who may file; full faith and credit; process.

1 (a) *Jurisdiction.* – Circuit courts and magistrate courts,
 2 as constituted under chapter fifty of this code, have
 3 concurrent jurisdiction over proceedings under this article:
 4 *Provided*, That on and after the first day of April, two

5 thousand one, magistrate court jurisdiction shall be
6 limited, and thereafter, full hearings wherein a protective
7 order is sought shall be heard before a circuit judge or a
8 family law master.

9 (b) *Venue.* – The action may be heard in the county in
10 which the domestic or family violence occurred, in the
11 county in which the respondent is living or in the county
12 in which the petitioner is living, either temporarily or
13 permanently. If the parties are married to each other, the
14 action may also be brought in the county in which an
15 action for divorce between the parties may be brought as
16 provided by section eight, article two of this chapter.

17 (c) *Petitioner's rights.* – The petitioner's right to relief
18 under this article shall not be affected by his or her leaving
19 a residence or household to avoid further abuse.

20 (d) *Priority of petitions.* – Any petition filed under the
21 provisions of this article shall be given priority over any
22 other civil action before the court, except actions in which
23 trial is in progress, and shall be docketed immediately
24 upon filing. Any appeal to the circuit court of a magis-
25 trate's judgment on a petition for relief under this article
26 shall be heard within ten working days of the filing of the
27 appeal.

28 (e) *Full faith and credit.* – Any protective order issued
29 pursuant to this article shall be effective throughout the
30 state in every county. Any protective order issued by any
31 other state, territory or possession of the United States,
32 Puerto Rico, the District of Columbia or Indian tribe shall
33 be accorded full faith and credit and enforced as if it were
34 an order of this state whether or not such relief is available
35 in this state. A protective order from another jurisdiction
36 is presumed to be valid if the order appears authentic on
37 its face and shall be enforced in this state. If the validity
38 of the order is contested, the court or law enforcement to
39 which the order is presented shall, prior to the full hearing,
40 determine the existence, validity and terms of such order
41 in the issuing jurisdiction. A protective order from
42 another jurisdiction may be enforced even if the order is
43 not entered into the state law-enforcement information
44 system described by section twelve of this article.

45 (f) *Service by publication.* – A protective order may be
46 served on the respondent by means of a Class I legal
47 advertisement published notice, with the publication area
48 being the county in which the respondent resides, pub-
49 lished in accordance with the provisions of section two,
50 article three, chapter fifty-nine of this code if: (i) The
51 petitioner files an affidavit with the court stating that an
52 attempt at personal service pursuant to rule four of the
53 West Virginia rules of civil procedure has been unsuccess-
54 ful or evidence is adduced at the hearing for the protective
55 order that the respondent has left the state of West Vir-
56 ginia; and (ii) a copy of the order is mailed by certified or
57 registered mail to the respondent at the respondent's last
58 known residence and returned undelivered.

§48-2A-6. Protective orders.

1 (a) At the conclusion of the hearing, if the petitioner has
2 proven the allegations of domestic or family violence, or
3 that he or she reported or witnessed domestic or family
4 violence against another and has, as a result, been abused,
5 threatened, harassed or has been the subject of other
6 actions to attempt to intimidate him or her, by a prepon-
7 derance of the evidence, the court shall issue a protective
8 order directing the respondent to refrain from abusing,
9 harassing, stalking, threatening or otherwise intimidating
10 the petitioner, the person who reported or witnessed
11 family or domestic violence or the minor children, or
12 engaging in other conduct that would place the petitioner,
13 the person who reported or witnessed family or domestic
14 violence or the minor children in reasonable fear of bodily
15 injury. Where the respondent is present at the hearing and
16 elects not to contest the allegations of domestic or family
17 violence or does not contest the relief sought, the peti-
18 tioner is not required to adduce evidence and prove the
19 allegations of domestic or family violence and the court
20 may directly address the issues of the relief requested.

21 (b) Where the petitioner is the victim of domestic or
22 family violence, the terms of a protective order may
23 include:

24 (1) Granting possession to the petitioner of the residence
25 or household jointly resided in at the time the abuse
26 occurred;

27 (2) Awarding temporary custody of or establishing
28 temporary visitation rights with regard to minor children
29 named in the order;

30 (3) Establishing terms of temporary visitation with
31 regard to the minor children named in the order including,
32 but not limited to, requiring third-party supervision of
33 visitations if necessary to protect the petitioner and/or the
34 minor children;

35 (4) Ordering the noncustodial parent to pay to the
36 custodial parent a sum for temporary support and mainte-
37 nance of the petitioner and children, if any;

38 (5) Ordering the respondent to pay to the petitioner a
39 sum for temporary support and maintenance of the
40 petitioner, where appropriate;

41 (6) Ordering the respondent to refrain from entering the
42 school, business or place of employment of the petitioner
43 or household or family members for the purpose of violat-
44 ing the protective order;

45 (7) Ordering the respondent to participate in an inter-
46 vention program for perpetrators;

47 (8) Ordering the respondent to refrain from contacting,
48 telephoning, communicating, harassing or verbally
49 abusing the petitioner;

50 (9) Providing for either party to obtain personal property
51 or other items from a location, including granting tempo-
52 rary possession of motor vehicles owned by either or both
53 of the parties, and providing for the safety of the parties
54 while this occurs, including ordering a law-enforcement
55 officer to accompany one or both of the parties;

56 (10) Prohibiting the respondent from using or possessing
57 a firearm or other weapon, notwithstanding the fact that
58 the respondent has a valid license to possess such firearm
59 or other weapon;

60 (11) Informing the respondent that possession of a
61 firearm while subject to a protective order is a violation of
62 federal law;

63 (12) Ordering the respondent to reimburse the petitioner
64 or other person for any expenses incurred as a result of the
65 domestic or family violence, including, but not limited to,
66 medical expenses, transportation and shelter; and

67 (13) Ordering the petitioner and respondent to refrain
68 from transferring, conveying, alienating, encumbering or
69 otherwise dealing with property which could otherwise be
70 subject to the jurisdiction of the court or another court in
71 an action for divorce or support, partition or in any other
72 action affecting their interests in property.

73 (c) Where the petitioner or other person to be protected
74 reported or was a witness to the family or domestic
75 violence, the terms of a protective order may include:

76 (1) Ordering the respondent to refrain from abusing,
77 contacting, telephoning, communicating, harassing,
78 verbally abusing or otherwise intimidating the petitioner
79 or other person to be protected; and

80 (2) Ordering the respondent to refrain from entering the
81 school, business or place of employment of the petitioner
82 or other person to be protected, for the purpose of violat-
83 ing the protective order.

84 (d) Except as otherwise provided by subsection (d),
85 section three-a of this article, a protective order issued by
86 a magistrate, family law master or circuit judge pursuant
87 to this article or subdivision (13), subsection (a), article
88 two of this chapter, is effective for either ninety days or
89 one hundred eighty days, in the discretion of the court. If
90 the court enters an order for a period of ninety days, upon
91 receipt of a written request from the petitioner prior to the
92 expiration of the ninety-day period, the court shall extend
93 its order for an additional ninety-day period.

94 (e) To be effective, a written request to extend an order
95 from ninety days to one hundred eighty days must be
96 submitted to the court prior to the expiration of the
97 original ninety-day period. A notice of the extension shall

98 be sent by the clerk of the court to the respondent by first
99 class mail, addressed to the last known address of the
100 respondent as indicated by the court's case filings. The
101 extension of time is effective upon mailing of the notice.

102 (f) The court may amend the terms of a protective order
103 at any time upon subsequent petition filed by either party.
104 The protective order shall be in full force and effect in
105 every county of this state and shall so state.

106 (g) No order under this article shall in any manner affect
107 title to any real property.

108 (h) Certified copies of any order or extension notice
109 made under the provisions of this section shall be issued to
110 the petitioner, the respondent and any law-enforcement
111 agency having jurisdiction to enforce the order, including
112 the city police, the county sheriff's office or local office of
113 the West Virginia state police within twenty-four hours of
114 the entry of the order.

115 (i) Mutual protective orders are prohibited unless both
116 parties have filed a petition under section four of this
117 article and have proven the allegations of domestic or
118 family violence by a preponderance of the evidence. This
119 shall not prevent other persons, including the respondent,
120 from filing a separate petition. The court may consolidate
121 two or more petitions if he or she determines that consoli-
122 dation will further the interests of justice and judicial
123 economy. The court shall enter a separate order for each
124 petition filed.

125 (j) Any protective order issued pursuant to this article
126 shall contain on its face the following statement, printed
127 in bold-faced type or in capital letters:

128 **"VIOLATION OF THIS ORDER MAY BE PUNISHED**
129 **BY CONFINEMENT IN A REGIONAL OR COUNTY JAIL**
130 **FOR AS LONG AS ONE YEAR AND BY A FINE OF AS**
131 **MUCH AS TWO THOUSAND DOLLARS"**

132 (k) Any person against whom a protective order is issued
133 after a full hearing pursuant to this section shall be
134 assessed a fee of twenty-five dollars. Such fee shall be
135 paid to the family court fund established pursuant to

136 section twenty-three, article four, chapter forty-eight-a of
137 this code.

138 (l) The supreme court of appeals shall promulgate a
139 procedural rule to establish time-keeping requirements for
140 magistrates, magistrate court clerks and magistrate
141 assistants so as to assure the maximum funding of incen-
142 tive payments, grants and other funding sources available
143 to the state for the processing of cases filed for the estab-
144 lishment of temporary orders of child support pursuant to
145 the provisions of this section.

ARTICLE 2C. DOMESTIC VIOLENCE ACT.

§48-2C-4c. Domestic violence legal services fund.

1 There is hereby established in the state treasury a special
2 revenue account, designated as the "domestic violence
3 legal services fund", which shall be an appropriated fund
4 for receipt of grants, gifts, fees, or federal or state funds
5 designated for legal services for domestic violence victims.
6 Expenditures from the fund shall be limited to attorneys
7 employed by domestic violence shelters, or employed by
8 nonprofit agencies which establish a collaborative rela-
9 tionship with a domestic violence shelter, that provide
10 civil legal services to victims of domestic violence.

**ARTICLE 11. ALLOCATION OF CUSTODIAL AND DECISION-MAKING
RESPONSIBILITY FOR CHILDREN.**

PART 1. SCOPE, OBJECTIVES, DEFINITIONS AND PARTIES.

**§48-11-101. Scope of article; legislative findings and declara-
tions.**

1 (a) This article sets forth principles governing the
2 allocation of custodial and decision-making responsibility
3 for a minor child when the parents do not live together.

4 (b) The Legislature finds and declares that it is the
5 public policy of this state to assure that the best interest of
6 children is the court's primary concern in allocating
7 custodial and decision-making responsibilities between
8 parents who do not live together. In furtherance of this
9 policy, the Legislature declares that a child's best interest
10 will be served by assuring that minor children have

11 frequent and continuing contact with parents who have
12 shown the ability to act in the best interest of their chil-
13 dren, to educate parents on their rights and responsibilities
14 and the effect their separation may have on children, to
15 encourage mediation of disputes, and to encourage parents
16 to share in the rights and responsibilities of rearing their
17 children after the parents have separated or divorced.

§48-11-102. Objectives; best interests of the child defined.

- 1 (a) The primary objective of this article is to serve the
2 child's best interests, by facilitating:
- 3 (1) Stability of the child;
 - 4 (2) Parental planning and agreement about the child's
5 custodial arrangements and upbringing;
 - 6 (3) Continuity of existing parent-child attachments;
 - 7 (4) Meaningful contact between a child and each parent;
 - 8 (5) Caretaking relationships by adults who love the child,
9 know how to provide for the child's needs, and who place
10 a high priority on doing so;
 - 11 (6) Security from exposure to physical or emotional
12 harm; and
 - 13 (7) Expedient, predictable decisionmaking and avoid-
14 ance of prolonged uncertainty respecting arrangements for
15 the child's care and control.
- 16 (b) A secondary objective of article is to achieve fairness
17 between the parents.

§48-11-103. Parties to an action under this article.

- 1 (1) Persons who have a right to be notified of and
2 participate as a party in an action filed by another are:
- 3 (a) A legal parent of the child, as defined in section one,
4 article two of this chapter;
 - 5 (b) An adult allocated custodial responsibility or
6 decision-making responsibility under a parenting plan
7 regarding the child that is then in effect; or

8 (c) Persons who were parties to a prior order establishing
9 custody and visitation, or who, under a parenting plan,
10 were allocated custodial responsibility or decision-making
11 responsibility.

12 (2) In exceptional cases the court may, in its discretion,
13 grant permission to intervene to other persons or public
14 agencies whose participation in the proceedings under this
15 article it determines is likely to serve the child's best
16 interests. The court may place limitations on participation
17 by the intervening party as the court determines to be
18 appropriate. Such persons or public agencies do not have
19 standing to initiate an action under this article.

§48-11-104. Parent education classes.

1 (a) A circuit court shall, by administrative rule or order,
2 and with the approval of the supreme court of appeals,
3 designate an organization or agency to establish and
4 operate education programs designed for parents who have
5 filed an action for divorce, paternity, support, separate
6 maintenance or other custody proceeding and who have
7 minor children. The education programs shall be designed
8 to instruct and educate parents about the effects of divorce
9 and custody disputes on their children and to teach
10 parents ways to help their children and minimize their
11 trauma.

12 (b) The circuit court shall issue an order requiring
13 parties to an action for divorce involving a minor child or
14 children to attend parent education classes established
15 pursuant to subsection (a) of this section unless the court
16 determines that attendance is not appropriate or necessary
17 based on the conduct or circumstances of the parties. The
18 court may, by order, establish sanctions for failure to
19 attend. The court may also order parties to an action
20 involving paternity, separate maintenance or modification
21 of a divorce decree to attend such classes.

22 (c) The circuit court may require that each person
23 attending a parent education class pay a fee, not to exceed
24 twenty-five dollars, to the clerk of such court to defray the
25 cost of materials and of hiring teachers: *Provided*, That
26 where it is determined that a party is indigent and unable

27 to pay for such classes, the court shall waive the payment
28 of the fee for such party. The clerk of the circuit court
29 shall, on or before the tenth day of each month, transmit
30 all fees collected under this subsection to the state trea-
31 surer for deposit in the state treasury to the credit of
32 special revenue fund to be known as the "parent education
33 fund", which is hereby created. All moneys collected and
34 received under this subsection and paid into the state
35 treasury and credited to the parent education fund shall be
36 used by the administrative office of the supreme court of
37 appeals solely for reimbursing the provider of parent
38 education classes for the costs of materials and of provid-
39 ing such classes. Such moneys shall not be treated by the
40 auditor and treasurer as part of the general revenue of the
41 state.

42 (d) The administrative office of the supreme court of
43 appeals shall submit a report to the joint committee on
44 government and finance summarizing the effectiveness of
45 any program of parent education no later than two years
46 from the initiation of the program.

PART 2. PARENTING PLANS.

§48-11-201. Parenting agreements.

1 (a) If the parents agree to one or more provisions of a
2 parenting plan, the court shall so order, unless it makes
3 specific findings that:

4 (1) The agreement is not knowing or voluntary; or

5 (2) The plan would be harmful to the child.

6 (b) The court, at its discretion and on any basis it deems
7 sufficient, may conduct an evidentiary hearing to deter-
8 mine whether there is a factual basis for a finding under
9 subdivision (1) or (2), subsection (a) of this section. When
10 there is credible information that child abuse as defined by
11 section three, article one, chapter forty-nine of this code or
12 domestic violence as defined by section two, article two-a,
13 chapter forty-eight-a of this code has occurred, a hearing
14 is mandatory and if the court determines that abuse has
15 occurred, appropriate protective measures shall be or-
16 dered.

17 (c) If an agreement, in whole or in part, is not accepted
18 by the court under the standards set forth in subsection (a)
19 of this section, the court shall allow the parents the
20 opportunity to negotiate another agreement.

§48-11-202. Court-ordered services.

1 (a) (1) The court shall inform the parents, or require
2 them to be informed, about:

3 (A) How to prepare a parenting plan;

4 (B) The impact of family dissolution on children and how
5 the needs of children facing family dissolution can best be
6 addressed;

7 (C) The impact of domestic abuse on children, and
8 resources for addressing domestic abuse; and

9 (D) Mediation or other nonjudicial procedures designed
10 to help them achieve an agreement.

11 (2) The court shall require the parents to attend parent
12 education classes.

13 (3) If parents are unable to resolve issues and agree to a
14 parenting plan, the court shall require mediation, unless
15 application of the procedural rules promulgated pursuant
16 to the provisions of subsection (b) of this section indicates
17 that mediation is inappropriate in the particular case.

18 (b) The supreme court of appeals shall make and promul-
19 gate rules that will provide for premediation screening
20 procedures to determine whether domestic violence, child
21 abuse or neglect, acts or threats of duress or coercion,
22 substance abuse, mental illness or other such elements
23 would adversely affect the safety of a party, the ability of
24 a party to meaningfully participate in the mediation, or
25 the capacity of a party to freely and voluntarily consent to
26 any proposed agreement reached as a result of the media-
27 tion. Such rules shall authorize a family law master or
28 judge to consider alternatives to mediation which may aid
29 the parties in establishing a parenting plan. Such rules
30 shall not establish a per se bar to mediation if domestic
31 violence, child abuse or neglect, acts or threats of duress or
32 coercion, substance abuse, mental illness or other such

33 elements exist, but may be the basis for the court, in its
34 discretion, not to order services under subsection (a) of this
35 section, or not to require a parent to have face-to-face
36 meetings with the other parent.

37 (c) A mediator shall not make a recommendation to the
38 court and may not reveal information that either parent
39 has disclosed during mediation under a reasonable expect-
40 ation of confidentiality, except that a mediator may
41 reveal to the court credible information that he or she has
42 received concerning domestic violence or child abuse.

43 (d) Mediation services authorized under subsection (a) of
44 this section shall be ordered at an hourly cost that is
45 reasonable in light of the financial circumstances of each
46 parent, assessed on a uniform sliding scale. Where one
47 parent's ability to pay for such services is significantly
48 greater than the other, the court may order that parent to
49 pay some or all of the expenses of the other. State reve-
50 nues shall not be used to defray the costs for the services
51 of a mediator: *Provided*, That the supreme court of appeals
52 may use a portion of its budget to pay administrative costs
53 associated with establishing and operating mediation
54 programs: *Provided, however*, That grants and gifts to the
55 state that may be used to fund mediation are not to be
56 considered as state revenues for purposes of this subsec-
57 tion.

58 (e) The supreme court of appeals shall establish stan-
59 dards for the qualification and training of mediators.

**§48-11-203. Proposed temporary parenting plan; temporary
order; amendment; vacation of order.**

1 (a) A parent seeking a temporary order relating to
2 parenting shall file and serve a proposed temporary
3 parenting plan by motion. The other parent, if contesting
4 the proposed temporary parenting plan, shall file and
5 serve a responsive proposed parenting plan. Either parent
6 may move to have a proposed temporary parenting plan
7 entered as part of a temporary order. The parents may
8 enter an agreed temporary parenting plan at any time as
9 part of a temporary order. The proposed temporary
10 parenting plan may be supported by relevant evidence and

11 shall be verified and shall state at a minimum the follow-
12 ing:

13 (1) The name, address and length of residence with the
14 person or persons with whom the child has lived for the
15 preceding twelve months;

16 (2) The performance by each parent during the last
17 twelve months of the parenting functions relating to the
18 daily needs of the child;

19 (3) The parents' work and child-care schedules for the
20 preceding twelve months;

21 (4) The parents' current work and child-care schedules;
22 and

23 (5) Any of the circumstances set forth in section two
24 hundred nine of this article that are likely to pose a serious
25 risk to the child and that warrant limitation on the award
26 to a parent of temporary residence or time with the child
27 pending entry of a permanent parenting plan.

28 (b) At the hearing, the court shall enter a temporary
29 parenting order incorporating a temporary parenting plan
30 which includes:

31 (1) A schedule for the child's time with each parent when
32 appropriate;

33 (2) Designation of a temporary residence for the child;

34 (3) Allocation of decision-making authority, if any.
35 Absent allocation of decision-making authority consistent
36 with section two hundred seven of this article, neither
37 party shall make any decision for the child other than
38 those relating to day-to-day or emergency care of the
39 child, which shall be made by the party who is present
40 with the child;

41 (4) Provisions for temporary support for the child; and

42 (5) Restraining orders, if applicable.

43 (c) A parent may make a motion for an order to show
44 cause and the court may enter a temporary order, includ-

45 ing a temporary parenting plan, upon a showing of necessity.

46 (d) A parent may move for amendment of a temporary
47 parenting plan, and the court may order amendment to the
48 temporary parenting plan, if the amendment conforms to
49 the limitations of section two hundred nine of this article
50 and is in the best interest of the child.

§48-11-204. Criteria for temporary parenting plan.

1 (a) After considering the proposed temporary parenting
2 plan filed pursuant to section two hundred three of this
3 article and other relevant evidence presented, the court
4 shall make a temporary parenting plan that is in the best
5 interest of the child. In making this determination, the
6 court shall give particular consideration to:

7 (1) Which parent has taken greater responsibility during
8 the last twelve months for performing caretaking func-
9 tions relating to the daily needs of the child; and

10 (2) Which parenting arrangements will cause the least
11 disruption to the child's emotional stability while the
12 action is pending.

13 (b) The court shall also consider the factors used to
14 determine residential provisions in the permanent
15 parenting plan.

16 (c) Upon credible evidence of one or more of the circum-
17 stances set forth in subsection (a), section two hundred
18 nine of this article, the court shall issue a temporary order
19 limiting or denying access to the child as required by that
20 section, in order to protect the child or the other party,
21 pending adjudication of the underlying facts.

22 (d) Expedited procedures shall be instituted to facilitate
23 the prompt issuance of a parenting plan.

§48-11-205. Permanent parenting plan.

1 (a) A party seeking a judicial allocation of custodial
2 responsibility or decision-making responsibility under this
3 article shall file a proposed parenting plan with the court.
4 Parties may file a joint plan. A proposed plan shall be

5 verified and shall state, to the extent known or reasonably
6 discoverable by the filing party or parties:

7 (1) The name, address and length of residence of any
8 adults with whom the child has lived for one year or more,
9 or in the case of a child less than one year old, any adults
10 with whom the child has lived since the child's birth;

11 (2) The name and address of each of the child's parents
12 and any other individuals with standing to participate in
13 the action under section one hundred three of this article;

14 (3) A description of the allocation of caretaking and
15 other parenting responsibilities performed by each person
16 named in subdivisions (1) and (2) of this subsection during
17 the twenty-four months preceding the filing of an action
18 under this article;

19 (4) A description of the work and child-care schedules of
20 any person seeking an allocation of custodial responsibil-
21 ity, and any expected changes to these schedules in the
22 near future;

23 (5) A description of the child's school and extracurricu-
24 lar activities;

25 (6) A description of any of the limiting factors as de-
26 scribed in section two hundred nine of this article that are
27 present, including any restraining orders against either
28 parent to prevent domestic or family violence, by case
29 number and jurisdiction;

30 (7) Required financial information; and

31 (8) A description of the known areas of agreement and
32 disagreement with any other parenting plan submitted in
33 the case.

34 The court shall maintain the confidentiality of any
35 information required to be filed under this section when
36 the person giving that information has a reasonable fear of
37 domestic abuse and disclosure of the information would
38 increase that fear.

39 (b) The court shall develop a process to identify cases in
40 which there is credible information that child abuse or

41 neglect, as defined in section three, article one, chapter
42 forty-nine of this code, or domestic or family violence as
43 defined in section one hundred twenty-one, article two of
44 this chapter has occurred. The process shall include
45 assistance for possible victims of domestic abuse in
46 complying with subdivision (6), subsection (a) of this
47 section, and referral to appropriate resources for safe
48 shelter, counseling, safety planning, information regarding
49 the potential impact of domestic abuse on children, and
50 information regarding civil and criminal remedies for
51 domestic abuse. The process shall also include a system
52 for ensuring that jointly submitted parenting plans that
53 are filed in cases in which there is credible information
54 that child abuse or domestic abuse has occurred receive
55 the court review that is mandated by subdivision (b),
56 section two hundred one of this article.

57 (c) Upon motion of a party and after consideration of the
58 evidence, the court shall order a parenting plan consistent
59 with the provisions of sections two hundred six through
60 two hundred nine of this article, containing:

61 (1) A provision for the child's living arrangements and
62 each parent's custodial responsibility, which shall include
63 either:

64 (A) A custodial schedule that designates in which par-
65 ent's home each minor child will reside on given days of
66 the year; or

67 (B) A formula or method for determining such a schedule
68 in sufficient detail that, if necessary, the schedule can be
69 enforced in subsequent proceedings by the court;

70 (2) An allocation of decision-making responsibility as to
71 significant matters reasonably likely to arise with respect
72 to the child; and

73 (3) A provision consistent with section two hundred two
74 of this article for resolution of disputes that arise under
75 the plan, and remedies for violations of the plan.

76 (d) A parenting plan may, at the court's discretion,
77 contain provisions that address matters that are expected
78 to arise in the event of a party's relocation, or provide for

79 future modifications in the parenting plan if specified
80 contingencies occur.

§48-11-206. Allocation of custodial responsibility.

1 (a) Unless otherwise resolved by agreement of the
2 parents under section two hundred one of this article or
3 unless manifestly harmful to the child, the court shall
4 allocate custodial responsibility so that the proportion of
5 custodial time the child spends with each parent approxi-
6 mates the proportion of time each parent spent performing
7 caretaking functions for the child prior to the parents'
8 separation or, if the parents never lived together, before
9 the filing of the action, except to the extent required under
10 section two hundred nine of this article or necessary to
11 achieve any of the following objectives:

12 (1) To permit the child to have a relationship with each
13 parent who has performed a reasonable share of parenting
14 functions;

15 (2) To accommodate the firm and reasonable preferences
16 of a child who is fourteen years of age or older, and with
17 regard to a child under fourteen years of age, but suffi-
18 ciently matured that he or she can intelligently express a
19 voluntary preference for one parent, to give that prefer-
20 ence such weight as circumstances warrant;

21 (3) To keep siblings together when the court finds that
22 doing so is necessary to their welfare;

23 (4) To protect the child's welfare when, under an other-
24 wise appropriate allocation, the child would be harmed
25 because of a gross disparity in the quality of the emotional
26 attachments between each parent and the child or in each
27 parent's demonstrated ability or availability to meet a
28 child's needs;

29 (5) To take into account any prior agreement of the
30 parents that, under the circumstances as a whole including
31 the reasonable expectations of the parents in the interest
32 of the child, would be appropriate to consider;

33 (6) To avoid an allocation of custodial responsibility that
34 would be extremely impractical or that would interfere

35 substantially with the child's need for stability in light of
36 economic, physical or other circumstances, including the
37 distance between the parents' residences, the cost and
38 difficulty of transporting the child, the parents' and child's
39 daily schedules, and the ability of the parents to cooperate
40 in the arrangement;

41 (7) To apply the principles set forth in subsection (d),
42 section four hundred three of this article if one parent
43 relocates or proposes to relocate at a distance that will
44 impair the ability of a parent to exercise the amount of
45 custodial responsibility that would otherwise be ordered
46 under this section; and

47 (8) To consider the stage of a child's development.

48 (b) In determining the proportion of caretaking functions
49 each parent previously performed for the child under
50 subsection (a) of this section, the court shall not consider
51 the divisions of functions arising from temporary arrange-
52 ments after separation, whether those arrangements are
53 consensual or by court order. The court may take into
54 account information relating to the temporary arrange-
55 ments in determining other issues under this section.

56 (c) If the court is unable to allocate custodial responsi-
57 bility under subsection (a) of this section because the
58 allocation under that subsection would be manifestly
59 harmful to the child, or because there is no history of past
60 performance of caretaking functions, as in the case of a
61 newborn, or because the history does not establish a
62 pattern of caretaking sufficiently dispositive of the issues
63 of the case, the court shall allocate custodial responsibility
64 based on the child's best interest, taking into account the
65 factors in considerations that are set forth in this section
66 and in section two hundred nine and subsection (d), section
67 four hundred three of this article and preserving to the
68 extent possible this section's priority on the share of past
69 caretaking functions each parent performed.

70 (d) In determining how to schedule the custodial time
71 allocated to each parent, the court shall take account of
72 the economic, physical and other practical circumstances

73 such as those listed in subdivision (6), subsection (a) of this
74 section.

§48-11-207. Allocation of significant decision-making responsibility.

1 (a) Unless otherwise resolved by agreement of the
2 parents under section two hundred one of this article, the
3 court shall allocate responsibility for making significant
4 life decisions on behalf of the child, including the child's
5 education and health care, to one parent or to two parents
6 jointly, in accordance with the child's best interest, in light
7 of:

8 (1) The allocation of custodial responsibility under
9 section two hundred six of this article;

10 (2) The level of each parent's participation in past
11 decisionmaking on behalf of the child;

12 (3) The wishes of the parents;

13 (4) The level of ability and cooperation the parents have
14 demonstrated in decisionmaking on behalf of the child;

15 (5) Prior agreements of the parties; and

16 (6) The existence of any limiting factors, as set forth in
17 section two hundred nine of this article.

18 (b) If each of the child's legal parents has been exercising
19 a reasonable share of parenting functions for the child, the
20 court shall presume that an allocation of decision-making
21 responsibility to both parents jointly is in the child's best
22 interests. The presumption is overcome if there is a history
23 of domestic abuse, or by a showing that joint allocation of
24 decision-making responsibility is not in the child's best
25 interest.

26 (c) Unless otherwise provided or agreed by the parents,
27 each parent who is exercising custodial responsibility shall
28 be given sole responsibility for day-to-day decisions for
29 the child, while the child is in that parent's care and
30 control, including emergency decisions affecting the health
31 and safety of the child.

§48-11-208. Criteria for parenting plan; dispute resolution.

1 (a) If provisions for resolving parental disputes are not
2 ordered by the court pursuant to parenting agreement
3 under section two hundred one of this article, the court
4 shall order a method of resolving disputes that serves the
5 child's best interest in light of:

6 (1) The parents' wishes and the stability of the child;

7 (2) Circumstances, including, but not limited to, finan-
8 cial circumstances, that may affect the parents ability to
9 participate in a prescribed dispute resolution process; and

10 (3) The existence of any limiting factor, as set forth in
11 section two hundred nine of this article.

12 (b) The court may order a nonjudicial process of dispute
13 resolution by designating with particularity the person or
14 agency to conduct the process or the method for selecting
15 such a person or agency. The disposition of a dispute
16 through a nonjudicial method of dispute resolution that
17 has been ordered by the court without prior parental
18 agreement is subject to de novo judicial review. If the
19 parents have agreed in a parenting plan or by agreement
20 thereafter to a binding resolution of their dispute by
21 nonjudicial means, a decision by such means is binding
22 upon the parents and must be enforced by the court, unless
23 it is shown to be contrary to the best interests of the child,
24 beyond the scope of the parents' agreement, or the result
25 of fraud, misconduct, corruption or other serious irregu-
26 larity.

27 (c) This section is subject to the limitations imposed by
28 section two hundred two of this article.

§48-11-209. Parenting plan; limiting factors.

1 (a) If either of the parents so requests, or upon receipt of
2 credible information thereof, the court shall determine
3 whether a parent who would otherwise be allocated
4 responsibility under a parenting plan:

5 (1) Has abused, neglected or abandoned a child, as
6 defined by state law;

- 7 (2) Has sexually assaulted or sexually abused a child as
8 those terms are defined in articles eight-b and eight-d,
9 chapter sixty-one of this code;
- 10 (3) Has committed domestic violence, as defined in
11 section two, article two-a of this chapter;
- 12 (4) Has interfered persistently with the other parent's
13 access to the child, except in the case of actions taken for
14 the purpose of protecting the safety of the child or the
15 interfering parent or another family member, pending
16 adjudication of the facts underlying that belief; or
- 17 (5) Has repeatedly made fraudulent reports of domestic
18 violence or child abuse.
- 19 (b) If a parent is found to have engaged in any activity
20 specified by subsection (a) of this section, the court shall
21 impose limits that are reasonably calculated to protect the
22 child or child's parent from harm. The limitations that the
23 court shall consider include, but are not limited to:
- 24 (1) An adjustment of the custodial responsibility of the
25 parents, including the allocation of exclusive custodial
26 responsibility to one of them;
- 27 (2) Supervision of the custodial time between a parent
28 and the child;
- 29 (3) Exchange of the child between parents through an
30 intermediary, or in a protected setting;
- 31 (4) Restraints on the parent from communication with or
32 proximity to the other parent or the child;
- 33 (5) A requirement that the parent abstain from posses-
34 sion or consumption of alcohol or nonprescribed drugs
35 while exercising custodial responsibility and in the
36 twenty-four hour period immediately preceding such
37 exercise;
- 38 (6) Denial of overnight custodial responsibility;
- 39 (7) Restrictions on the presence of specific persons while
40 the parent is with the child;

41 (8) A requirement that the parent post a bond to secure
42 return of the child following a period in which the parent
43 is exercising custodial responsibility or to secure other
44 performance required by the court;

45 (9) A requirement that the parent complete a program of
46 intervention for perpetrators of domestic violence, for drug
47 or alcohol abuse, or a program designed to correct another
48 factor; or

49 (10) Any other constraints or conditions that the court
50 deems necessary to provide for the safety of the child, a
51 child's parent or any person whose safety immediately
52 affects the child's welfare.

53 (c) If a parent is found to have engaged in any activity
54 specified in subsection (a) of this section, the court may
55 not allocate custodial responsibility or decision-making
56 responsibility to that parent without making special
57 written findings that the child and other parent can be
58 adequately protected from harm by such limits as it may
59 impose under subsection (b) of this section. The parent
60 found to have engaged in the behavior specified in subsec-
61 tion (a) of this section has the burden of proving that an
62 allocation of custodial responsibility or decision-making
63 responsibility to that parent will not endanger the child or
64 the other parent.

PART 3. FACT FINDING.

§48-11-301. Court-ordered investigation.

1 (a) In its discretion, the court may order a written
2 investigation and report to assist it in determining any
3 issue relevant to proceedings under this article. The
4 investigation and report may be made by the guardian ad
5 litem, the staff of the court or other professional social
6 service organization experienced in counseling children
7 and families. The court shall specify the scope of the
8 investigation or evaluation and the authority of the
9 investigator.

10 (b) In preparing the report concerning a child, the
11 investigator may consult any person who may have
12 information about the child and the potential parenting or

13 custodian arrangements. Upon order of the court, the
14 investigator may refer the child to professional personnel
15 for diagnosis. The investigator may consult with and
16 obtain information from medical, psychiatric or other
17 expert persons who have served the child in the past
18 without obtaining the consent of the parent or the child's
19 custodian; but the child's consent must be obtained if the
20 child has reached the age of twelve, unless the court finds
21 that the child lacks mental capacity to consent. If the
22 requirements of subsection (c) of this section are fulfilled,
23 the investigator's report may be received in evidence at the
24 hearing.

25 (c) The investigator shall deliver the investigator's report
26 to counsel and to any party not represented by counsel at
27 least ten days prior to the hearing unless a shorter time is
28 ordered by the court for good cause shown. The investiga-
29 tor shall make available to counsel and to any party not
30 represented by counsel the investigator's file of underlying
31 data and reports, complete texts of diagnostic reports
32 made to the investigator pursuant to the provisions of
33 subsection (b) of this section, and the names and addresses
34 of all persons whom the investigator has consulted. Any
35 party to the proceeding may call the investigator and any
36 person whom the investigator has consulted for
37 cross-examination. A party may not waive the right of
38 cross-examination prior to the hearing.

39 (e) Services and tests ordered under this section shall be
40 ordered only if at no cost to the individuals involved, or at
41 a cost that is reasonable in light of the available financial
42 resources.

§48-11-302. Appointment of guardian.

1 (a) In its discretion, the court may appoint a guardian ad
2 litem to represent the child's best interests. The court shall
3 specify the terms of the appointment, including the guard-
4 ian's role, duties and scope of authority.

5 (b) In its discretion, the court may appoint a lawyer to
6 represent the child, if the child is competent to direct the
7 terms of the representation and court has a reasonable
8 basis for finding that the appointment would be helpful in

9 resolving the issues of the case. The court shall specify the
10 terms of the appointment, including the lawyer's role,
11 duties and scope of authority.

12 (c) When substantial allegations of domestic abuse have
13 been made, the court shall order an investigation under
14 section three hundred one of this article or make an
15 appointment under subsection (a) or (b) of this section,
16 unless the court is satisfied that the information necessary
17 to evaluate the allegations will be adequately presented to
18 the court without such order or appointment.

19 (d) Subject to whatever restrictions the court may
20 impose or that may be imposed by the attorney-client
21 privilege or by subsection (d), section two hundred two of
22 this article, the court may require the child or parent to
23 provide information to an individual or agency appointed
24 by the court under section three hundred one of this article
25 or subsection (a) or (b) of this section, and it may require
26 any person having information about the child or parent
27 to provide that information, even in the absence of consent
28 by a parent or by the child, except if the information is
29 otherwise protected by law.

30 (e) The investigator who submits a report or evidence to
31 the court that has been requested under section three
32 hundred one of this article and a guardian ad litem
33 appointed under subsection (a) of this section who submits
34 information or recommendations to the court are subject
35 to cross-examination by the parties. A lawyer appointed
36 under subsection (b) of this section may not be a witness in
37 the proceedings, except as allowed under standards
38 applicable in other civil proceedings.

39 (f) Services and tests ordered under this section shall be
40 ordered only if at no cost to the individuals involved, or at
41 a cost that is reasonable in light of the available financial
42 resources.

§48-11-303. Interview of the child by the court.

1 The court, in its discretion, may interview the child in
2 chambers or direct another person to interview the child,
3 in order to obtain information relating to the issues of the

4 case. The interview shall be conducted in accordance with
5 rule 16 of the rules of practice and procedure for family
6 law, as promulgated by the supreme court of appeals.

PART 4. MODIFICATION OF PARENTING PLAN.

§48-11-401. Modification upon showing of changed circumstances or harm.

1 (a) Except as provided in section four hundred two or
2 four hundred three of this article, a court shall modify a
3 parenting plan order if it finds, on the basis of facts that
4 were not known or have arisen since the entry of the prior
5 order and were not anticipated therein, that a substantial
6 change has occurred in the circumstances of the child or of
7 one or both parents and a modification is necessary to
8 serve the best interests of the child.

9 (b) In exceptional circumstances, a court may modify a
10 parenting plan if it finds that the plan is not working as
11 contemplated and in some specific way is manifestly
12 harmful to the child, even if a substantial change of
13 circumstances has not occurred.

14 (c) Unless the parents have agreed otherwise, the follow-
15 ing circumstances do not justify a significant modification
16 of a parenting plan except where harm to the child is
17 shown:

18 (1) Circumstances resulting in an involuntary loss of
19 income, by loss of employment or otherwise, affecting the
20 parent's economic status;

21 (2) A parent's remarriage or cohabitation; and

22 (3) Choice of reasonable caretaking arrangements for the
23 child by a legal parent, including the child's placement in
24 day care.

25 (d) For purposes of subsection (a) of this section, the
26 occurrence or worsening of a limiting factor, as defined in
27 subsection (a), section two hundred nine of this article,
28 after a parenting plan has been ordered by the court,
29 constitutes a substantial change of circumstances and
30 measures shall be ordered pursuant to section two hundred

31 nine of this article to protect the child or the child's parent.

§48-11-402. Modification without showing of changed circumstances.

1 (a) The court shall modify a parenting plan in accordance with a parenting agreement, unless it finds that the agreement is not knowing and voluntary or that it would be harmful to the child.

5 (b) The court may modify any provisions of the parenting plan without the showing of change circumstances required by subsection (a), section four hundred one of this article if the modification is in the child's best interests, and the modification:

10 (1) Reflects the de facto arrangements under which the child has been receiving care from the petitioner, without objection, in substantial deviation from the parenting plan, for the preceding six months before the petition for modification is filed, provided the arrangement is not the result of a parent's acquiescence resulting from the other parent's domestic abuse;

17 (2) Constitutes a minor modification in the plan; or

18 (3) Is necessary to accommodate the reasonable and firm preferences of a child who has attained the age of fourteen.

20 (c) Evidence of repeated filings of fraudulent reports of domestic violence or child abuse is admissible in a domestic relations action between the involved parties when the allocation of custodial responsibilities is in issue, and the fraudulent accusations may be a factor considered by the court in making the allocation of custodial responsibilities.

§48-11-403. Relocation of a parent.

1 (a) The relocation of a parent constitutes a substantial change in the circumstances under subsection (a), section four hundred one of this article of the child only when it significantly impairs either parent's ability to exercise responsibilities that the parent has been exercising.

6 (b) Unless otherwise ordered by the court, a parent who has responsibility under a parenting plan who changes, or

8 intends to change, residences for more than ninety days
9 must give a minimum of sixty days' advance notice, or the
10 most notice practicable under the circumstances, to any
11 other parent with responsibility under the same parenting
12 plan. Notice shall include:

- 13 (1) The relocation date;
- 14 (2) The address of the intended new residence;
- 15 (3) The specific reasons for the proposed relocation;
- 16 (4) A proposal for how custodial responsibility shall be
17 modified, in light of the intended move; and
- 18 (5) Information for the other parent as to how he or she
19 may respond to the proposed relocation or modification of
20 custodial responsibility.

21 Failure to comply with the notice requirements of this
22 section without good cause may be a factor in the determi-
23 nation of whether the relocation is in good faith under
24 subsection (d) of this section, and is a basis for an award of
25 reasonable expenses and reasonable attorneys fees to
26 another parent that are attributable to such failure.

27 The supreme court of appeals shall make available
28 through the offices of the circuit clerks and the family law
29 masters a form notice that complies with the provisions of
30 this subsection. The supreme court of appeals shall
31 promulgate procedural rules that provide for an expedited
32 hearing process to resolve issues arising from a relocation
33 or proposed relocation.

34 (c) When changed circumstances are shown under
35 subsection (a) of this section, the court shall, if practical,
36 revise the parenting plan so as to both accommodate the
37 relocation and maintain the same proportion of custodial
38 responsibility being exercised by each of the parents. In
39 making such revision, the court may consider the addi-
40 tional costs that a relocation imposes upon the respective
41 parties for transportation and communication, and may
42 equitably allocate such costs between the parties.

43 (d) When the relocation constituting changed circum-
44 stances under subsection (a) of this section renders it

45 impractical to maintain the same proportion of custodial
46 responsibility as that being exercised by each parent, the
47 court shall modify the parenting plan in accordance with
48 the child's best interests and in accordance with the
49 following principles:

50 (1) A parent who has been exercising a significant
51 majority of the custodial responsibility for the child should
52 be allowed to relocate with the child so long as that parent
53 shows that the relocation is in good faith for a legitimate
54 purpose and to a location that is reasonable in light of the
55 purpose. The percentage of custodial responsibility that
56 constitutes a significant majority of custodial responsibil-
57 ity is seventy percent or more. A relocation is for a
58 legitimate purpose if it is to be close to significant family
59 or other support networks, for significant health reasons,
60 to protect the safety of the child or another member of the
61 child's household from significant risk of harm, to pursue
62 a significant employment or educational opportunity, or to
63 be with one's spouse who is established, or who is pursuing
64 a significant employment or educational opportunity, in
65 another location. The relocating parent has the burden of
66 proving of the legitimacy of any other purpose. A move
67 with a legitimate purpose is reasonable unless its purpose
68 is shown to be substantially achievable without moving, or
69 by moving to a location that is substantially less disruptive
70 of the other parent's relationship to the child.

71 (2) If a relocation of the parent is in good faith for
72 legitimate purpose and to a location that is reasonable in
73 light of the purpose, and if neither has been exercising a
74 significant majority of custodial responsibility for the
75 child, the court shall reallocate custodial responsibility
76 based on the best interest of the child, taking into account
77 all relevant factors including the effects of the relocation
78 on the child.

79 (3) If a parent does not establish that the purpose for
80 that parent's relocation is in good faith for a legitimate
81 purpose into a location that is reasonable in light of the
82 purpose, the court may modify the parenting plan in
83 accordance with the child's best interests and the effects
84 of the relocation on the child. Among the modifications

85 the court may consider is a reallocation of primary custo-
86 dial responsibility, effective if and when the relocation
87 occurs, but such a reallocation shall not be ordered if the
88 relocating parent demonstrates that the child's best
89 interests would be served by the relocation.

90 (4) The court shall attempt to minimize impairment to a
91 parent-child relationship caused by a parent's relocation
92 through alternative arrangements for the exercise of
93 custodial responsibility appropriate to the parents'
94 resources and circumstances and the developmental level
95 of the child.

96 (e) In determining the proportion of caretaking functions
97 each parent previously performed for the child under the
98 parenting plan before relocation, the court shall not
99 consider a division of functions arising from any arrange-
100 ments made after a relocation but before a modification
101 hearing on the issues related to relocation.

102 (f) In determining the effect of the relocation or proposed
103 relocation on a child, any interviewing or questioning of
104 the child shall be conducted in accordance with the
105 provisions of rule 16 of the rules of practice and procedure
106 for family law, as promulgated by the supreme court of
107 appeals.

PART 5. ENFORCEMENT OF PARENTING PLANS.

§48-11-501. Enforcement of parenting plans.

1 (a) If, upon a parental complaint, the court finds a parent
2 intentionally and without good cause violated a provision
3 of the court-ordered parenting plan, it shall enforce the
4 remedy specified in the plan or, if no remedies are speci-
5 fied or they are clearly inadequate, it shall find the plan
6 has been violated and order an appropriate remedy, which
7 may include:

8 (1) In the case of interference with the exercise of
9 custodial responsibility for a child by the other parent,
10 substitute time for that parent to make up for time missed
11 with the child;

12 (2) In the case of missed time by a parent, costs in
13 recognition of lost opportunities by the other parent, in
14 child care costs and other reasonable expenses in connec-
15 tion with the missed time;

16 (3) A modification of the plan, if the requirements for a
17 modification are met under section two hundred nine, four
18 hundred one, four hundred two or four hundred three of
19 this article, including an adjustment of the custodial
20 responsibility of the parents or an allocation of exclusive
21 custodial responsibility to one of them;

22 (4) An order that the parent who violated the plan obtain
23 appropriate counseling;

24 (5) A civil penalty, in an amount of not more than one
25 hundred dollars for a first offense, not more than five
26 hundred dollars for a second offense, or not more than one
27 thousand dollars for a third or subsequent offense, to be
28 paid to the parent education fund as established under
29 section one hundred four of this article;

30 (6) Court costs, reasonable attorney's fees and any other
31 reasonable expenses in enforcing the plan; and

32 (7) Any other appropriate remedy.

33 (b) Except as provided in a jointly submitted plan that
34 has been ordered by the court, obligations established in a
35 parenting plan are independent obligations, and it is not
36 a defense to an action under this section by one parent that
37 the other parent failed to meet obligations under a
38 parenting plan or child support order.

39 (c) An agreement between the parents to depart from the
40 parenting plan can be a defense to a claim that the plan
41 has been violated, even though the agreement was not
42 made part of a court order, but only as to acts or omissions
43 consistent with the agreement that occur before the
44 agreement is disaffirmed by either parent.

PART 6. MISCELLANEOUS PROVISIONS.

§48-11-601. Access to a child's records.

1 (a) (1) Each parent has full and equal access to a child's
2 educational records absent a court order to the contrary.
3 Neither parent may veto the access requested by the other
4 parent. Educational records are academic, attendance and
5 disciplinary records of public and private schools in all
6 grades kindergarten through twelve and any form of
7 alternative school. Educational records are any and all
8 school records concerning the child that would otherwise
9 be properly released to the primary custodial parent,
10 including, but not limited to, report cards and progress
11 reports, attendance records, disciplinary reports, results of
12 the child's performance on standardized tests and state-
13 wide tests and information on the performance of the
14 school that the child attends on standardized statewide
15 tests; curriculum materials of the class or classes in which
16 the child is enrolled; names of the appropriate school
17 personnel to contact if problems arise with the child;
18 information concerning the academic performance stan-
19 dards, proficiencies, or skills the child is expected to
20 accomplish; school rules, attendance policies, dress codes
21 and procedures for visiting the school; and information
22 about any psychological testing the school does involving
23 the child.

24 (2) In addition to the right to receive school records, the
25 nonresidential parent has the right to participate as a
26 member of a parent advisory committee or any other
27 organization comprised of parents of children at the school
28 that the child attends.

29 (3) The nonresidential parent or noncustodial parent has
30 the right to question anything in the child's record that the
31 parent feels is inaccurate or misleading or is an invasion of
32 privacy and to receive a response from the school.

33 (4) Each parent has a right to arrange appointments for
34 parent-teacher conferences absent a court order to the
35 contrary. Neither parent can be compelled against their
36 will to exercise this right by attending conferences jointly
37 with the other parent.

38 (b) (1) Each parent has full and equal access to a child's
39 medical records absent a court order to the contrary.
40 Neither parent may veto the access requested by the other

41 parent. If necessary, either parent is required to authorize
42 medical providers to release to the other parent copies of
43 any and all information concerning medical care provided
44 to the child which would otherwise be properly released to
45 either parent.

46 (2) If the child is in the actual physical custody of one
47 parent, that parent is required to promptly inform the
48 other parent of any illness of the child which requires
49 medical attention.

50 (3) Each parent is required to consult with the other
51 parent prior to any elective surgery being performed on
52 the child, and in the event emergency medical procedures
53 are undertaken for the child which require the parental
54 consent of either parent, if time permits, the other parent
55 shall be consulted, or if time does not permit such consul-
56 tation, the other parent shall be promptly informed of the
57 emergency medical procedures: *Provided*, That nothing
58 contained herein alters or amends the law of this state as
59 it otherwise pertains to physicians or health care facilities
60 obtaining parental consent prior to providing medical care
61 or performing medical procedures.

62 (c) Each parent has full and equal access to a child's
63 juvenile court records, process and pleadings, absent a
64 court order to the contrary. Neither parent may veto any
65 access requested by the other parent. Juvenile court
66 records are limited to those records which are normally
67 available to a parent of a child who is a subject of the
68 juvenile justice system.

**§48-11-602. Designation of custody for the purpose of other
state and federal statutes.**

1 Solely for the purposes of all other state and federal
2 statutes which require a designation or determination of
3 custody, a parenting plan shall designate the parent with
4 whom the child is scheduled to reside the majority of the
5 time as the custodian of the child. However, this designa-
6 tion shall not affect either parent's rights and responsibili-
7 ties under a parenting plan. In the absence of such a
8 designation, the parent with whom the child is scheduled
9 to reside the majority of the time shall be deemed to be the

10 custodian of the child for the purposes of such federal and
11 state statutes.

§48-11-603. Effect of enactment; operative dates.

1 (a) The enactment of this article during the second
2 extraordinary session of the Legislature, one thousand
3 nine hundred ninety-nine, is prospective in operation
4 unless otherwise expressly indicated.

5 (b) The provisions of section two hundred two of this
6 article, insofar as they provide for parent education and
7 mediation, become operative on the first day of January,
8 two thousand. Until that date, parent education and
9 mediation with regard to custody issues are discretionary
10 unless made mandatory under a particular program or
11 pilot project by rule or direction of the supreme court of
12 appeals or a circuit court.

13 (c) The provisions of this article that authorize a circuit
14 court in the absence of an agreement of the parents to
15 order an allocation of custodial responsibility and an
16 allocation of significant decision-making responsibility,
17 become operative on the first day of January, two thou-
18 sand, at which time the primary caretaker doctrine shall
19 be replaced with a system that allocates custodial and
20 decision-making responsibility to the parents in accor-
21 dance with this article.

**§48-11-604. Effect of enactment; modification of child visita-
tion privileges in certain cases.**

1 (a) Parents who are parties to an order that establishes
2 visitation privileges with a child and that is in existence on
3 the first day of January, two thousand, may move for a
4 modification of the order, even without a change of
5 circumstances, in accordance with the provisions of this
6 section, if the motion for modification is made before the
7 first day of July, two thousand, moving the court to
8 establish a parenting plan in accordance with the provi-
9 sions of this article.

10 (b) Modification of an order that awards visitation
11 privileges may be reconsidered on a motion for modifica-

12 tion if the court first makes a preliminary finding that the
13 following factors are present:

14 (1) Visitation was based, in whole or in part, on a
15 schedule or guidelines;

16 (2) The party petitioning for modification has consis-
17 tently exercised or attempted to exercise the ordered
18 visitation;

19 (3) The visitation provisions of the order sought to be
20 modified have been in effect for less than five years; and

21 (4) The facts as alleged in the motion, if taken as true,
22 would result in a parenting plan that is substantially
23 different from the result reached by application of the
24 visitation schedule or guidelines that the prior order was
25 based on.

26 (c) If the court makes a preliminary finding that the
27 factors described in subsection (b) of this section are
28 present, the case shall proceed under the provisions of this
29 article to establish a parenting plan: *Provided*, That in no
30 case shall the parent petitioning for modification of a prior
31 order of visitation be allocated more than fifty percent of
32 the custodial responsibility. Nothing contained in this
33 subsection shall be construed to authorize the continued
34 application of the primary caretaker standard to modifica-
35 tions made under this section.

CHAPTER 48A. ENFORCEMENT OF FAMILY OBLIGATIONS.

ARTICLE 1. GENERAL PROVISIONS.

§48A-1-3. Calculation of interest.

1 (a) If an obligation to pay interest arises under this
2 chapter, the rate of interest is that specified in section
3 thirty-one, article six, chapter fifty-six of this code.
4 Interest shall accrue only upon the outstanding principal
5 of such obligation. On and after the ninth day of June, one
6 thousand nine hundred ninety-five, this section shall be
7 construed to permit the accumulation of simple interest,
8 and may not be construed to permit the compounding of
9 interest. Interest which accrued on unpaid installments

10 accruing before the ninth day of June, one thousand nine
 11 hundred ninety-five, may not be modified by any court,
 12 irrespective of whether such installment accrued simple or
 13 compound interest: *Provided*, That unpaid installments
 14 upon which interest was compounded before the effective
 15 date of this section shall accrue only simple interest
 16 thereon on and after the ninth day of June, one thousand
 17 nine hundred ninety-five.

18 (b) Except as otherwise provided in this subsection,
 19 prejudgment interest shall not be awarded in a domestic
 20 relations action. The circuit court may only award pre-
 21 judgment interest in a domestic relations action against a
 22 party if the court finds, in writing, that the party engaged
 23 in conduct that would violate subsection (b), rule eleven of
 24 the West Virginia rules of civil procedure. If prejudgment
 25 interest is awarded, the court shall calculate prejudgment
 26 interest from the date the offending representation was
 27 presented to the court.

ARTICLE 1A. DEFINITIONS.

§48A-1A-19. Gross income.

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

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

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

15 (2) Any payment from a pension plan, an insurance
 16 contract, an annuity, social security benefits, unemploy-
 17 ment compensation, supplemental employment benefits,

18 workers' compensation benefits and state lottery winnings
19 and prizes;

20 (3) Interest, dividends or royalties;

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

28 (5) Attributed income of the parent, calculated in
29 accordance with the provisions of section three, article
30 one-a of this chapter;

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

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

53 (8) Income from seasonal employment or other sporadic
54 sources: *Provided*, That the amount of monthly income to
55 be included in gross income shall be determined by

56 averaging the income from seasonal employment or other
57 sporadic sources received during the previous thirty-six-
58 month period or during a period beginning with the month
59 in which the parent first received such compensation,
60 whichever period is shorter; and

61 (9) Alimony and separate maintenance receipts.

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

65 (d) "Gross income" does not include:

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

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

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

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

**§48A-1A-21. Individual entitled to support enforcement ser-
vices under the provisions of this chapter and
the provisions of Title IV-D of the federal
Social Security Act.**

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

4 (1) An individual who has applied for or is receiving
5 services from the child support enforcement division and
6 who is the custodial parent of a child, or the primary
7 caretaker of a child, or the guardian of the property of a
8 child when:

9 (A) Such child has a parent and child relationship with
10 an obligor who is not such custodial parent, primary
11 caretaker or guardian; and

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

15 (2) An individual who has applied for or is receiving
 16 services from the child support enforcement division and
 17 who is an adult or an emancipated minor whose spouse or
 18 former spouse has been ordered by a court of competent
 19 jurisdiction to pay spousal support to the individual,
 20 whether such support is denominated alimony or separate
 21 maintenance, or is identified by some other terminology,
 22 thus establishing a support obligation with respect to such
 23 spouse, when the obligor required to pay such spousal
 24 support is not meeting the obligation, or has not met such
 25 obligation in the past; or

26 (3) Any individual who is an obligee in a support order,
 27 entered by a court of competent jurisdiction after the
 28 thirty-first day of December, one thousand nine hundred
 29 ninety-three.

30 (b) The filing of an action wherein the establishment or
 31 enforcement of child support is an issue constitutes an
 32 application to receive services from the child support
 33 enforcement division, if the individual filing the action is
 34 otherwise eligible for such services: *Provided*, That any
 35 such individual has the option to decline the receipt of
 36 such services.

ARTICLE 1B. GUIDELINES FOR CHILD SUPPORT AWARDS.

§48A-1B-3. Basic child support obligation.

1 (a) The basic child support obligation is determined from
 2 the following table of monthly basic child support obliga-
 3 tions:

West Virginia						
Monthly Basic Child Support Obligations						
(Adjusted for West Virginia's Income Relative to U.S. Averages)						
COMBINED	ONE	TWO	THREE	FOUR	FIVE	SIX
GROSS	CHILD	CHILDREN	CHILDREN	CHILDREN	CHILDREN	CHILDREN
MONTHLY	INCOME					

550	127	185	219	242	263	281
600	137	200	237	262	284	304
650	147	214	253	280	303	325
700	156	227	268	296	321	344
750	163	238	282	311	337	361
800	171	249	295	326	353	378
850	179	261	309	341	370	395
900	188	273	323	357	387	414
950	197	286	338	374	405	433
1000	205	299	353	390	423	452
1050	214	311	368	406	440	471
1100	223	324	382	423	458	490
1150	231	336	397	439	476	509
1200	240	349	412	455	493	528
1250	248	361	426	471	511	547
1300	257	373	441	487	528	565
1350	265	386	456	503	546	584
1400	274	398	470	519	563	602
1450	282	410	484	534	579	620
1500	291	422	498	550	596	638
1550	299	434	512	565	613	656
1600	307	446	526	581	630	674
1650	316	458	540	596	646	692
1700	324	470	554	612	663	709
1750	332	482	568	627	680	727
1800	341	494	581	643	697	745
1850	349	506	595	658	713	763
1900	357	517	609	673	730	781
1950	366	529	623	689	747	799
2000	373	540	636	703	762	816
2050	381	551	649	717	778	832
2100	388	562	662	731	793	848
2150	395	573	674	745	808	864
2200	403	583	687	759	823	881

2250	410	594	700	773	838	897
2300	417	605	712	787	853	913
2350	425	616	725	801	869	929
2400	432	626	738	815	884	946
2450	440	637	750	829	899	962
2500	447	648	763	843	914	978
2550	454	658	776	857	929	994
2600	460	667	786	868	941	1007
2650	465	674	794	877	951	1018
2700	471	682	803	887	962	1029
2750	475	688	810	895	970	1038
2800	479	694	816	902	978	1046
2850	484	700	823	909	986	1055
2900	488	705	830	917	994	1063
2950	492	711	836	924	1002	1072
3000	496	717	843	931	1010	1080
3050	500	723	850	939	1018	1089
3100	504	729	856	946	1026	1097
3150	509	735	863	953	1033	1106
3200	513	740	869	961	1041	1114
3250	517	746	876	968	1049	1123
3300	521	752	882	975	1057	1131
3350	524	757	888	981	1064	1138
3400	527	761	893	987	1070	1145
3450	531	766	899	993	1077	1152
3500	534	771	904	999	1083	1159
3550	537	775	910	1006	1090	1166
3600	541	780	916	1012	1097	1173
3650	544	785	921	1018	1103	1180
3700	547	790	927	1024	1110	1187
3750	550	794	932	1030	1116	1194
3800	554	799	937	1036	1123	1201
3850	557	803	943	1041	1129	1208
3900	560	808	948	1047	1135	1215

3950	563	812	953	1053	1142	1222
4000	566	817	959	1059	1148	1229
4050	570	822	964	1065	1155	1236
4100	574	828	972	1074	1164	1245
4150	579	834	979	1082	1172	1254
4200	583	841	986	1090	1181	1264
4250	588	847	993	1098	1190	1273
4300	592	853	1001	1106	1199	1283
4350	597	860	1008	1114	1207	1292
4400	601	866	1015	1122	1216	1301
4450	606	873	1023	1130	1225	1311
4500	610	879	1030	1138	1234	1320
4550	615	885	1037	1146	1242	1329
4600	619	892	1044	1154	1251	1339
4650	624	898	1052	1162	1260	1348
4700	628	904	1059	1170	1269	1357
4750	633	911	1066	1178	1277	1367
4800	637	917	1074	1186	1286	1376
4850	642	924	1082	1195	1296	1386
4900	647	931	1090	1204	1305	1397
4950	651	938	1098	1213	1315	1407
5000	656	945	1106	1222	1325	1418
5050	661	951	1114	1231	1335	1428
5100	666	958	1123	1240	1345	1439
5150	670	965	1131	1249	1354	1449
5200	675	972	1139	1259	1364	1460
5250	680	979	1147	1268	1374	1470
5300	685	986	1155	1277	1384	1481
5350	689	993	1163	1285	1393	1491
5400	694	999	1171	1294	1403	1501
5450	698	1006	1179	1302	1412	1511
5500	703	1012	1186	1311	1421	1521
5550	707	1019	1194	1319	1430	1530
5600	712	1025	1201	1328	1439	1540

5650	716	1031	1208	1335	1447	1548
5700	719	1036	1214	1341	1454	1556
5750	723	1042	1220	1348	1462	1564
5800	727	1047	1226	1355	1469	1572
5850	731	1052	1233	1362	1477	1580
5900	735	1058	1239	1369	1484	1588
5950	739	1063	1245	1376	1492	1596
6000	743	1069	1251	1383	1499	1604
6050	747	1074	1258	1390	1506	1612
6100	751	1080	1265	1397	1515	1621
6150	755	1086	1272	1405	1523	1630
6200	760	1093	1279	1413	1531	1639
6250	764	1099	1286	1420	1540	1648
6300	768	1105	1292	1428	1548	1657
6350	773	1111	1299	1436	1556	1665
6400	777	1117	1306	1444	1565	1674
6450	781	1123	1313	1451	1573	1683
6500	785	1129	1320	1459	1582	1692
6550	789	1135	1327	1467	1590	1701
6600	793	1140	1334	1474	1598	1710
6650	797	1146	1341	1482	1607	1719
6700	801	1152	1348	1490	1615	1728
6750	806	1158	1355	1498	1623	1737
6800	810	1164	1362	1505	1632	1746
6850	814	1170	1369	1513	1640	1755
6900	818	1176	1376	1521	1649	1764
6950	822	1182	1383	1529	1657	1773
7000	826	1188	1390	1536	1665	1782
7050	830	1194	1397	1544	1674	1791
7100	834	1200	1404	1552	1682	1800
7150	838	1206	1411	1560	1691	1809
7200	842	1212	1418	1567	1699	1818
7250	847	1218	1425	1575	1707	1827
7300	851	1224	1432	1583	1716	1836

7350	855	1230	1439	1591	1724	1845
7400	859	1236	1446	1598	1733	1854
7450	863	1242	1453	1606	1741	1863
7500	867	1248	1460	1614	1749	1872
7550	871	1253	1468	1622	1758	1881
7600	875	1259	1475	1629	1766	1890
7650	879	1265	1482	1637	1775	1899
7700	883	1271	1489	1645	1783	1908
7750	887	1277	1496	1653	1792	1917
7800	891	1283	1503	1661	1800	1926
7850	895	1289	1510	1669	1809	1935
7900	899	1295	1517	1676	1817	1944
7950	903	1300	1524	1684	1826	1954
8000	907	1306	1531	1692	1834	1963
8050	911	1312	1538	1700	1843	1972
8100	915	1318	1545	1708	1851	1981
8150	919	1324	1553	1716	1860	1990
8200	923	1330	1560	1723	1868	1999
8250	927	1336	1567	1731	1877	2008
8300	931	1342	1574	1739	1885	2017
8350	935	1348	1581	1747	1894	2026
8400	939	1353	1588	1755	1902	2035
8450	943	1359	1595	1763	1911	2044
8500	947	1365	1602	1770	1919	2053
8550	951	1371	1609	1778	1928	2062
8600	954	1377	1616	1786	1936	2072
8650	958	1383	1623	1794	1944	2081
8700	962	1389	1630	1802	1953	2090
8750	966	1395	1638	1809	1961	2099
8800	970	1401	1645	1817	1970	2108
8850	974	1406	1652	1825	1978	2117
8900	978	1412	1659	1833	1987	2126
8950	982	1418	1666	1840	1995	2135
9000	985	1423	1672	1847	2002	2142

9050	989	1428	1678	1854	2010	2150
9100	992	1433	1684	1861	2017	2158
9150	996	1438	1690	1867	2024	2166
9200	999	1443	1696	1874	2032	2174
9250	1003	1448	1702	1881	2039	2182
9300	1006	1453	1708	1888	2046	2189
9350	1010	1458	1714	1894	2053	2197
9400	1013	1463	1720	1901	2061	2205
9450	1016	1469	1727	1908	2068	2213
9500	1020	1474	1733	1915	2075	2221
9550	1023	1479	1739	1921	2083	2228
9600	1027	1484	1745	1928	2090	2236
9650	1030	1489	1751	1935	2097	2244
9700	1034	1494	1757	1942	2105	2252
9750	1037	1499	1763	1948	2112	2260
9800	1041	1504	1769	1955	2119	2268
9850	1044	1509	1775	1962	2127	2275
9900	1047	1514	1781	1969	2134	2283
9950	1051	1519	1788	1975	2141	2291
10000	1054	1524	1794	1982	2148	2299
10050	1058	1529	1800	1989	2156	2307
10100	1061	1534	1806	1995	2163	2315
10150	1065	1539	1812	2002	2170	2322
10200	1068	1545	1818	2009	2178	2330
10250	1072	1550	1824	2016	2185	2338
10300	1075	1555	1830	2022	2192	2346
10350	1078	1560	1836	2029	2200	2354
10400	1082	1565	1842	2036	2207	2361
10450	1086	1570	1849	2043	2215	2370
10500	1089	1576	1855	2050	2222	2378
10550	1093	1581	1861	2057	2230	2386
10600	1097	1586	1868	2064	2237	2394
10650	1101	1592	1874	2071	2245	2402
10700	1104	1597	1880	2078	2252	2410

10750	1108	1602	1887	2085	2260	2418
10800	1112	1608	1893	2092	2268	2426
10850	1115	1613	1899	2099	2275	2434
10900	1119	1619	1906	2106	2283	2443
10950	1123	1624	1912	2113	2290	2451
11000	1127	1629	1918	2120	2298	2459
11050	1130	1635	1925	2127	2306	2467
11100	1134	1640	1931	2134	2313	2475
11150	1138	1645	1937	2141	2321	2483
11200	1142	1651	1944	2148	2328	2491
11250	1145	1656	1950	2155	2336	2499
11300	1149	1662	1956	2162	2343	2507
11350	1153	1667	1963	2169	2351	2516
11400	1156	1672	1969	2176	2359	2524
11450	1160	1678	1975	2183	2366	2532
11500	1163	1682	1981	2189	2373	2539
11550	1167	1687	1987	2196	2380	2547
11600	1170	1692	1993	2202	2387	2554
11650	1174	1697	1999	2208	2394	2561
11700	1177	1702	2004	2215	2401	2569
11750	1180	1707	2010	2221	2408	2576
11800	1184	1712	2016	2228	2415	2584
11850	1187	1717	2022	2234	2422	2591
11900	1191	1722	2027	2240	2428	2598
11950	1193	1725	2031	2245	2433	2604
12000	1195	1729	2035	2249	2438	2609
12050	1198	1732	2039	2254	2443	2614
12100	1200	1735	2043	2258	2448	2619
12150	1202	1739	2047	2262	2452	2624
12200	1205	1742	2051	2267	2457	2629
12250	1207	1746	2055	2271	2462	2634
12300	1210	1749	2059	2276	2467	2640
12350	1212	1752	2063	2280	2472	2645
12400	1214	1756	2067	2285	2476	2650

12450	1217	1759	2071	2289	2481	2655
12500	1219	1763	2075	2293	2486	2660
12550	1221	1766	2079	2298	2491	2665
12600	1224	1770	2083	2302	2496	2670
12650	1226	1773	2088	2307	2500	2675
12700	1228	1776	2092	2311	2505	2681
12750	1231	1780	2096	2316	2510	2686
12800	1233	1783	2100	2320	2515	2691
12850	1236	1787	2104	2324	2520	2696
12900	1238	1790	2108	2329	2524	2701
12950	1240	1793	2112	2333	2529	2706
13000	1243	1797	2116	2338	2534	2711
13050	1245	1800	2120	2342	2539	2717
13100	1247	1804	2124	2347	2544	2722
13150	1250	1807	2128	2351	2548	2727
13200	1252	1811	2132	2355	2553	2732
13250	1255	1814	2136	2360	2558	2737
13300	1257	1817	2140	2364	2563	2742
13350	1259	1821	2144	2369	2568	2747
13400	1262	1824	2148	2373	2572	2753
13450	1264	1828	2152	2378	2577	2758
13500	1266	1831	2156	2382	2582	2763
13550	1269	1834	2160	2386	2587	2768
13600	1271	1838	2164	2391	2592	2773
13650	1274	1841	2168	2395	2596	2778
13700	1276	1845	2172	2400	2601	2783
13750	1278	1848	2176	2404	2606	2789
13800	1281	1852	2180	2409	2611	2794
13850	1283	1855	2184	2413	2616	2799
13900	1285	1858	2188	2417	2620	2804
13950	1288	1862	2192	2422	2625	2809
14000	1290	1865	2196	2426	2630	2814
14050	1292	1869	2200	2431	2635	2819
14100	1295	1872	2204	2435	2640	2824

14150	1297	1875	2208	2440	2645	2830
14200	1300	1879	2212	2444	2649	2835
14250	1302	1882	2216	2448	2654	2840
14300	1304	1886	2220	2453	2659	2845
14350	1307	1889	2224	2457	2664	2850
14400	1309	1893	2228	2462	2669	2855
14450	1311	1896	2232	2466	2673	2860
14500	1314	1899	2236	2471	2678	2866
14550	1316	1903	2240	2475	2683	2871
14600	1319	1906	2244	2479	2688	2876
14650	1321	1910	2248	2484	2693	2881
14700	1323	1913	2252	2488	2697	2886
14750	1326	1916	2256	2493	2702	2891
14800	1328	1920	2260	2497	2707	2896
14850	1330	1923	2264	2502	2712	2902
14900	1333	1927	2268	2506	2717	2907
14950	1335	1930	2272	2510	2721	2912
15000	1338	1934	2276	2515	2726	2917

4 (b) This subsection provides for incomes below table. If
5 combined adjusted gross income is below five hundred
6 fifty dollars per month, which is the lowest amount of
7 income considered in the table of monthly basic child
8 support obligations set forth in subsection (a) of this
9 section, the basic child support obligation shall be set at
10 fifty dollars per month or a discretionary amount deter-
11 mined by the court based on the resources and living
12 expenses of the parents and the number of children due
13 support.

14 (c) This subsection provides for incomes above table. If
15 combined adjusted gross income is above fifteen thousand
16 dollars per month, which is the highest amount of income
17 considered in the table of monthly basic child support
18 obligations set forth in subsection (a) of this section, the
19 basic child support obligation shall not be less than it
20 would be based on a combined adjusted gross income of
21 fifteen thousand dollars. The court may also compute the

22 basic child support obligation for combined adjusted gross
23 incomes above fifteen thousand dollars by the following:

24 (1) One child – $\$1,338 + 0.088 \times$ combined adjusted gross
25 income above fifteen thousand dollars per month;

26 (2) Two children – $\$1,934 + 0.129 \times$ combined adjusted
27 gross income above fifteen thousand dollars per month;

28 (3) Three children – $\$2,276 + 0.153 \times$ combined adjusted
29 gross income above fifteen thousand dollars per month;

30 (4) Four children – $\$2,515 + 0.169 \times$ combined adjusted
31 gross income above fifteen thousand dollars per month;

32 (5) Five children – $\$2,726 + 0.183 \times$ combined adjusted
33 gross income above fifteen thousand dollars per month;

34 and

35 (6) Six children – $\$2,917 + 0.196 \times$ combined adjusted
36 gross income above fifteen thousand dollars per month.

§48A-1B-6. Computation of child support order in sole custody cases.

1 (a) For sole custody cases, the total child support obliga-
2 tion consists of the basic child support obligation plus the
3 child's share of any unreimbursed health care expenses,
4 work-related child care expenses and any other extraordi-
5 nary expenses agreed to by the parents or ordered by the
6 court less any extraordinary credits agreed to by the
7 parents or ordered by the court.

8 (b) In a sole custody case, the total basic child support
9 obligation is divided between the parents in proportion to
10 their income. From this amount is subtracted the obligor's
11 direct expenditures of any items which were added to the
12 basic child support obligation to arrive at the total child
13 support obligation.

14 (c) Child support for sole custody cases shall be calcu-
15 lated using the following worksheet:

WORKSHEET A: SOLE PHYSICAL CUSTODY

IN THE CIRCUIT COURT OF _____ COUNTY, WEST VIRGINIA CASE NO. _____

Mother: _____ SSNo.: _____ Primary Custodial parent? Yes No

Father: _____ SSNo.: _____ Primary Custodial parent? Yes No

Children	SSN	Date of Birth	Children	SSN	Date of Birth
PART I. CHILD SUPPORT ORDER			Mother	Father	Combined
1. MONTHLY GROSS INCOME (Exclusive of overtime compensation)			\$	\$	
a. Minus preexisting child support payment			-	-	
b. Minus maintenance paid			-	-	
c. Plus overtime compensation, if not excluded, and not to exceed 50%, pursuant to W. Va. Code §48A-1A-19(b)(6)			+	+	
2. MONTHLY ADJUSTED GROSS INCOME			\$	\$	\$
3. PERCENTAGE SHARE OF INCOME (Each parent's income from line 2 divided by Combined Income)			%	%	100%
4. BASIC OBLIGATION (Use Line 2 combined to find amount from schedule.)					\$
5. ADJUSTMENTS (Expenses paid directly by each parent)					
a. Work-Related Child Care Costs Adjusted for Federal Tax Credit (0.75 x actual work-related child care costs.)			\$	\$	
b. Extraordinary Medical Expenses (Uninsured only) and Children's Portion of Health Insurance Premium Costs.			\$	\$	
c. Extraordinary Expenses (Agreed to by parents or by order of the court.)			\$	\$	
d. Minus Extraordinary Adjustments (Agreed to by parents or by order of court.)					

e. Total Adjustments (For each column, add 5a, 5b, and 5c. Subtract Line 5d. Add the parent's totals together for Combined amount.)	\$	\$	\$
6. TOTAL SUPPORT OBLIGATION (Add line 4 and line 5e Combined.)			\$
7. EACH PARENT'S SHARE OF THE TOTAL CHILD SUPPORT OBLIGATION (Line 3 x line 6 for each parent.)	\$	\$	
8. NONCUSTODIAL PARENT ADJUSTMENT (Enter noncustodial parent's line 5e.)	\$	\$	
9. RECOMMENDED CHILD SUPPORT ORDER (Subtract line 8 from line 7 for the noncustodial parent only. Leave custodial parent column blank.)	\$	\$	
PART II. ABILITY TO PAY CALCULATION (Complete if the noncustodial parent's adjusted monthly gross income is below \$1,550.)			
10. Spendable Income (0.80 x line 2 for noncustodial parent only.)			
11. Self Support Reserve	\$500	\$500	
12. Income Available for Support (Line 10 - line 11. If less than \$50, then \$50)			
13. Adjusted Child Support Order (Lessor of Line 9 and Line 12.)			
Comments, calculations, or rebuttals to schedule or adjustments if noncustodial parent directly pays extraordinary expenses.			
PREPARED BY:		Date:	

16 (d) In cases where the noncustodial parent's adjusted
 17 gross income is below one thousand five hundred fifty
 18 dollars per month, an additional calculation in Worksheet
 19 A, Part II shall be made. This additional calculation sets
 20 the child support order at whichever is lower: (i) Child
 21 support at the amount determined in Part I; or (ii) the
 22 difference between eighty percent of the noncustodial
 23 parent's adjusted gross income and five hundred dollars,
 24 or fifty dollars, whichever is more.

§48A-1B-7. Shared physical custody adjustment.

1 (a) Child support for cases with shared physical custody
2 shall be calculated using Worksheet B. The following
3 method should be used only for shared physical custody as
4 defined in section twenty-six, article one-a of this chapter:
5 That is, cases where each parent has the child for more
6 than one hundred twenty-seven days per year (thirty-five
7 percent).

8 (b) The basic child support obligation shall be multiplied
9 by 1.5 to arrive at a shared custody basic child support
10 obligation. The shared custody basic child support
11 obligation is apportioned to each parent according to his
12 or her income. In turn, a child support obligation is
13 computed for each parent by multiplying that parent's
14 portion of the shared custody child support obligation by
15 the percentage of time the child spends with the other
16 parent. The respective basic child support obligations are
17 then offset, with the parent owing more basic child
18 support paying the difference between the two amounts.
19 The transfer for the basic obligation for the parent owing
20 less basic child support shall be set at zero dollars.

21 (c) Adjustments for each parent's additional direct
22 expenses on the child are made by apportioning the sum of
23 the parent's direct expenditures on the child's share of any
24 unreimbursed child health care expenses, work-related
25 child care expenses and any other extraordinary expenses
26 agreed to by the parents or ordered by the court or master
27 less any extraordinary credits agreed to by the parents or
28 ordered by the court or master to each parent according to
29 their income share. In turn each parent's net share of
30 additional direct expenses is determined by subtracting
31 the parent's actual direct expenses on the child's share of
32 any unreimbursed child health care expenses, work-
33 related child care expenses and any other extraordinary
34 expenses agreed to by the parents or by the court or master
35 less any extraordinary credits agreed to by the parents or
36 ordered by the court or master from their share. The
37 parent with a positive net share of additional direct
38 expenses owes the other parent the amount of his or her
39 net share of additional direct expenses. The parent with

40 zero or a negative net share of additional direct expenses
 41 owes zero dollars for additional direct expenses.

42 (d) The final amount of the child support order is
 43 determined by summing what each parent owes for the
 44 basic support obligation and additional direct expenses as
 45 defined in subsections (b) and (c) of this section. The
 46 respective sums are then offset, with the parent owing
 47 more paying the other parent the difference between the
 48 two amounts.

49 (e) Child support for shared physical custody cases shall
 50 be calculated using the following worksheet:

WORKSHEET B: SHARED PHYSICAL CUSTODY

IN THE CIRCUIT COURT OF _____ COUNTY, WEST VIRGINIA CASE NO. _____

Mother: _____ SSNo.: _____ Primary Custodial parent? Yes No

Father: _____ SSNo.: _____ Primary Custodial parent? Yes No

Children	SSN	Date of Birth	Children	SSN	Date of Birth
PART I. BASIC OBLIGATION			Mother	Father	Combined
1. MONTHLY GROSS INCOME (E×clusive of overtime compensation)			\$	\$	
a. Minus preexisting child support payment			-	-	
b. Minus maintenance paid			-	-	
c. Plus overtime compensation, if not excluded, and not to exceed 50%, pursuant to W. Va. Code §48A-1A-19(b)(6)			+	+	
2. MONTHLY ADJUSTED GROSS INCOME			\$	\$	\$
3. PERCENTAGE SHARE OF INCOME (Each parent's income from line 2 divided by Combined Income)			%	%	100%
4. BASIC OBLIGATION (Use line 2 Combined to find amount from Child Support Schedule.)					\$
PART II. SHARED CUSTODY ADJUSTMENT					

5. Shared Custody Basic Obligation (line 4 x 1.50)			\$
6. Each Parent's Share (Line 5 x each parent's line 3)	\$	\$	
7. Overnights with Each Parent (must total 365)			365
8. Percentage with Each Parent (Line 7 divided by 365)	%	%	100%
9. Amount Retained (Line 6 x line 8 for each parent)	\$	\$	
10. Each Parent's Obligation (Line 6 - line 9)	\$	\$	
11. AMOUNT TRANSFERRED FOR BASIC OBLIGATION (Subtract smaller amount on line 10 from larger amount on line 10. Parent with larger amount on line 10 owes the other parent the difference. Enter \$0 for other parent.)	\$	\$	
PART III. ADJUSTMENTS FOR ADDITIONAL EXPENSES (Expenses paid directly by each parent.)			
12a. Work-Related Child Care Costs Adjusted for Federal Tax Credit (0.75 x actual work related child care costs.)	\$	\$	
12b. Extraordinary Medical Expenses (Uninsured only) and Children's Portion of Health Insurance Premium Costs.	\$	\$	
12c. Extraordinary Additional Expenses (Agreed to by parents or by order of the court or master.)	\$	\$	
12d. Minus Extraordinary Adjustments (Agreed to by parents or by order of the court or master.)	\$	\$	
12e. Total Adjustments (For each column, add 11a, 11b, and 11c. Subtract line 11d. Add the parent's totals together for Combined amount.)	\$	\$	\$
13. Each Parent's Share of Additional Expenses (Line 3 x line 12e Combined.)	\$	\$	
14. Each Parent's Net Share of Additional Direct Expenses (Each parent's line 13-line 12e. If negative number, enter \$0)	\$	\$	
15. AMOUNT TRANSFERRED FOR ADDITIONAL EXPENSES (Subtract smaller amount on line 14 from larger amount on line 14. Parent with larger amount on line 14 owes the other parent the difference. Enter \$0 for other parent.)	\$	\$	
PART IV. RECOMMENDED CHILD SUPPORT ORDER			

16. TOTAL AMOUNT TRANSFERRED (Line 11 + line 15)	\$	\$	
17. RECOMMENDED CHILD SUPPORT ORDER (Subtract smaller amount on line 16 from larger amount on line 16. Parent with larger amount on line 16 owes the other parent the difference.	\$	\$	
Comments, calculations, or rebuttals to schedule or adjustments			
PREPARED BY:		Date:	

§48A-1B-11. Modification.

1 (a) The provisions of a child support order may be
 2 modified if there is a substantial change of circumstances.
 3 For purposes of this section, if application of the guideline
 4 would result in a new order that is more than fifteen
 5 percent different, then the circumstances are considered to
 6 be a substantial change.

7 (b) An expedited process for modification of a child
 8 support order may be utilized if either parent experiences
 9 a substantial change of circumstances resulting in a
 10 decrease in income due to loss of employment or other
 11 involuntary cause or an increase in income due to promo-
 12 tion, change in employment, reemployment, or other such
 13 change in employment status. The party seeking the
 14 recalculation of support and modification of the support
 15 order shall file a description of the decrease or increase in
 16 income and an explanation of the cause of the decrease or
 17 increase on a standardized form to be provided by the
 18 secretary-clerk or other employee of the family court. The
 19 standardized form shall be verified by the filing party.
 20 Any available documentary evidence shall be filed with
 21 the standardized form. Based upon the filing and informa-
 22 tion available in the case record, the amount of support
 23 shall be tentatively recalculated. The secretary-clerk shall
 24 cause a notice of the filing, a copy of the standardized
 25 form, and the support calculations to be served upon the
 26 other party and upon the local office of the child support
 27 enforcement division for the county in which the circuit

28 court is located in the same manner as original process
29 under rule 4(d) of the rules of civil procedure. The notice
30 shall fix a date fourteen days from the date of mailing, and
31 inform the party that unless the recalculation is contested
32 and a hearing request is made on or before the date fixed,
33 the proposed modification will be made effective. If the
34 filing is contested, the proposed modification shall be set
35 for hearing; otherwise, the family law master shall prepare
36 a recommended default order for entry by the circuit
37 judge. Either party may move to set aside a default
38 entered by the circuit clerk or a judgment by default
39 entered by the clerk or the court, pursuant to the provi-
40 sions of rule 55 or rule 60(b) of the rules of civil procedure.
41 If an obligor uses the provisions of this section to expedi-
42 tiously reduce his or her child support obligation, the order
43 that effected the reduction shall also require the obligor to
44 notify the obligee of reemployment, new employment or
45 other such change in employment status that results in an
46 increase in income. If an obligee uses the provisions of this
47 section to expeditiously increase his or her child support
48 obligation, the order that effected the increase shall also
49 require the obligee to notify the obligor of reemployment,
50 new employment or other such change in employment
51 status that results in an increase in income of the obligee.

52 (c) The supreme court of appeals shall develop the
53 standardized form required by subsection (b) of this
54 section.

§48A-1B-14. Disregard of formula.

1 (a) If the court finds that the guidelines are inappropri-
2 ate in a specific case, the court may either disregard the
3 guidelines or adjust the guidelines-based award to accom-
4 modate the needs of the child or children or the circum-
5 stances of the parent or parents. In either case, the reason
6 for the deviation and the amount of the calculated guide-
7 lines award must be stated on the record (preferably in
8 writing on the worksheet or in the order). Such findings
9 clarify the basis of the order if appealed or modified in the
10 future.

11 (b) These guidelines do not take into account the eco-
12 nomic impact of the following factors and can be possible
13 reasons for deviation:

14 (1) Special needs of the child or support obligor, includ-
15 ing, but not limited to, the special needs of a minor or
16 adult child who is physically or mentally disabled;

17 (2) Educational expenses for the child or the parent (i.e.
18 those incurred for private, parochial, or trade schools,
19 other secondary schools, or post-secondary education
20 where there is tuition or costs beyond state and local tax
21 contributions);

22 (3) Families with more than six children;

23 (4) Long distance visitation costs;

24 (5) The child resides with third party;

25 (6) The needs of another child or children to whom the
26 obligor owes a duty of support;

27 (7) The extent to which the obligor's income depends on
28 nonrecurring or nonguaranteed income; or

29 (8) Whether the total of alimony, child support and child
30 care costs subtracted from an obligor's income reduces
31 that income to less than the federal poverty level and
32 conversely, whether deviation from child support guide-
33 lines would reduce the income of the child's household to
34 less than the federal poverty level.

§48A-1B-16. Investment of child support.

1 (a) A circuit judge has the discretion, in appropriate
2 cases, to direct that a portion of child support be placed in
3 trust and invested for future educational or other needs of
4 the child. The family law master may recommend and the
5 circuit judge may order such investment when all of the
6 child's day-to-day needs are being met such that, with due
7 consideration of the age of the child, the child is living as
8 well as his or her parents.

9 (b) If the amount of child support ordered per child
10 exceeds the sum of two thousand dollars per month, the

11 court is required to make a finding, in writing, as to
 12 whether investments shall be made as provided for in
 13 subsection (a) of this section.

14 (c) A trustee named by the court shall use the judgment
 15 and care under the circumstances then prevailing that
 16 persons of prudence, discretion and intelligence exercise in
 17 the management of their own affairs, not in regard to
 18 speculation but in regard to the permanent disposition of
 19 their funds, considering the probable income as well as the
 20 probable safety of their capital. A trustee shall be gov-
 21 erned by the provisions of the uniform prudent investor
 22 act as set forth in article six-c, chapter forty-four of this
 23 code. The court may prescribe the powers of the trustee
 24 and provide for the management and control of the trust.
 25 Upon petition of a party or the child's guardian or next
 26 friend and upon a showing of good cause, the court may
 27 order the release of funds in the trust from time to time.

§48A-1B-17. Operative date of certain amendments.

1 The amendments to this article made during the second
 2 extraordinary session of the Legislature, one thousand
 3 nine hundred ninety-nine, are operable after the thirtieth
 4 day of September, one thousand nine hundred ninety-nine.

**ARTICLE 2. WEST VIRGINIA SUPPORT ENFORCEMENT COMMISSION;
 CHILD SUPPORT ENFORCEMENT DIVISION; ESTABLISH-
 MENT AND ORGANIZATION.**

§48A-2-17. Notice to unemployed obligor.

1 Upon receipt of a report from an employer stating that
 2 a support obligor has been discharged or laid off or has
 3 resigned or voluntarily quit, the child support enforcement
 4 division shall send a notice to the obligor, informing the
 5 obligor of the availability of a modification of the support
 6 award and of the services that may be available to him or
 7 her from the division. The division shall also inform the
 8 obligor of his or her possible entitlement to a reduction in
 9 court-ordered support payments; that a failure to obtain
 10 a modification will result in the previously-ordered award
 11 remaining in effect; and that substantial arrearage might
 12 accumulate and remain as judgments against him or her.

§48A-2-38. Acceptance of federal purposes; compliance with federal requirements and standards.

1 (a) The state assents to the purposes of the federal laws
2 regarding child support and establishment of paternity
3 and agrees to accept federal appropriations and other
4 forms of assistance made under or pursuant thereto, and
5 authorizes the receipt of such appropriations into the state
6 treasury and the receipt of other forms of assistance by the
7 child support enforcement division for expenditure,
8 disbursement and distribution by the division in accor-
9 dance with the provisions of this chapter and the condi-
10 tions imposed by applicable federal laws, rules and
11 regulations.

12 (b) Insofar as such actions are consistent with the laws of
13 this state granting authority to the division and the
14 director, the division shall comply with such requirements
15 and standards as the secretary of the federal department
16 of health and human services may have determined, as of
17 the effective date of this section, to be necessary for the
18 establishment of an effective program for locating obli-
19 gors, establishing paternity, obtaining support orders and
20 collecting support payments.

21 (c) The director shall propose for promulgation a legisla-
22 tive rule in accordance with the provisions of chapter
23 twenty-nine-a of this code, to establish time-keeping
24 requirements to assure the maximum funding of incentive
25 payments, grants and other funding sources available to
26 the state for the processing of cases filed for the location
27 of absent parents, the establishment of paternity, and the
28 establishment, modification or enforcement of orders of
29 child support.

ARTICLE 4. PROCEEDING BEFORE A FAMILY LAW MASTER.

§48A-4-9. Hearing procedures.

1 (a) This section applies, according to the provisions
2 thereof, to hearings required by section ten, article two-a,
3 chapter fifty-one of this code to be conducted by a family
4 law master.

5 (b) A family law master to whom a matter is referred
6 pursuant to the provisions of section ten, article two-a,
7 chapter fifty-one of this code shall preside at the taking of
8 evidence.

9 (c) A family law master presiding at a hearing under the
10 provisions of this chapter may:

11 (1) Administer oaths and affirmations, compel the
12 attendance of witnesses and the production of documents,
13 examine witnesses and parties and otherwise take testi-
14 mony, receive relevant evidence and establish a record;

15 (2) Rule on motions for discovery and offers of proof;

16 (3) Take depositions or have depositions taken when the
17 ends of justice may be served;

18 (4) Regulate the course of the hearing;

19 (5) Hold pretrial conferences for the settlement or
20 simplification of issues and enter time-frame orders which
21 shall include, but not be limited to, discovery cut-offs,
22 exchange of witness lists and agreements on stipulations,
23 contested issues and hearing schedules;

24 (6) Make and enter temporary orders on procedural
25 matters, including, but not limited to, substitution of
26 counsel, amendment of pleadings, requests for hearings
27 and other similar matters;

28 (7) Accept voluntary acknowledgments of support
29 liability or paternity;

30 (8) Accept stipulated agreements;

31 (9) Prepare default orders for entry if the person against
32 whom an action is brought does not respond to notice or
33 process within the time required;

34 (10) Recommend orders in accordance with the provi-
35 sions of section thirteen of this article;

36 (11) Require the issuance of subpoenas and subpoenas
37 duces tecum, issue writs of attachment, hold hearings in
38 aid of execution and propound interrogatories in aid of

39 execution and fix bond or other security in connection
40 with an action for enforcement in a child or spousal
41 support matter; and

42 (12) Take other action authorized by general order of the
43 circuit court or the chief judge thereof consistent with the
44 provisions of this chapter.

45 (d) Except as otherwise provided by law, a moving party
46 has the burden of proof on a particular question presented.
47 Any oral or documentary evidence may be received, but
48 the family law master shall exclude irrelevant, immaterial
49 or unduly repetitious evidence. A party is entitled to
50 present his or her case or defense by oral or documentary
51 evidence, to submit rebuttal evidence and to conduct such
52 cross-examination as may be required for a full and true
53 disclosure of the facts. In determining claims for money
54 due or the amount of payments to be made, when a party
55 will not be prejudiced thereby, the family law master may
56 adopt procedures for the submission of all or part of the
57 evidence in written form.

58 (e) Hearings before a family law master shall be recorded
59 electronically. A magnetic tape or other electronic record-
60 ing medium on which a hearing is recorded shall be
61 indexed and securely preserved by the secretary-clerk of
62 the family law master and shall not be placed in the case
63 file in the office of the circuit clerk: *Provided*, That upon
64 the request of the family law master, such magnetic tapes
65 or other electronic recording media shall be stored by the
66 clerk of the circuit court. When requested by either of the
67 parties, a family law master shall provide a duplicate copy
68 of the tape or other electronic recording medium of each
69 hearing held. For evidentiary purposes, a duplicate of
70 such electronic recording prepared by the secretary-clerk
71 shall be a "writing" or "recording" as those terms are
72 defined in rule 1001 of the West Virginia rules of evidence,
73 and unless the duplicate is shown not to reflect the con-
74 tents accurately, it shall be treated as an original in the
75 same manner that data stored in a computer or similar
76 data is regarded as an "original" under such rule. The
77 party requesting the copy shall pay to the family law
78 master an amount equal to the actual cost of the tape or

79 other medium or the sum of five dollars, whichever is
80 greater. Unless otherwise ordered by the court, the
81 preparation of a transcript and the payment of the cost
82 thereof shall be the responsibility of the party requesting
83 the transcript.

84 (f) The recording of the hearing or the transcript of
85 testimony, as the case may be, and the exhibits, together
86 with all papers and requests filed in the proceeding,
87 constitute the exclusive record for recommending an order
88 in accordance with section thirteen of this article, and on
89 payment of lawfully prescribed costs, shall be made
90 available to the parties. When a family law master's final
91 recommended order rests on official notice of a material
92 fact not appearing in the evidence in the record, a party is
93 entitled, on timely request, to an opportunity to show the
94 contrary.

95 (g) After a temporary parenting plan has been agreed to
96 by the parties or ordered by the family law master, or after
97 a temporary support order has been entered by the court,
98 a scheduled final evidentiary hearing cannot be continued
99 without the agreement of the parties or without a review
100 of the temporary parenting plan and the temporary
101 support order.

102 (h) In any case in which a party has filed an affidavit
103 that he or she is financially unable to pay the fees or costs,
104 the family law master shall determine whether either party
105 is financially able to pay such fees and costs based on the
106 information set forth in the affidavit or on any evidence
107 submitted at the hearing. If the family law master deter-
108 mines that either party is financially able to pay the fees
109 and costs, the family law master shall assess the payment
110 of such fees and costs accordingly as part of a recom-
111 mended order. The provisions of this subsection do not
112 alter or diminish the provisions of section one, article two,
113 chapter fifty-nine of this code.

**§48A-4-20. Circuit court review of family law master's recom-
mended order.**

1 (a) The circuit court shall proceed to a review of the
2 recommended order of the family law master when:

3 (1) No petition has been filed within the time allowed, or
4 the parties have expressly waived the right to file a
5 petition;

6 (2) A petition and an answer in opposition have been
7 filed, or the time for filing an answer in opposition has
8 expired, or the parties have expressly waived the right to
9 file an answer in opposition, as the case may be.

10 (b) To the extent necessary for decision and when
11 presented, the circuit court shall decide all relevant
12 questions of law, interpret constitutional and statutory
13 provisions and determine the appropriateness of the terms
14 of the recommended order of the family law master.

15 (c) The circuit court shall examine the recommended
16 order of the family law master, along with the findings and
17 conclusions of the family law master, and may enter the
18 recommended order, may recommit the case, with instruc-
19 tions, for further hearing before the master or may, in its
20 discretion, enter an order upon different terms, as the ends
21 of justice may require. Conclusions of law of the family
22 law master shall be subject to de novo review by the
23 circuit court. The circuit court shall be held to the clearly
24 erroneous standard in reviewing findings of fact. The
25 circuit court shall not follow the recommendation, findings
26 and conclusions of a master found to be:

27 (1) Arbitrary, capricious, an abuse of discretion or
28 otherwise not in conformance with the law;

29 (2) Contrary to constitutional right, power, privilege or
30 immunity;

31 (3) In excess of statutory jurisdiction, authority or
32 limitations or short of statutory right;

33 (4) Without observance of procedure required by law;

34 (5) Unsupported by substantial evidence; or

35 (6) Unwarranted by the facts.

36 (d) In making its determinations under this section, the
37 circuit court shall review the whole record or those parts
38 of it cited by a party. If the circuit court finds that a

39 family law master's recommended order is deficient as to
 40 matters which might be affected by evidence not consid-
 41 ered or inadequately developed in the family law master's
 42 recommended order, the court may recommit the recom-
 43 mended order to the family law master, with instructions
 44 indicating the court's opinion, or the circuit court may
 45 proceed to take such evidence without recommitting the
 46 matter.

47 (e) The order of the circuit court entered pursuant to the
 48 provisions of subsection (d) of this section shall be entered
 49 not later than ten days after the time for filing pleadings
 50 or briefs has expired or after the filing of a notice or
 51 notices waiving the right to file such pleading or brief.

52 (f) If a case is recommitted by the circuit court, the
 53 family law master shall retry the matter within twenty
 54 days.

55 (g) At the time a case is recommitted, the circuit court
 56 shall enter appropriate temporary orders awarding
 57 custody, visitation, child support, spousal support or such
 58 other temporary relief as the circumstances of the parties
 59 may require.

§48A-4-23. Family court fund.

1 The office and the clerks of the circuit courts shall, on or
 2 before the tenth day of each month, transmit all fees and
 3 costs received for the services of the office under this
 4 chapter to the state treasurer for deposit in the state
 5 treasury to the credit of a special revenue fund to be
 6 known as the "family court fund", which is hereby cre-
 7 ated. All moneys collected and received under this chapter
 8 and paid into the state treasury and credited to the "family
 9 court fund" shall be used by the administrative office of
 10 the supreme court of appeals solely for paying the costs
 11 associated with the duties imposed upon the family law
 12 masters under the provisions of this chapter which require
 13 activities by the family law masters which are not subject
 14 to being matched with federal funds or subject to reim-
 15 bursement by the federal government. Such moneys shall
 16 not be treated by the auditor and treasurer as part of the
 17 general revenue of the state.

CHAPTER 51. COURTS AND THEIR OFFICERS.

ARTICLE 2A. CIRCUIT COURTS; FAMILY COURT DIVISION.

§51-2A-1. Family court division established in circuit court; designation of division.

1 There is hereby created in the circuit court of each
2 county in this state, a division of the circuit court to be
3 designated as "The Family Court of _____ County, West
4 Virginia".

§51-2A-2. Appointment of commissioners to be designated as family law masters; administrative and judicial functions of family law master.

1 (a) In each of the family court circuits, family law
2 masters shall be appointed as follows:

3 (1) If a family law master serves a single judicial circuit
4 that has one circuit judge, the circuit judge shall appoint
5 the family law master;

6 (2) If a family law master serves a single judicial circuit
7 that has two or more circuit court judges, the chief judge
8 of the circuit shall appoint the family law master or
9 masters;

10 (3) If a family law master serves more than one judicial
11 circuit, the chief judges of the judicial circuits shall
12 appoint the family law master or masters;

13 (4) If the chief judge or chief judges of the judicial
14 circuits cannot agree, all of the circuit judges of the
15 affected judicial circuits shall appoint the family law
16 master or masters; or

17 (5) If the circuit judges of the affected judicial circuits
18 cannot agree, the supreme court of appeals shall appoint
19 the family law master or masters.

20 (b) A commissioner appointed under subsection (a) of
21 this section may be designated by the name "family law
22 master".

23 (c) The family law master will conduct hearings in
24 family court cases, take testimony, hear the parties, enter

25 orders of a temporary or interlocutory nature, make
26 findings of fact and conclusions of law on the record,
27 formulate recommendations, and report to the circuit
28 court. The family law master will exercise any other
29 power or authority provided for in this article or article
30 four, chapter forty-eight-a of this code.

31 (d) The family law master, as a commissioner of the
32 circuit court, has both administrative and judicial func-
33 tions to perform, as described in subsections (e) and (f) of
34 this section.

35 (e) The family law master has responsibility for the
36 administration of the family court division of the circuit
37 court. A circuit court judge or judges whose circuit is
38 served by a family law master or masters must monitor the
39 administration of the family court divisions within the
40 judicial circuit and regulate those activities, including
41 naming one or more circuit judges to serve as administra-
42 tive supervisor of the family law master, through appro-
43 priate administrative orders. The administrative orders of
44 the administrative supervisor regarding a family court
45 division will be compiled and indexed in the office of the
46 circuit clerk and be available for public inspection.

47 (f) In exercising the judicial function of the family court,
48 the family law master, free of direct oversight by a circuit
49 judge, is responsible for the preparation or preliminary
50 consideration of issues requiring judicial decision, subject
51 only to a subsequent review by a circuit judge. Conclu-
52 sions of law of the family law master are subject to de
53 novo review by the circuit court. In reviewing the findings
54 of fact of a family law master, the circuit court is held to
55 the clearly erroneous standard.

56 (g) A family law master shall not be eligible to partici-
57 pate in the judges retirement system under the provisions
58 of article nine of this chapter.

59 (h) Beginning the first day of January, two thousand,
60 each family law master is required to file a quarterly
61 activity report with the supreme court of appeals and the
62 joint committee on government and finance. The report
63 shall include, but is not limited to, the number of cases

64 heard before the family law master, the date the case was
65 heard, the date the case was filed and the number and
66 types of hearings held before the family law master in a
67 particular case.

68 (i) The supreme court of appeals shall promulgate a
69 procedural rule to establish timekeeping requirements for
70 family law masters, family case coordinators and
71 secretary-clerks of family law masters so as to assure the
72 maximum funding of incentive payments, grants and other
73 funding sources available to the state for the processing of
74 cases filed for the location of absent parents, the establish-
75 ment of paternity and the establishment, modification, and
76 enforcement of child support orders.

**§51-2A-3. Assignment of family law masters by family court
circuits.**

1 (a) A total of thirty-three family law masters will serve
2 throughout the state. The state will be divided into
3 twenty-four family court circuits with the number of
4 family law masters allocated as follows:

5 The counties of Brooke, Hancock and Ohio shall consti-
6 tute the first family court circuit and shall have two family
7 law masters; the counties of Marshall, Wetzel and Tyler
8 shall constitute the second family court circuit and shall
9 have one family law master; the counties of Pleasants,
10 Wood, Wirt, Ritchie and Doddridge shall constitute the
11 third family court circuit and shall have two family law
12 masters; the counties of Jackson, Roane, Calhoun and
13 Gilmer shall constitute the fourth family court circuit and
14 shall have one family law master; the counties of Mason
15 and Putnam shall constitute the fifth family court circuit
16 and shall have one family law master; the county of Cabell
17 shall constitute the sixth family court circuit and shall
18 have two family law masters; the county of Wayne shall
19 constitute the seventh family court circuit and shall have
20 one family law master; the county of Mingo shall consti-
21 tute the eighth family court circuit and shall have one
22 family law master; the county of Logan shall constitute the
23 ninth family court circuit and shall have one family law
24 master; the counties of Lincoln and Boone shall constitute
25 the tenth family court circuit and shall have one family

26 law master; the county of Kanawha shall constitute the
27 eleventh family court circuit and shall have four family
28 law masters; the counties of McDowell and Mercer shall
29 constitute the twelfth family court circuit and shall have
30 two family law masters; the counties of Raleigh and
31 Wyoming shall constitute the thirteenth family court
32 circuit and shall have two family law masters; the counties
33 of Fayette and Summers shall constitute the fourteenth
34 family court circuit and shall have one family law master;
35 the counties of Greenbrier, Monroe and Pocahontas shall
36 constitute the fifteenth family court circuit and shall have
37 one family law master; the counties of Clay, Nicholas and
38 Webster shall constitute the sixteenth family court circuit
39 and shall have one family law master; the counties of
40 Braxton, Lewis and Upshur shall constitute the seven-
41 teenth family court circuit and shall have one family law
42 master; the county of Harrison shall constitute the eigh-
43 teenth family court circuit and shall have one family law
44 master; the county of Marion shall constitute the nine-
45 teenth family court circuit and shall have one family law
46 master; the county of Monongalia shall constitute the
47 twentieth family court circuit and shall have one family
48 law master; the counties of Barbour, Preston and Taylor
49 shall constitute the twenty-first family court circuit and
50 shall have one family law master; the counties of Grant,
51 Tucker and Randolph shall constitute the twenty-second
52 family court circuit and shall have one family law master;
53 the counties of Mineral, Hampshire, Hardy and Pendleton
54 shall constitute the twenty-third family court circuit and
55 shall have one family law master; and the counties of
56 Berkeley, Jefferson and Morgan shall constitute the
57 twenty-fourth family court circuit and shall have two
58 family law masters.

59 (b) The chief justice of the supreme court of appeals may
60 temporarily assign a family law master from one family
61 court circuit to another family court circuit, as caseload,
62 disqualification, recusal, vacation or illness may dictate.
63 In each case of temporary assignment, the chief justice
64 shall appoint only a family law master who is actually
65 serving at the time of such appointment.

§51-2A-4. Qualifications of family law masters.

1 (a) An individual serving as a family law master prior to
2 the initial election of family law masters, as set forth in
3 section five of this article, must be a member in good
4 standing of the West Virginia state bar and must have at
5 least five years' experience as a practicing attorney prior
6 to taking office. An individual elected as a family law
7 master at the initial election of family law masters or at
8 any subsequent election of family law masters, as set forth
9 in section five of this article, or an individual appointed as
10 a family law master at any time after the initial election of
11 family law masters must be a member in good standing of
12 the West Virginia state bar, must have at least five years'
13 experience as a practicing attorney prior to taking office,
14 and must, at the time he or she takes office, and thereafter
15 during his or her continuance in office, be a resident of the
16 state of West Virginia.

17 (b) Upon assuming his or her duties, a family law master
18 with no prior experience as a family law master shall, as
19 soon as is practicable, attend and complete a course of
20 instruction in principles of family law and procedure that
21 is given in accordance with the supervisory rules of the
22 supreme court of appeals. All family law masters shall
23 attend courses of continuing educational instruction as
24 may be required by supervisory rule of the supreme court
25 of appeals. Failure to attend the required courses of
26 continuing educational instruction without good cause
27 constitutes neglect of duty. Persons attending such courses
28 outside of the county of their residence will be reimbursed
29 by the supreme court of appeals for expenses actually
30 incurred in accordance with the supervisory rules of the
31 supreme court of appeals.

32 (c) A family law master may not engage in any other
33 business, occupation or employment inconsistent with the
34 expeditious, proper and impartial performance of his or
35 her duties as a judicial officer. A family law master is not
36 permitted to engage in the outside practice of law and
37 shall devote full time to his or her duties as a judicial
38 officer.

§51-2A-5. Term of office of family law master; elections.

1 (a) Before the first day of September, one thousand nine
2 hundred ninety-nine, family law masters shall be ap-
3 pointed to serve in the family court circuits as provided for
4 in section three of this article. The initial term of office for
5 the family law masters first appointed shall commence on
6 the first day of October, one thousand nine hundred
7 ninety-nine, and end on the thirty-first day of December,
8 two thousand two.

9 (b) Beginning with the primary and general elections to
10 be conducted in the year two thousand two, family law
11 masters shall be elected. In family court circuits having
12 two or more family law masters there shall be, for election
13 purposes, numbered divisions corresponding to the number
14 of family law masters in each area. Each family law
15 master shall be elected at large by the entire family court
16 area. In each numbered division of a judicial circuit, the
17 candidates for nomination or election shall be voted upon
18 and the votes cast for the candidates in each division shall
19 be tallied separately from the votes cast for candidates in
20 other numbered divisions within the family court area.
21 The candidate or candidates receiving the highest number
22 of the votes cast within a numbered division shall be
23 nominated or elected, as the case may be.

24 (c) The term of office for all family law masters elected
25 in two thousand two shall be for four years, commencing
26 on the first day of January, two thousand three, and
27 ending on the thirty-first day of December, two thousand
28 six. Subsequent terms of office for family law masters
29 elected thereafter shall be for four years.

§51-2A-6. Vacancy in the office of family law master.

1 If a vacancy occurs in the office of family law master,
2 the chief judge or judges of the affected circuit courts, as
3 the case may be, shall, within thirty days after the vacancy
4 occurs, fill the vacancy by appointment for the unexpired
5 term. If the chief judge or judges of the affected circuit
6 court fail to act timely to fill a vacancy, the chief justice of
7 the supreme court of appeals may fill the vacancy for the
8 unexpired term.

§51-2A-6a. Terms of family law masters continued.

1 The family law masters holding office on the first day of
2 June, one thousand nine hundred ninety-nine, by virtue of
3 appointments made under the prior enactments of article
4 four, chapter forty-eight-a of this code are continued in
5 their term of office through the thirtieth day of September,
6 one thousand nine hundred ninety-nine.

**§51-2A-7. Procedure for removal, suspension or discipline of
family law master; appeal; grounds.**

1 (a) A family law master appointed pursuant to section
2 two of this article may be removed from office in the
3 manner provided in this section for official misconduct,
4 malfeasance in office, incompetence, neglect of duty, gross
5 immorality or inability to serve.

6 (b) Charges may be preferred by:

7 (1) A circuit judge of a county that constitutes all or a
8 part of the family law master's region;

9 (2) By the administrative director of the supreme court
10 of appeals; or

11 (3) By any person as provided in rule two of the rules of
12 judicial disciplinary procedure. If a formal charge is filed
13 by the judicial investigation commission, such charge may
14 recommend removal and the convening of a three-judge
15 court as provided for in this section.

16 (c) The charges must be reduced to writing in the form of
17 a petition, duly verified by the charging party, and filed
18 with the supreme court of appeals. The petition must
19 request the impaneling or convening of a three-judge court
20 consisting of three circuit judges of the state. The chief
21 justice of the supreme court of appeals shall, without
22 delay, designate and appoint three circuit judges within
23 the state, none of whom is from the region in which the
24 family law master serves. In the order of appointment, the
25 chief justice shall designate the date, time and place for
26 the convening of the three-judge court. The date and time
27 of hearing on the petition must be more than twenty days
28 from the date of the filing of the petition.

29 The three-judge court shall, without a jury, hear the
30 charges and all evidence offered in support thereof or in
31 opposition thereto and upon satisfactory proof of the
32 charges shall remove the family law master from office
33 and place the records, papers and property of his or her
34 office in the possession of some other officer or person for
35 safekeeping or in the possession of the person appointed as
36 hereinafter provided to fill the office temporarily. Final
37 orders shall set out the court's decision to dismiss the
38 charges or to suspend or remove the family law master,
39 with or without recommendations to refer the matter for
40 investigation by the office of disciplinary counsel under
41 the rules of judicial disciplinary procedure, or to provide
42 other disposition appropriate to the case.

43 (d) An appeal from a final order of a three-judge court
44 removing or refusing to remove a family law master from
45 office pursuant to this section may be taken to the supreme
46 court of appeals within thirty days from the date of entry
47 of the order from which the appeal is to be taken. The
48 supreme court of appeals shall consider and decide the
49 appeal upon the original papers and documents, without
50 requiring the same to be printed and shall enforce its
51 findings by proper writ. From the date of any order of the
52 three-judge court removing an officer under this section
53 until the expiration of thirty days thereafter, and, if an
54 appeal be taken, until the date of suspension of such order,
55 if suspended by the three-judge court and if not sus-
56 pended, until the final adjudication of the matter by the
57 supreme court of appeals, the circuit court judge or judges
58 having power to fill a vacancy in such office may fill the
59 same by a temporary appointment until a final decision of
60 the matter, and if a final decision is made by the supreme
61 court of appeals affirming the removal of the family law
62 master, shall fill the vacancy in the manner provided by
63 law for such office.

64 (e) For purposes of subsections (a) through (d), inclusive,
65 of this section, "neglect of duty" includes, but is not
66 limited to, failure to make findings of fact and conclusions
67 of law either on the record or in writing to be filed as part
68 of the record.

69 (f) Notwithstanding any other provision, the conduct of
70 family law masters who begin serving terms of office on
71 the first day of January, two thousand three, and thereaf-
72 ter, shall be governed by the code of judicial conduct
73 adopted by the supreme court of appeals and any com-
74 plaint of violation of the code of judicial conduct against
75 a family law judge shall be filed and considered in accor-
76 dance with the rules of judicial disciplinary procedure
77 adopted by the supreme court of appeals.

**§51-2A-8. Compensation and expenses of family law masters
and their staffs.**

1 (a) Beginning the first day of October, one thousand nine
2 hundred ninety-nine, until the thirty-first day of Decem-
3 ber, two thousand two, a family law master is entitled to
4 receive as compensation for his or her services an annual
5 salary of sixty thousand dollars. Beginning the first day of
6 January, two thousand three, a family law master is
7 entitled to receive as compensation for his or her services,
8 an annual salary of sixty-two thousand five hundred
9 dollars.

10 (b) The secretary-clerk of the family law master is
11 appointed by the family law master and serves at his or
12 her will and pleasure. The secretary-clerk of the family
13 law master is entitled to receive an annual salary of
14 twenty-two thousand three hundred eight dollars. In
15 addition, beginning the first day of October, one thousand
16 nine hundred ninety-nine, any secretary-clerk who is
17 employed by a family law master on the effective date of
18 this section who has been so employed for at least two
19 years prior to such effective date, shall receive an addi-
20 tional five hundred dollars per year up to ten years of such
21 prior employment. Further, the secretary-clerk will receive
22 such percentage or proportional salary increases as may be
23 provided for by general law for other public employees
24 and is entitled to receive the annual incremental salary
25 increase as provided for in article five, chapter five of this
26 code.

27 (c) After the first day of October, one thousand nine
28 hundred ninety-nine, the family law master may employ
29 not more than one family case coordinator who serves at

30 his or her will and pleasure: *Provided*, That for purposes
31 of the initial employment of family case coordinators, the
32 administrative director of the supreme court of appeals
33 shall designate twenty family law masters who are autho-
34 rized to employ family case coordinators, and the addi-
35 tional thirteen family case coordinators may only be
36 employed when authorized by the administrative director
37 of the supreme court of appeals. The annual salary of the
38 family case coordinator of the family law master shall be
39 established by the administrative director of the supreme
40 court of appeals but may not exceed thirty-five thousand
41 dollars. The family case coordinator will receive such
42 percentage or proportional salary increases as may be
43 provided for by general law for other public employees
44 and is entitled to receive the annual incremental salary
45 increase as provided for in article five, chapter five of this
46 code.

47 (d) Subject to the approval of the chief judge of the
48 circuit, the sheriff or his or her designated deputy, shall
49 serve as a bailiff for a family law master. The sheriff of
50 each county shall serve or designate persons to serve so as
51 to assure that a bailiff is available when a family law
52 master determines the same is necessary for the orderly
53 and efficient conduct of the business of the family court
54 division of the circuit court.

55 (e) A special commissioner of the court appointed
56 pursuant to subdivision (4), subsection (a), section ten of
57 this article is entitled to be compensated by the supreme
58 court of appeals at an hourly rate not to exceed the hourly
59 rate paid to panel attorneys for performing work in court
60 pursuant to the provisions of section thirteen-a, article
61 twenty-one, chapter twenty-nine of this code.

62 (f) Disbursement of salaries for family law masters and
63 members of their staffs are made by or pursuant to the
64 order of the director of the administrative office of the
65 supreme court of appeals.

66 (g) Family law masters, members of their staffs and
67 special commissioners of the court are allowed their actual
68 and necessary expenses incurred in the performance of
69 their duties. The expenses and compensation will be

70 determined and paid by the director of the administrative
71 office of the supreme court of appeals under such guide-
72 lines as he or she may prescribe, as approved by the
73 supreme court of appeals.

§51-2A-9. Rules of practice and procedure; applicability of rules of evidence; local administrative rules.

1 (a) Pleading, practice and procedure in matters before a
2 family law master are governed by rules of practice and
3 procedure for family law promulgated by the supreme
4 court of appeals pursuant to section four, article one of
5 this chapter.

6 (b) The West Virginia rules of evidence apply to proceed-
7 ings before a family law master.

8 (c) The chief judge of a circuit court may promulgate
9 local administrative rules governing the conduct and
10 administration of family courts serving the circuit court.
11 Local administrative rules are subordinate and subject to
12 the rules of the supreme court of appeals or the orders of
13 the chief justice. Rules promulgated by the chief judge of
14 a circuit court are made by order entered upon the order
15 book of the circuit court, and are effective when filed with
16 the clerk of the supreme court of appeals.

§51-2A-10. Matters to be heard by a family law master.

1 (a) A chief judge of a circuit court shall refer to the
2 family law master the following matters for hearing:

3 (1) Actions to obtain orders of support brought under the
4 provisions of section one, article five, chapter forty-eight-a
5 of this code;

6 (2) All actions to establish paternity brought under the
7 provisions of article six, chapter forty-eight-a of this code,
8 and any dependent claims related to such action regarding
9 child support, custody and visitation;

10 (3) All petitions for writs of habeas corpus wherein the
11 issue contested is child custody;

12 (4) All motions for temporary relief affecting child
13 custody, visitation, child support, spousal support or

14 domestic or family violence, wherein either party has
15 requested such referral or the court on its own motion in
16 individual cases or by general order has referred such
17 motions to the family law master: *Provided*, That if the
18 family law master determines, in his or her discretion, that
19 the pleadings raise substantial issues concerning the
20 identification of separate property or the division of
21 marital property which may have a bearing on an award
22 of support, the family law master shall notify the appro-
23 priate circuit court of this fact and the circuit court may
24 refer the case to a special commissioner chosen by the
25 circuit court to serve in such capacity;

26 (5) All petitions for modification of an order involving
27 child custody, child visitation, child support or spousal
28 support;

29 (6) All actions for divorce, annulment or separate
30 maintenance brought pursuant to article two, chapter
31 forty-eight of this code: *Provided*, That an action for
32 divorce, annulment or separate maintenance which does
33 not involve child custody or child support shall be heard
34 by a circuit judge if, at the time of the filing of the action,
35 the parties file a written property settlement agreement
36 which has been signed by both parties;

37 (7) All actions wherein an obligor is contesting the
38 enforcement of an order of support through the withhold-
39 ing from income of amounts payable as support or is
40 contesting an affidavit of accrued support, filed with a
41 circuit clerk, which seeks to collect arrearage;

42 (8) All actions commenced under chapter forty-eight-b
43 of this code or the interstate family support act of another
44 state;

45 (9) Proceedings for the enforcement of support, custody
46 or visitation orders;

47 (10) All actions to establish custody of a minor child or
48 visitation with a minor child, including actions brought
49 pursuant to the uniform child custody jurisdiction act and
50 actions brought to establish grandparent visitation:
51 *Provided*, That any action instituted under article six,

52 chapter forty-nine of this code shall be heard by a circuit
53 judge;

54 (11) On and after the first day of October, one thousand
55 nine hundred ninety-nine, civil contempt and direct
56 contempts: *Provided*, That criminal contempts must be
57 heard by a circuit judge; and

58 (12) On and after the first day of April, two thousand
59 one, full hearings in domestic or family violence proceed-
60 ings wherein a protective order is sought.

61 (b) On its own motion or upon motion of a party, the
62 circuit court may revoke the referral of a particular matter
63 to a family law master if the family law master is recused,
64 if the matter is uncontested, or for other good cause, or if
65 the matter will be more expeditiously and inexpensively
66 heard by a circuit judge without substantially affecting the
67 rights of parties.

§51-2A-11. Contempt powers of family law master.

1 (a) A family law master, acting in his or her capacity as
2 a commissioner of the circuit court, may:

3 (1) Sanction persons through civil contempt proceedings
4 when necessary to preserve and enforce the rights of
5 private parties or to administer remedies granted by the
6 court;

7 (2) Regulate all proceedings in a hearing before the
8 family law master; and

9 (3) Punish direct contempts that are offered in the
10 presence of the court or that obstruct or corrupt the
11 proceedings of the court.

12 (b) A family law master may enforce compliance with his
13 or her lawful orders with remedial or coercive sanctions
14 designed to compensate a complainant for losses sustained
15 and to coerce obedience for the benefit of the complainant.
16 Sanctions must give the contemnor an opportunity to
17 purge himself or herself. In selecting sanctions, the court
18 must use the least possible power adequate to the end
19 proposed. A person who lacks the present ability to
20 comply with the order of the court may not be confined for

21 a civil contempt. Sanctions may include, but are not
 22 limited to, seizure or impoundment of property to secure
 23 compliance with a prior order. Ancillary relief may
 24 provide for an award of attorney's fees.

§51-2A-12. Effects of certain repealers or reenactments.

1 The repeal or reenactment of sections in article four,
 2 chapter forty-eight of this code effected during the second
 3 extraordinary session of the Legislature, one thousand
 4 nine hundred ninety-nine, become operable on the first
 5 day of July, one thousand nine hundred ninety-nine. It is
 6 intended that the family law master system in existence on
 7 the eighteenth day of May, one thousand nine hundred
 8 ninety-nine, will continue to function under the prior
 9 enactment of article four, chapter forty-eight-a of this
 10 code, notwithstanding the repeal or the amendment and
 11 reenactment of sections of that article, until the first day
 12 of October, one thousand nine hundred ninety-nine, when
 13 the family law master system is replaced with the system
 14 of family law masters provided for in this article.

ARTICLE 3. COURTS IN GENERAL.

§51-3-14. Court security fund.

1 (a) The offices and the clerks of the magistrate courts
 2 and the circuit courts shall, on or before the tenth day of
 3 each month, transmit all fees and costs received for the
 4 court security fund in accordance with the provisions of
 5 sections one and two, article three, chapter fifty of this
 6 code and section eleven, article one, chapter fifty-nine of
 7 this code for deposit in the state treasury to the credit of a
 8 special revenue fund to be known as the "court security
 9 fund", which is hereby created under the department of
 10 military affairs and public safety. The court security fund
 11 may receive any gifts, grants, contributions or other money
 12 from any source which is specifically designated for
 13 deposit in the fund. All moneys collected and received and
 14 paid into the state treasury and credited to the court
 15 security fund shall be expended by the board exclusively
 16 to implement the improvement measures agreed upon in
 17 accordance with the security plans submitted pursuant to
 18 section sixteen of this article and in accordance with an

19 appropriation by the Legislature. Amounts collected
20 which are found from time to time to exceed the funds
21 needed for the purposes set forth in this article may be
22 transferred to other accounts or funds and redesignated
23 for other purposes upon appropriation by the Legislature.

24 (b) Notwithstanding any provision of this code to the
25 contrary, during fiscal year two thousand, all fees and
26 costs received for the court security fund in accordance
27 with the provisions of sections one and two, article three,
28 chapter fifty of this code, section eleven, article one,
29 chapter fifty-nine of this code, and any other provision of
30 this code, for deposit in the state treasury to the credit of
31 the court security fund shall not be deposited in the court
32 security fund, but shall instead be transmitted by the
33 offices and the clerks of the magistrate courts and the
34 circuit courts, on or before the tenth day of each month,
35 for deposit in the state treasury to the credit of the family
36 court fund established under section twenty-three, article
37 four, chapter forty-eight-a of this code. The fees and costs
38 that are deposited in the family court fund under the
39 provisions of this subsection shall be expended for the
40 purposes set forth in said section twenty-three.

41 (c) Notwithstanding any provision of this code to the
42 contrary, after the thirtieth day of June, two thousand, the
43 court security board shall transfer such amounts from the
44 court security fund as may from time to time be directed
45 by the Legislature in an appropriation act to the domestic
46 violence legal services fund created in section four-c,
47 article two-c, chapter forty-eight of this code. Any moneys
48 transferred to the domestic violence legal services fund
49 pursuant to the provisions of this section shall be ex-
50 pended for the purposes specified in said section four-c.

**CHAPTER 59. FEES, ALLOWANCES AND COSTS;
NEWSPAPERS; LEGAL ADVERTISEMENTS.**

ARTICLE 1. FEES AND ALLOWANCES.

§59-1-11. Fees to be charged by clerk of circuit court.

1 (a) The clerk of a circuit court shall charge and collect
2 for services rendered as such clerk the following fees, and

3 such fees shall be paid in advance by the parties for whom
4 such services are to be rendered:

5 (1) For instituting any civil action under the rules of civil
6 procedure, any statutory summary proceeding, any
7 extraordinary remedy, the docketing of civil appeals, or
8 any other action, cause, suit or proceeding, seventy-five
9 dollars: *Provided*, That the fee for instituting an action for
10 divorce shall be one hundred five dollars;

11 (2) Beginning on and after the first day of July, one
12 thousand nine hundred ninety-nine, for instituting an
13 action for divorce, separate maintenance or annulment,
14 one hundred twenty-five dollars; and

15 (3) For petitioning for the modification of an order
16 involving child custody, child visitation, child support or
17 spousal support, seventy-five dollars.

18 (b) In addition to the foregoing fees, the following fees
19 shall likewise be charged and collected:

20 (1) For preparing an abstract of judgment, five dollars;

21 (2) For any transcript, copy or paper made by the clerk
22 for use in any other court or otherwise to go out of the
23 office, for each page, fifty cents;

24 (3) For action on suggestion, ten dollars;

25 (4) For issuing an execution, ten dollars;

26 (5) For issuing or renewing a suggestee execution,
27 including copies, postage, registered or certified mail fees
28 and the fee provided by section four, article five-a, chapter
29 thirty-eight of this code, three dollars;

30 (6) For vacation or modification of a suggestee execu-
31 tion, one dollar;

32 (7) For docketing and issuing an execution on a tran-
33 script of judgment from magistrate's court, three dollars;

34 (8) For arranging the papers in a certified question, writ
35 of error, appeal or removal to any other court, five dollars;

36 (9) For postage and express and for sending or receiving
37 decrees, orders or records, by mail or express, three times
38 the amount of the postage or express charges;

39 (10) For each subpoena, on the part of either plaintiff or
40 defendant, to be paid by the party requesting the same,
41 fifty cents; and

42 (11) For additional service (plaintiff or appellant) where
43 any case remains on the docket longer than three years, for
44 each additional year or part year, twenty dollars.

45 (c) The clerk shall tax the following fees for services in
46 any criminal case against any defendant convicted in such
47 court:

48 (1) In the case of any misdemeanor, fifty-five dollars;
49 and

50 (2) In the case of any felony, sixty-five dollars.

51 (d) No such clerk shall be required to handle or accept
52 for disbursement any fees, cost or amounts, of any other
53 officer or party not payable into the county treasury,
54 except it be on order of the court or in compliance with the
55 provisions of law governing such fees, costs or accounts.

**§59-1-28a. Disposition of filing fees in divorce and other civil
actions and fees for services in criminal cases.**

1 (a) Except for those payments to be made from amounts
2 equaling filing fees received for the institution of divorce
3 actions as prescribed in subsection (b) of this section, and
4 except for those payments to be made from amounts
5 equaling filing fees received for the institution of actions
6 for divorce, separate maintenance and annulment as
7 prescribed in subsection (c) of this section, for each civil
8 action instituted under the rules of civil procedure, any
9 statutory summary proceeding, any extraordinary remedy,
10 the docketing of civil appeals, or any other action, cause,
11 suit or proceeding in the circuit court, the clerk of the
12 court shall, at the end of each month, pay into the funds or
13 accounts described in this subsection an amount equal to
14 the amount set forth in this subsection of every filing fee
15 received for instituting such action as follows:

16 (1) Into the regional jail and correctional facility devel-
17 opment fund in the state treasury established pursuant to
18 the provisions of section ten, article twenty, chapter
19 thirty-one of this code, the amount of sixty dollars; and

20 (2) Into the court security fund in the state treasury
21 established pursuant to the provisions of section fourteen,
22 article three, chapter fifty-one of this code, the amount of
23 five dollars.

24 (b) For each divorce action instituted in the circuit court,
25 the clerk of the court shall, at the end of each month, pay
26 into the funds or accounts in this subsection an amount
27 equal to the amount set forth in this subsection of every
28 filing fee received for instituting such divorce action as
29 follows:

30 (1) Into the regional jail and correctional facility devel-
31 opment fund in the state treasury established pursuant to
32 the provisions of section ten, article twenty, chapter
33 thirty-one of this code, the amount of ten dollars;

34 (2) Into the special revenue account of the state treasury,
35 established pursuant to section twenty-four, article one,
36 chapter forty-eight of this code, an amount of thirty
37 dollars;

38 (3) Into the family court fund established under section
39 twenty-three, article four, chapter forty-eight-a of this
40 code, an amount of fifty dollars; and

41 (4) Into the court security fund in the state treasury,
42 established pursuant to the provisions of section fourteen,
43 article three, chapter fifty-one of this code, the amount of
44 five dollars.

45 (c) This subsection applies to filing fees paid after the
46 thirtieth day of June, one thousand nine hundred ninety-
47 nine. For each action for divorce, separate maintenance or
48 annulment instituted in the circuit court, the clerk of the
49 court shall, at the end of each month, pay into the funds or
50 accounts in this subsection an amount equal to the amount
51 set forth in this subsection of every filing fee received for
52 instituting such divorce action as follows:

53 (1) Into the regional jail and correctional facility devel-
54 opment fund in the state treasury established pursuant to
55 the provisions of section ten, article twenty, chapter
56 thirty-one of this code, the amount of ten dollars;

57 (2) Into the special revenue account of the state treasury,
58 established pursuant to section twenty-four, article one,
59 chapter forty-eight of this code, an amount of thirty
60 dollars;

61 (3) Into the family court fund established under section
62 twenty-three, article four, chapter forty-eight-a of this
63 code, an amount of seventy dollars; and

64 (4) Into the court security fund in the state treasury,
65 established pursuant to the provisions of section fourteen,
66 article three, chapter fifty-one of this code, the amount of
67 five dollars.

68 (d) Notwithstanding any provision of subsection (a) or
69 (b) of this section to the contrary, the clerk of the court
70 shall, at the end of each month, pay into the family court
71 fund established under section twenty-three, article four,
72 chapter forty-eight-a of this code an amount equal to the
73 amount of every fee received for petitioning for the
74 modification of an order involving child custody, child
75 visitation, child support or spousal support as determined
76 by subdivision (3), subsection (a), section eleven of this
77 article.

78 (e) The clerk of the court from which a protective order
79 is issued shall, at the end of each month, pay into the
80 family court fund established under section twenty-three,
81 article four, chapter forty-eight-a of this code an amount
82 equal to every fee received pursuant to the provisions of
83 subsection (k), section six, article two-a, chapter forty-
84 eight of this code.

85 (f) The clerk of each circuit court shall, at the end of each
86 month, pay into the regional jail and prison development
87 fund in the state treasury an amount equal to forty dollars
88 of every fee for service received in any criminal case
89 against any defendant convicted in such court and shall
90 pay an amount equal to five dollars of every such fee into

91 the court security fund in the state treasury established
92 pursuant to the provisions of section fourteen, article
93 three, chapter fifty-one of this code.

ARTICLE 2. COSTS GENERALLY.

§59-2-1. Suits by persons financially unable to pay.

1 (a) A natural person who is financially unable to pay the
2 fees or costs attendant to the commencement, prosecution
3 or defense of any civil action or proceeding, or an appeal
4 therein, is permitted to proceed without prepayment in
5 any court of this state, after filing with the court an
6 affidavit that he or she is financially unable to pay the fees
7 or costs or give security therefor.

8 (1) The clerk of the court and all other officers of the
9 court shall issue and serve all process and perform all
10 duties in such cases.

11 (2) Judgment may be rendered for costs at the conclusion
12 of the action, where otherwise authorized by law, and be
13 taxable against a losing party who has not been deter-
14 mined to be financially unable to pay.

15 (3) Upon the filing of an affidavit in accordance with
16 this subsection, seeking an appeal in a civil case from a
17 circuit court to the supreme court of appeals, the supreme
18 court of appeals may direct payment by the administrative
19 office of the supreme court of appeals of the expenses of
20 duplicating the record on appeal after it is transmitted by
21 the clerk of the circuit court. The transcript of proceed-
22 ings before the circuit court, if the petition for appeal is to
23 be filed with the transcript, shall be provided by the court
24 reporter without cost: *Provided*, That actual expenses of
25 the court reporter for supplies used in preparing the
26 transcript may be paid when authorized by the director of
27 the administrative office of the supreme court of appeals.

28 (b) The supreme court of appeals or the chief justice
29 thereof shall establish and periodically review and update
30 financial guidelines for determining the eligibility of civil
31 litigants to proceed in forma pauperis.

32 (c) The supreme court of appeals shall adopt a financial
33 affidavit form for use by persons seeking a waiver of fees,

34 costs or security pursuant to the provisions of this section.
35 Copies of the form shall be available to the public in the
36 offices of the clerk of any court of this state. The affidavit
37 shall state the nature of the action, defense or appeal and
38 the affiant's belief that he or she is entitled to redress. The
39 form shall elicit information from the affiant which will
40 enable the court in which it is filed to consider the follow-
41 ing factors in determining whether the affiant is finan-
42 cially unable to pay fees, costs or security:

43 (1) Current income prospects, taking into account
44 seasonal variations in income;

45 (2) Liquid assets, assets which may provide collateral to
46 obtain funds and other assets which may be liquidated to
47 provide funds to pay fees, costs or security;

48 (3) Fixed debts and obligations, including federal, state
49 and local taxes and medical expenses;

50 (4) Child care, transportation and other expenses neces-
51 sary for employment;

52 (5) Age or physical infirmity of resident family members;

53 (6) Whether the person has paid or will pay counsel fees,
54 or whether counsel will be provided by a private attorney
55 on a contingent fee basis, an attorney pro bono, a legal
56 services attorney, or some other attorney at no cost or a
57 reduced cost to the affiant; and

58 (7) The consequences for the individual if a waiver of
59 fees, costs or security is denied.

60 (d) When the information set forth in the affidavit or the
61 evidence submitted in the action reveals that the person
62 filing the affidavit is financially able to pay the fees and
63 costs, the court or the family law master shall order the
64 person to pay the fees and costs in the action.

65 (e) No other party in any proceeding may initiate an
66 inquiry by motion or other pleading or participate in any
67 proceeding relevant to the issues raised pursuant to this
68 section.

69 (f) The making of an affidavit subject to inquiry under
 70 this section does not in any event give rise to criminal
 71 remedies against the affiant nor occasion any civil action
 72 against the affiant except for the recovery of costs as in
 73 any other case where costs may be recovered and the
 74 recovery of the value of services, if any, provided pursuant
 75 to this section. A person who has made an affidavit
 76 knowing the contents thereof to be false may be prose-
 77 cuted for false swearing as provided by law.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 5. CRIMES AGAINST PUBLIC JUSTICE.

§61-5-29. Failure to meet an obligation to provide support to a minor; penalties.

1 (1) A person who: (a) Persistently fails to provide
 2 support which he or she can reasonably provide and which
 3 he or she knows he or she has a duty to provide to a minor;
 4 or (b) is subject to court order to pay any amount for the
 5 support of a minor child and is delinquent in meeting the
 6 full obligation established by the order and has been
 7 delinquent for a period of at least six months' duration, is
 8 guilty of a misdemeanor and, upon conviction thereof,
 9 shall be fined not less than one hundred dollars nor more
 10 than one thousand dollars, or confined in the county or
 11 regional jail for not more than one year, or both fined and
 12 confined.

13 (2) A person who persistently fails to provide support
 14 which he or she can reasonably provide and which he or
 15 she knows he or she has a duty to provide to a minor by
 16 virtue of a court or administrative order and the failure
 17 results in: (a) An arrearage of not less than eight thousand
 18 dollars; or (b) twelve consecutive months without payment
 19 of support, is guilty of a felony and, upon conviction
 20 thereof, shall be fined not less than one hundred dollars
 21 nor more than one thousand dollars, or imprisoned for not
 22 less than one year nor more than three years, or both fined
 23 and imprisoned.

24 (3) In a prosecution under this section, the defendant's
 25 alleged inability to reasonably provide the required
 26 support may be raised only as an affirmative defense, after
 27 reasonable notice to the state.

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

[Signature]
.....
Chairman Senate Committee
Member

[Signature]
.....
Chairman House Committee

Originating in the Senate.

In effect 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 *15th*.....

Day of..... *June* 1999

[Signature]
.....
Governor

PRESENTED TO THE

GOVERNOR

Date 6/1/99

Time 10:30 am