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# WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 1999

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## SECOND ENROLLMENT

Com. Sub. for  
House Bill No. 2678

(By Delegates Amores, Doyle, Jenkins and Yeager)

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Passed March 22, 1999

In Effect from Passage

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OFFICE OF THE CLERK  
SENATE

## **SECOND ENROLLMENT**

COMMITTEE SUBSTITUTE

FOR

### **H. B. 2678**

(BY DELEGATES AMORES, DOYLE, JENKINS AND YEAGER)

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[Passed March 22, 1999; in effect from passage.]

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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, and six, article four, chapter forty-eight-a of said code; to amend and reenact section one, article two, chapter forty-four-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 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 section nineteen, 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 and reenact section thirty-four, article two of said chapter; to further amend said article by adding thereto a new section, designated section seventeen; to amend and reenact sections nine, twenty and twenty-three, article four of said chapter; to amend

and reenact section fourteen, article three, chapter fifty-one of said code; to further amend said chapter by adding thereto a new article, designated article two-a; to amend and reenact sections eleven and twenty-eight-a, article one, chapter fifty-nine of said code; to further amend said article by adding thereto a new section, designated section eleven-a; 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; increasing the filing fee for appointment of guardians; defining terms used in divorce, annulment and separate maintenance cases; denominating parties in domestic actions; limiting or terminating alimony for cohabitation; establishing burden of proof; establishing criteria for the award of alimony; eliminating property allocated by equitable distribution from availability for alimony payments; disposition of marital property; entitlement to future or contingent payments; calculation of interest; precluding prejudgment interest in divorce matters; exceptions; establishing date magistrate court jurisdiction in domestic violence cases is to be limited; establishing a fee upon issuance of a protective order; transfer of jurisdiction to family court and circuit court judges; allocation of custodial and decision-making responsibility for children in divorce cases; establishing best interests of the child as primary objective; establishing parent education programs; parenting plans; court ordered services; court ordered investigations; appointment of guardians; judicial interviews of minor children; modification of parenting plans; relocation of a parent constituting a material change of circumstances with regard to parental rights and responsibilities; enforcement of parenting plans; monetary sanctions for violations; parental access to a child's records; requiring notice to obligor; designation of custody for purposes of other state and federal statutes; operative dates; calculation of interest; excluding reimbursed moneys from definition of gross income; 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; adjustment of child support in shared physical custody cases; modification of child support; requiring judicial findings regarding investment of child support moneys; establishing operative date of amendments; notice to unemployed obligors; employment

income reporting; proceedings before a family court judge; establishing family court division of circuit courts; initial appointments; effective dates; reporting requirements; assignment of family court judges by regions; establishing qualifications for family court judges; establishing terms of office of judges; schedule of elections for judges; criteria for handling vacancies in office; disciplinary procedures; grounds for discipline; appeal procedures; setting compensation for judges and staff members; applicability of rules of evidence; authorizing promulgation of local circuit rules of practice and procedure; jurisdiction of family court judges; establishing contempt powers of family court judges; 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; establishing additional fees for certain future filings; 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 and six, article four, chapter forty-eight-a of said code be repealed; that section one, article two, chapter forty-four-a of said code be amended and reenacted; 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 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 section nineteen, 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-four, 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 section fourteen, article three, chapter fifty-one of said code be amended and reenacted;

that said chapter be further amended by adding thereto a new article, designated article two-a; that sections eleven and twenty-eight-a, article one, chapter fifty-nine of said code be amended and reenacted; that said article be further amended by adding thereto a new section, designated section eleven-a; and that section twenty-nine, article five, chapter sixty-one of said code be amended and reenacted, all to read as follows:

**CHAPTER 44A. WEST VIRGINIA GUARDIANSHIP  
AND CONSERVATORSHIP ACT.**

**ARTICLE 2. PROCEDURE FOR APPOINTMENT.**

**§44A-2-1. Filing of petition; jurisdiction; fees.**

1           (a) A petition for the appointment of a guardian or conser-  
2 vator shall be filed with the clerk of the circuit court in the  
3 county in which the alleged protected person resides, or, if an  
4 alleged protected person has been admitted to a health care or  
5 correctional facility, in the county in which that facility is  
6 located. A petition for the appointment of a conservator for a  
7 missing person shall be filed with the clerk of the circuit court  
8 in the county in which the missing person last resided.

9           (b) The circuit court in which the proceeding is first  
10 commenced shall have exclusive jurisdiction unless that court  
11 determines that a transfer of venue would be in the best  
12 interests of the person alleged to need protection.

13           (c) The fee for filing a petition shall be seventy dollars,  
14 payable upon filing to the circuit clerk, all of which shall be  
15 retained by the circuit clerk: *Provided*, That effective the first  
16 day of July, two thousand one, the fee for filing a petition shall  
17 be one hundred twenty-five dollars. The person bringing the  
18 petition shall be responsible for fees for filings of the petition  
19 and other papers, for service of process, and for copies of court  
20 documents and transcripts. In the event that a guardian and/or  
21 conservator is appointed by the court, such fees shall be  
22 reimbursed to the individual who filed the petition from the  
23 protected person's estate, if funds are available. Any person  
24 who is pecuniarily unable to pay such fees and costs as set forth  
25 in article one, chapter fifty-nine of this code, and article two,  
26 chapter fifty-one of this code, will not be required to pay said  
27 fees and costs.

**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-a of  
2 this code, the words and phrases defined in the following  
3 subdivisions of this section, and any variation of those words  
4 and phrases required by the context, have the meanings ascribed  
5 to them in this section. These definitions are applicable unless  
6 a different meaning clearly appears from the context.

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

17 (2) "Antenuptial agreement" or "prenuptial agreement"  
18 means an agreement between a man and woman before mar-  
19 riage, but in contemplation and generally in consideration of  
20 marriage, whereby the property rights and interests of the  
21 prospective husband and wife, or both of them, are determined,  
22 or where property is secured to either or both of them, to their  
23 separate estate, or to their children or other persons. An  
24 antenuptial agreement may include provisions which define the  
25 respective property rights of the parties during the marriage, or  
26 in the event of the death of either or both of the parties, and  
27 may provide for the disposition of marital property upon an  
28 annulment of the marriage or a divorce or separation of the  
29 parties. A prenuptial agreement is void if at the time it is made  
30 either of the parties is a minor.

31 (3) "Caretaking functions" means tasks that involve  
32 interaction with the child or care of the child, including the  
33 direction of interaction and care by others. Caretaking functions  
34 include the following:

35 (A) Feeding, bedtime and wake-up routines, care of the  
36 child when sick or hurt, bathing, grooming, personal hygiene,  
37 dressing, recreation and play, physical safety, transportation,  
38 and other functions that meet the daily physical needs of the  
39 child;

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

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

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

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

52 (F) Arrangements for health care, including making  
53 appointments, communication with health-care providers,  
54 medical follow-up, and home health care;

55 (G) Moral guidance; and

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

60 (4) "Custodial responsibility" refers to physical custodian-  
61 ship and supervision of a child. It usually includes, but does not  
62 necessary require, the exercise of residential or overnight  
63 responsibility.

64 (5) "Decision-making responsibility" refers to authority for  
65 making significant life decisions on behalf of a child, including,  
66 but not limited to, the child's education, spiritual guidance, and  
67 health care.

68 (6) "Earnings" means compensation paid or payable for  
69 personal services, whether denominated as wages, salary,

70 commission, bonus, or otherwise, and includes periodic  
71 payments pursuant to a pension or retirement program.  
72 “Disposable earnings” means that part of the earnings of any  
73 individual remaining after the deduction from those earnings of  
74 any amounts required by law to be withheld.

75 (7) “Family court judge” means a commissioner of the  
76 circuit court appointed or elected pursuant to section two,  
77 article two-a, chapter fifty-one of this code and authorized to  
78 hear certain domestic relations actions under section ten, article  
79 two-a, chapter fifty-one of this code.

80 (8) “Income” includes, but is not limited to, the following:

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

84 (B) Any payment due or to be due in the future to an  
85 individual from a profit-sharing plan, a pension plan, an  
86 insurance contract, an annuity, social security, unemployment  
87 compensation, supplemental employment benefits, workers’  
88 compensation benefits, state lottery winnings and prizes, and  
89 overtime pay;

90 (C) Any amount of money which is owing to an individual  
91 as a debt from an individual, partnership, association, public or  
92 private corporation, the United States or any federal agency,  
93 this state or any political subdivision of this state, any other  
94 state or a political subdivision of another state, or any other  
95 legal entity which is indebted to the obligor.

96 (9) “Legal parent” means an individual defined as a parent,  
97 by law, on the basis of biological relationship, presumed  
98 biological relationship, legal adoption, or other recognized  
99 grounds.

100 (10) “Marital property” means:

101 (A) All property and earnings acquired by either spouse  
102 during a marriage, including every valuable right and interest,  
103 corporeal or incorporeal, tangible or intangible, real or personal,  
104 regardless of the form of ownership, whether legal or benefi-



105 cial, whether individually held, held in trust by a third party, or  
106 whether held by the parties to the marriage in some form of co-  
107 ownership such as joint tenancy or tenancy in common, joint  
108 tenancy with the right of survivorship, or any other form of  
109 shared ownership recognized in other jurisdictions without this  
110 state, except that marital property shall not include separate  
111 property as defined in subdivision (16) of this section; and

112 (B) The amount of any increase in value in the separate  
113 property of either of the parties to a marriage, which increase  
114 results from (i) an expenditure of funds which are marital  
115 property, including an expenditure of such funds which reduces  
116 indebtedness against separate property, extinguishes liens, or  
117 otherwise increases the net value of separate property, or (ii)  
118 work performed by either or both of the parties during the  
119 marriage.

120 The definitions of "marital property" contained in this  
121 subsection and "separate property" contained in subdivision  
122 (16) of this section shall have no application outside of the  
123 provisions of this article, and the common law as to the  
124 ownership of the respective property and earnings of a husband  
125 and wife, as altered by the provisions of article three of this  
126 chapter and other provisions of this code, are not abrogated by  
127 implication or otherwise, except as expressly provided for by  
128 the provisions of this article as such provisions are applied in  
129 actions brought under this article or for the enforcement of  
130 rights under this article.

131 (11) "Parent" means a legal parent as defined in subsection  
132 (I) of this section, unless otherwise specified.

133 (12) "Parenting functions" means tasks that serve the needs  
134 of the child or the child's residential family. Parenting functions  
135 include caretaking functions, as defined in subdivision (3) of  
136 this section. Parenting functions also include functions that are  
137 not caretaking functions, including:

138 (A) Provision of economic support;

139 (B) Participation in decision-making regarding the child's  
140 welfare;

141 (C) Maintenance or improvement of the family residence,  
142 home or furniture repair, home-improvement projects, yard  
143 work, and house cleaning;

144 (D) Financial planning and organization, car repair and  
145 maintenance, food and clothing purchasing, cleaning and  
146 maintenance of clothing, and other tasks supporting the  
147 consumption and savings needs of the family; and

148 (E) Other functions usually performed by a parent or  
149 guardian that are important to the child's welfare and develop-  
150 ment.

151 (13) "Parenting plan" means a temporary parenting plan as  
152 defined in subdivision (18) of this section or a permanent  
153 parenting plan as defined in subdivision (14) of this section.

154 (14) "Permanent parenting plan" means a plan for parenting  
155 a child that is incorporated into a final order or subsequent  
156 modification order in a domestic relations action. The plan  
157 principally establishes, but is not limited to, the allocation of  
158 caretaking functions and parenting functions and provisions for  
159 resolution of subsequent disputes between the parents.

160 (15) "Rehabilitative alimony" means alimony payable for  
161 a short, specific and determinable period of time, designed to  
162 cease when the payee is, after the exercise of reasonable efforts,  
163 in a position of self-support.

164 (16) "Separate property" means:

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

166 (B) Property acquired by a person during marriage in  
167 exchange for separate property which was acquired before the  
168 marriage; or

169 (C) Property acquired by a person during marriage, but  
170 excluded from treatment as marital property by a valid agree-  
171 ment of the parties entered into before or during the marriage;  
172 or

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

175 (E) Property acquired by a party during a marriage but after  
176 the separation of the parties and before the granting of a  
177 divorce, annulment or decree of separate maintenance; or

178 (F) Any increase in the value of separate property as  
179 defined in paragraph (A), (B), (C), (D) or (E) of this subdivision  
180 which is due to inflation or to a change in market value result-  
181 ing from conditions outside the control of the parties.

182 (17) "Separation" or "separation of the parties" means the  
183 separation of the parties next preceding the filing of an action  
184 under the provisions of this article, which separation continues,  
185 without the parties cohabiting or otherwise living together as  
186 husband and wife, and without interruption.

187 (18) "Separation agreement" means a written agreement  
188 entered into by a husband and wife whereby they agree to live  
189 separate and apart from each other and, in connection therewith,  
190 agree to settle their property rights; or to provide for the  
191 custody and support of their minor child or children, if any; or  
192 to provide for the payment or waiver of alimony by either party  
193 to the other; or to otherwise settle and compromise issues  
194 arising out of their marital rights and obligations. Insofar as an  
195 antenuptial agreement as defined in subdivision (2) of this  
196 section affects the property rights of the parties or the disposi-  
197 tion of property upon an annulment of the marriage, or a  
198 divorce or separation of the parties, such antenuptial agreement  
199 shall be regarded as a separation agreement under the provi-  
200 sions of this article.

201 (19) "Temporary parenting plan" means a plan incorporated  
202 into a temporary or interlocutory order that provides for the  
203 parenting of a child pending final resolution of a domestic  
204 relations action.

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

1 (a) A domestic relations action is instituted by the filing of  
2 a verified petition. The formal style and the caption for all  
3 subsequent pleadings is as follows:

4 (1) In an action for divorce, separate maintenance or  
5 annulment the action may be styled "In Re the marriage of  
6 \_\_\_\_\_ and \_\_\_\_\_"; and

7 (2) In an action to establish a child support obligation or to  
8 allocate custodial responsibility and decision-making responsi-  
9 bility when the parties are not married, the action may be styled  
10 "In Re the Child(ren) of \_\_\_\_\_ and \_\_\_\_\_."

11 The parties are identified in all pleadings as "petitioner"  
12 and "respondent".

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

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

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

15 (1) The court may provide for the custody of minor children  
16 of the parties, subject to such rights of visitation, both in and  
17 out of the residence of the custodial parent or other person or

18 persons having custody, as may be appropriate under the  
19 circumstances. In every action where visitation is awarded, the  
20 court shall specify a schedule for visitation by the noncustodial  
21 parent: *Provided*, That with respect to any existing order which  
22 provided for visitation but which does not provide a specific  
23 schedule for visitation by the noncustodial parent, upon motion  
24 of any party, notice of hearing and hearing, the court shall issue  
25 an order which provides a specific schedule of visitation by the  
26 noncustodial parent;

27 (2) When the action involves a minor child or children, the  
28 court shall require either party to pay child support in the form  
29 of periodic installments for the maintenance of the minor  
30 children of the parties in accordance with support guidelines  
31 promulgated pursuant to article one-b, chapter forty-eight-a of  
32 this code. Payments of child support are to be ordinarily made  
33 from a party's income, but in cases when the income is not  
34 sufficient to adequately provide for those payments, the court  
35 may, upon specific findings set forth in the order, order the  
36 party required to make those payments to make them from the  
37 corpus of his or her separate estate;

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

41 (4) As an incident to requiring the payment of alimony or  
42 child support, the court may order either party to continue in  
43 effect existing policies of insurance covering the costs of health  
44 care and hospitalization of the other party: *Provided*, That if the  
45 other party is no longer eligible to be covered by such insurance  
46 because of the granting of an annulment or divorce, the court  
47 may require a party to substitute such insurance with a new  
48 policy to cover the other party or may consider the prospective  
49 cost of such insurance in awarding alimony to be paid in  
50 periodic installments. Payments made to an insurer pursuant to  
51 this subdivision, either directly or by a deduction from wages,  
52 shall be deemed to be alimony or installment payments for the  
53 distribution of marital property, in such proportion as the court  
54 shall direct: *Provided, however*, That if the court does not set

55 forth in the order that a portion of such payments is to be  
56 deemed installment payments for the distribution of marital  
57 property, then all such payments made pursuant to this subdivi-  
58 sion shall be deemed to be alimony: *Provided further*, That the  
59 designation of insurance coverage as alimony under the  
60 provisions of this subdivision shall not, in and of itself, give rise  
61 to a subsequent modification of the order to provide for alimony  
62 other than insurance for covering the costs of health care and  
63 hospitalization;

64 (5) The court may grant the exclusive use and occupancy of  
65 the marital home to one of the parties, together with all or a  
66 portion of the household goods, furniture and furnishings  
67 reasonably necessary for such use and occupancy. Such use and  
68 occupancy shall be for a definite period, ending at a specific  
69 time set forth in the order, subject to modification upon the  
70 petition of either party. Except in extraordinary cases supported  
71 by specific findings set forth in the order granting relief, a grant  
72 of the exclusive use and occupancy of the marital home shall be  
73 limited to those situations when such use and occupancy is  
74 reasonably necessary to accommodate the rearing of minor  
75 children of the parties. The court may require payments to third  
76 parties in the form of home loan installments, land contract  
77 payments, rent, property taxes and insurance coverage if the  
78 amount of such coverage is reduced to a fixed monetary amount  
79 set forth in the court's order. When such third party payments  
80 are ordered, the court shall specify whether such payments or  
81 portions of payments are alimony, child support, a partial  
82 distribution of marital property or an allocation of marital debt:  
83 *Provided*, That if the court does not set forth in the order that a  
84 portion of such payments is to be deemed child support or  
85 installment payments for the distribution of marital property,  
86 then all such payments made pursuant to this subdivision shall  
87 be deemed to be alimony. When such third party payments are  
88 ordered, the court shall specify whether such payments or  
89 portions of payments are alimony, child support, a partial  
90 distribution of marital property or an allocation of marital debt.  
91 If the payments are not designated in an order and the parties  
92 have waived any right to receive alimony, the court may

93 designate the payments upon motion by any party. Nothing  
94 contained in this subdivision shall abrogate an existing contract  
95 between either of the parties and a third party or affect the  
96 rights and liabilities of either party or a third party under the  
97 terms of such contract;

98 (6) As an incident to requiring the payment of alimony, the  
99 court may grant the exclusive use and possession of one or  
100 more motor vehicles to either of the parties. The court may  
101 require payments to third parties in the form of automobile loan  
102 installments or insurance coverage if available at reasonable  
103 rates, and any such payments made pursuant to this subdivision  
104 for the benefit of the other party shall be deemed to be alimony  
105 or installment payments for the distribution of marital property,  
106 as the court may direct. Nothing contained in this subdivision  
107 shall abrogate an existing contract between either of the parties  
108 and a third party or affect the rights and liabilities of either  
109 party or a third party under the terms of such contract;

110 (7) When the pleadings include a specific request for  
111 specific property or raise issues concerning the equitable  
112 division of marital property as defined in section one of this  
113 article, the court shall order such relief as may be required to  
114 effect a just and equitable distribution of the property and to  
115 protect the equitable interests of the parties therein;

116 (8) Unless a contrary disposition is ordered pursuant to  
117 other provisions of this section, then upon the motion of either  
118 party, the court may compel the other party to deliver to the  
119 moving party any of his or her separate estate which may be in  
120 the possession or control of the respondent party and may make  
121 such further order as is necessary to prevent either party from  
122 interfering with the separate estate of the other;

123 (9) When allegations of abuse have been proven, the court  
124 shall enjoin the offending party from molesting or interfering  
125 with the other, or otherwise imposing any restraint on the  
126 personal liberty of the other or interfering with the custodial or  
127 visitation rights of the other. Such order may permanently  
128 enjoin the offending party from entering the school, business or  
129 place of employment of the other for the purpose of molesting

130 or harassing the other; or from contacting the other, in person  
131 or by telephone, for the purpose of harassment or threats; or  
132 from harassing or verbally abusing the other in a public place;

133 (10) The court may order either party to take necessary  
134 steps to transfer utility accounts and other accounts for recur-  
135 ring expenses from the name of one party into the name of the  
136 other party or from the joint names of the parties into the name  
137 of one party. Nothing contained in this subdivision shall affect  
138 the liability of the parties for indebtedness on any such account  
139 incurred before the transfer of such account.

140 (c) When an annulment or divorce is denied, the court shall  
141 retain jurisdiction of the case and may order all or any portion  
142 of the relief provided for in subsections (a) and (b) of this  
143 section which has been demanded or prayed for in the plead-  
144 ings.

145 (d) When a divorce or annulment is granted in this state  
146 upon constructive service of process and personal jurisdiction  
147 is thereafter obtained of the defendant in such case, the court  
148 may order all or any portion of the relief provided for in  
149 subsections (a) and (b) of this section which has been demanded  
150 or prayed for in the pleadings.

151 (e) After the entry of an order pursuant to the provisions of  
152 this section, the court may revise the order concerning the  
153 maintenance of the parties and enter a new order concerning the  
154 same, as the circumstances of the parties may require.

155 The court may also from time to time afterward, upon  
156 motion of either of the parties and upon proper service, revise  
157 such order to grant relief pursuant to subdivision (9), subsection  
158 (b) of this section, and enter a new order concerning the same,  
159 as the circumstances of the parties and the benefit of children  
160 may require. The court may also from time to time afterward,  
161 upon the motion of either of the parties or other proper person  
162 having actual or legal custody of the minor child or children of  
163 the parties, revise or alter the order concerning the custody and  
164 support of the children, and make a new order concerning the  
165 same, issuing it forthwith, as the circumstances of the parents



166 or other proper person or persons and the benefit of the children  
167 may require: *Provided*, That all orders modifying child support  
168 shall be in conformance with the requirements of support  
169 guidelines promulgated pursuant to article one-b, chapter  
170 forty-eight-a of this code: *Provided, however*, That an order  
171 providing for child support payments may be revised or altered  
172 for the reason, inter alia, that the existing order provides for  
173 child support payments in an amount that is less than  
174 eighty-five percent or more than one hundred fifteen percent of  
175 the amount that would be required to be paid under the child  
176 support guidelines promulgated pursuant to the provisions of  
177 said section: *Provided further*, That the child support enforce-  
178 ment division may review a child support order and, if appro-  
179 priate, file a motion with the circuit court for modification of  
180 the child support order pursuant to the provisions of section  
181 thirty-five, article two, chapter forty-eight-a of this code.

182 In granting relief under this subsection, the court may,  
183 when other means are not conveniently available, alter any prior  
184 order of the court with respect to the distribution of marital  
185 property, if such property is still held by the parties, and if  
186 necessary to give effect to a modification of alimony, child  
187 support or child custody or necessary to avoid an inequitable or  
188 unjust result which would be caused by the manner in which the  
189 modification will affect the prior distribution of marital  
190 property.

191 (f) (1) When a separation agreement is the basis for an  
192 award of alimony, the court, in approving the agreement, shall  
193 examine the agreement to ascertain whether it clearly provides  
194 for alimony to continue beyond the death of the payor or the  
195 payee or to cease in such event. When alimony is to be paid  
196 pursuant to the terms of a separation agreement which does not  
197 state whether the payment of alimony is to continue beyond the  
198 death of the payor or payee or is to cease, or when the parties  
199 have not entered into a separation agreement and alimony is  
200 awarded, the court shall specifically state as a part of its order  
201 that such payments of alimony are to cease at the death of the  
202 payor or payee. Rehabilitative alimony ceases with the payee's  
203 death.

204       (2) When a separation agreement is the basis for an award  
205 of alimony, the court, in approving the agreement, shall  
206 examine the agreement to ascertain whether it clearly provides  
207 for alimony to continue beyond the remarriage of the payee or  
208 to cease in such event. When alimony is to be paid pursuant to  
209 the terms of a separation agreement which does not state  
210 whether the payment of alimony is to continue beyond the  
211 remarriage of the payee or is to cease, or when the parties have  
212 not entered into a separation agreement and alimony is  
213 awarded, the court shall specifically state as a part of its order  
214 that such payments of alimony are to cease at the remarriage of  
215 the payee. Rehabilitative alimony does not cease upon the  
216 remarriage of the payee during a rehabilitative period of four  
217 years or less.

218       (3) Unless a pertinent separation order clearly provides for  
219 alimony to continue beyond the death of a payor or payee or  
220 beyond the remarriage of a payee, any order awarding alimony  
221 that is entered after the first day of July, one thousand nine  
222 hundred ninety-nine that does not state that payments of  
223 alimony are to cease at the death of the payor or payee or at the  
224 remarriage of the payee shall be deemed to state that payments  
225 of alimony are to cease at the death of the payor or payee or at  
226 the remarriage of the payee.

227       (g) (1) It is a ground for suspending a payor's obligation to  
228 pay alimony if the payee shares living quarters and cohabits  
229 with another person for six months within a period of twelve  
230 months.

231       (2) It is a ground for terminating a payor's obligation to pay  
232 alimony if the payee shares living quarters and cohabits with  
233 another person for twenty-four months within a period of thirty-  
234 six months.

235       (3) A suspended obligation that has not been terminated and  
236 that has not yet expired under its original terms may be rein-  
237 stated for the remaining portion of the original term at the  
238 termination of the relationship upon which the suspension was  
239 based.

240 (4) On the issue of whether alimony should be suspended  
241 or terminated under this subsection, the burden is on the payor  
242 to prove by a preponderance of the evidence that the payee has  
243 shared living quarters and cohabited for the requisite time. If  
244 such proof is made, there is a rebuttable presumption that the  
245 payee derives sufficient benefit from shared living quarters and  
246 continued cohabitation, nonfinancial as well as financial, so that  
247 compensation is no longer required for any financial losses  
248 arising from the termination of the marital relationship upon  
249 which the alimony is based and would, if allowed, make  
250 overcompensation of the payee likely.

251 (5) If the court finds that the payor has failed to meet  
252 burden of proof on the issue, the court may award reasonable  
253 attorney's fees to a payee who prevails in an action to suspend  
254 or terminate alimony on the ground of cohabitation.

255 (6) The court shall order that a suspension or termination of  
256 alimony is retroactive to the date of service of the petition on  
257 the payee unless the court finds that reimbursement of amounts  
258 already paid would cause an undue hardship on the payee.

259 (h) In addition to the disclosure requirements set forth in  
260 section thirty-three of this article, the court may order accounts  
261 to be taken as to all or any part of marital property or the  
262 separate estates of the parties and may direct that the accounts  
263 be taken as of the date of the marriage, the date upon which the  
264 parties separated or any other time in assisting the court in the  
265 determination and equitable division of property.

266 (i) In determining whether alimony is to be awarded, or in  
267 determining the amount of alimony, if any, to be awarded under  
268 the provisions of this section, the court shall consider and  
269 compare the fault or misconduct of either or both of the parties  
270 and the effect of such fault or misconduct as a contributing  
271 factor to the deterioration of the marital relationship. However,  
272 alimony shall not be awarded when both parties prove grounds  
273 for divorce and are denied a divorce, nor shall an award of  
274 alimony under the provisions of this section be ordered which  
275 directs the payment of alimony to a party determined to be at  
276 fault, when, as a grounds granting the divorce, such party is  
277 determined by the court:

278 (1) To have committed adultery; or

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

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

284 (j) Whenever under the terms of this section or section  
285 thirteen of this article a court enters an order requiring the  
286 payment of alimony or child support, if the court anticipates the  
287 payment of such alimony or child support or any portion thereof  
288 to be paid out of "disposable retired or retainer pay" as that  
289 term is defined in 10 U.S.C. §1408, relating to members or  
290 former members of the uniformed services of the United States,  
291 the court shall specifically provide for the payment of an  
292 amount, expressed in dollars or as a percentage of disposable  
293 retired or retainer pay, from the disposable retired or retainer  
294 pay of the payor party to the payee party.

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

297 (1) The name of the custodian;

298 (2) The amount of the support payments;

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

300 (4) The frequency of the support payments;

301 (5) The event or events which trigger termination of the  
302 support obligation;

303 (6) A provision regarding wage withholding;

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

305 (8) A provision for medical support; and

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

**§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 separation  
3 agreement, if the court finds that the agreement is fair and  
4 reasonable, and not obtained by fraud, duress or other uncon-  
5 scionable conduct by one of the parties, and further finds that  
6 the parties, through the separation agreement, have expressed  
7 themselves in terms which, if incorporated into a judicial order,  
8 would be enforceable by a court in future proceedings, then the  
9 court shall conform the relief which it is authorized to order  
10 under the provisions of sections thirteen and fifteen of this  
11 article to the separation agreement of the parties. The separation  
12 agreement may contractually fix the division of property  
13 between the parties and may determine whether alimony shall  
14 be awarded, whether a court shall have continuing jurisdiction  
15 over the amount of an alimony award so as to increase or  
16 decrease the amount of alimony to be paid, whether alimony  
17 shall be awarded as a lump sum settlement in lieu of periodic  
18 payments, whether alimony shall continue beyond the death of  
19 the payor party or the remarriage of the payee party, or whether  
20 the alimony award shall be enforceable by contempt proceed-  
21 ings or other judicial remedies aside from contractual remedies.  
22 Any award of periodic payments of alimony shall be deemed to  
23 be judicially decreed and subject to subsequent modification  
24 unless there is some explicit, well expressed, clear, plain and  
25 unambiguous provision to the contrary set forth in the court  
26 approved separation agreement or the order granting the  
27 divorce. Child support shall, under all circumstances, always be  
28 subject to continuing judicial modification.

29 (b) In cases where the parties to an action commenced  
30 under the provisions of this article have not executed a separa-  
31 tion agreement, or have executed an agreement which is  
32 incomplete or insufficient to resolve the outstanding issues  
33 between the parties, or where the court finds the separation  
34 agreement of the parties not to be fair and reasonable or clear  
35 and unambiguous, the court shall proceed to resolve the issues

36 outstanding between the parties. The court shall consider the  
37 following factors in determining the amount of alimony, child  
38 support or separate maintenance, if any, to be ordered under the  
39 provisions of sections thirteen and fifteen of this article, as a  
40 supplement to or in lieu of the separation agreement:

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

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

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

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

50 (5) The distribution of marital property to be made under  
51 the terms of a separation agreement or by the court under the  
52 provisions of section thirty-two of this article, insofar as the  
53 distribution affects or will affect the earnings of the parties and  
54 their ability to pay or their need to receive alimony, child  
55 support or separate maintenance: *Provided*, That for the  
56 purposes of determining a spouse's ability to pay alimony, the  
57 court may not consider the income generated by property  
58 allocated to the payor spouse in connection with the division of  
59 marital property;

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

62 (7) The educational qualifications of each party;

63 (8) Whether either party has foregone or postponed  
64 economic, education or employment opportunities during the  
65 course of the marriage;

66 (9) The standard of living established during the marriage;

67 (10) The likelihood that the party seeking alimony, child  
68 support or separate maintenance can substantially increase his  
69 or her income-earning abilities within a reasonable time by  
70 acquiring additional education or training;

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

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

76 (13) The costs of educating minor children;

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

79 (15) The tax consequences to each party;

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

83 (17) The financial need of each party;

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

86 (19) Such other factors as the court deems necessary or  
87 appropriate to consider in order to arrive at a fair and equitable  
88 grant of alimony, child support or separate maintenance.

**§48-2-32. Marital property disposition.**

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

5 (b) In cases where the parties to an action commenced  
6 under the provisions of this article have executed a separation  
7 agreement, then the court shall divide the marital property in  
8 accordance with the terms of the agreement, unless the court  
9 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 not  
13 expressed themselves in terms which, if incorporated into a

14 judicial order, would be enforceable by a court in future  
15 proceedings; or

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

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

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

31 (A) Employment income and other earnings; and

32 (B) Funds which are separate property.

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

37 (A) Homemaker services;

38 (B) Child care services;

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

42 (D) Labor performed in the actual maintenance or improve-  
43 ment of tangible marital property; and

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

46 (3) The extent to which each party expended his or her  
47 efforts during the marriage in a manner which limited or



48 decreased such party's income-earning ability or increased the  
49 income-earning ability of the other party, including, but not  
50 limited to:

51 (A) Direct or indirect contributions by either party to the  
52 education or training of the other party which has increased the  
53 income-earning ability of such other party; and

54 (B) Foregoing by either party of employment or other  
55 income-earning activity through an understanding of the parties  
56 or at the insistence of the other party.

57 (4) The extent to which each party, during the marriage,  
58 may have conducted himself or herself so as to dissipate or  
59 depreciate the value of the marital property of the parties:  
60 *Provided*, That except for a consideration of the economic  
61 consequences of conduct as provided for in this subdivision,  
62 fault or marital misconduct shall not be considered by the court  
63 in determining the proper distribution of marital property.

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

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

81 (A) Fix the spouses' respective shares in such future  
82 payments if and when received, or,

83 (B) If it is not possible and practical to fix their share at the  
84 time of entering a final order in a domestic relations action,  
85 reserve jurisdiction to make an appropriate order at the earliest  
86 practical date.

87 If a valuation is made after a contingent or other future fee  
88 has been earned through the personal services or skills of a  
89 spouse, the portion that is marital property shall be in the same  
90 proportion to the total fee that the personal services or skills  
91 expended before the separation of the parties bears to the total  
92 personal skills or services expended. The provisions of this  
93 subdivision apply to pending cases when the issues of contin-  
94 gent fees or future earned fees have not been finally adjudi-  
95 cated.

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

121 (3) Designate the property which constitutes separate  
122 property of the respective parties or the separate property of  
123 their children;

124 (4) Determine the extent to which marital property is  
125 susceptible to division in accordance with the findings of the  
126 court as to the respective interests of the parties therein;

127 (5) In the case of any property which is not susceptible to  
128 division, ascertain the projected results of a sale of such  
129 property;

130 (6) Ascertain the projected effect of a division or transfer of  
131 ownership of income-producing property, in terms of the  
132 possible pecuniary loss to the parties or other persons which  
133 may result from an impairment of the property's capacity to  
134 generate earnings; and

135 (7) Transfer title to such component parts of the marital  
136 property as may be necessary to achieve an equitable distribu-  
137 tion of the marital property. To make such equitable distribu-  
138 tion, the court may:

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

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

143 (C) Direct either party to pay a sum of money to the other  
144 party in lieu of transferring specific property or an interest  
145 therein, if necessary to adjust the equities and rights of the  
146 parties, which sum may be paid in installments or otherwise, as  
147 the court may direct;

148 (D) Direct a party to transfer his or her property to the other  
149 party in substitution for property of the other party of equal  
150 value which the transferor is permitted to retain and assume  
151 ownership of; or

152 (E) Order a sale of specific property and an appropriate  
153 division of the net proceeds of such sale: *Provided*, That such  
154 sale may be by private sale, or through an agent or by judicial

155 sale, whichever would facilitate a sale within a reasonable time  
156 at a fair price.

157 (e) In order to achieve the equitable distribution of marital  
158 property, the court shall, unless the parties otherwise agree,  
159 order, when necessary, the transfer of legal title to any property  
160 of the parties, giving preference to effecting equitable distribu-  
161 tion through periodic or lump sum payments: *Provided*, That  
162 the court may order the transfer of legal title to motor vehicles,  
163 household goods and the former marital domicile without  
164 regard to such preference where the court determines it to be  
165 necessary or convenient. In any case involving the equitable  
166 distribution of: (1) Property acquired by bequest, devise,  
167 descent, distribution or gift; or (2) ownership interests in a  
168 business entity, the court shall, unless the parties otherwise  
169 agree, give preference to the retention of the ownership interests  
170 in such property. In the case of such business interests, the court  
171 shall give preference to the party having the closer involvement,  
172 larger ownership interest or greater dependency upon the  
173 business entity for income or other resources required to meet  
174 responsibilities imposed under this article, and shall also  
175 consider the effects of transfer or retention in terms of which  
176 alternative will best serve to preserve the value of the business  
177 entity or protect the business entity from undue hardship or  
178 from interference caused by one of the parties or by the divorce,  
179 annulment or decree of separate maintenance: *Provided*,  
180 *however*, That the court may, unless the parties otherwise agree,  
181 sever the business relationship of the parties and order the  
182 transfer of legal title to ownership interests in the business  
183 entity from one party to the other, without regard to the  
184 limitations on the transfer of title to such property otherwise  
185 provided in this subsection, if such transfer is required to  
186 achieve the other purposes of this article: *Provided further*, That  
187 in all such cases the court shall order or the agreement of the  
188 parties shall provide for equitable payment or transfer of legal  
189 title to other property, of fair value in money or moneys' worth,  
190 in lieu of any ownership interests in a business entity which are  
191 ordered to be transferred under this subsection: *And provided*  
192 *further*, That the court may order the transfer of such business

193 interests to a third party (such as the business entity itself or  
194 another principal in the business entity) where the interests of  
195 the parties under this article can be protected and at least one  
196 party consents thereto.

197 (f) In any order which divides or transfers the title to any  
198 property, determines the ownership or value of any property,  
199 designates the specific property to which any party is entitled  
200 or grants any monetary award, the court shall set out in detail its  
201 findings of fact and conclusions of law, and the reasons for  
202 dividing the property in the manner adopted.

203 (g) If an order entered in accordance with the provisions of  
204 this article requires the transfer of title to property and a party  
205 fails or refuses to execute a deed or other instrument necessary  
206 to convey title to such property, the deed or other instrument  
207 shall be executed by a special commissioner appointed by the  
208 court for the purpose of effecting such transfer of title pursuant  
209 to section seven, article twelve, chapter fifty-five of this code.

210 (h) As to any third party, the doctrine of equitable distribu-  
211 tion of marital property and the provisions of this article shall  
212 be construed as creating no interest or title in property until and  
213 unless an order is entered under this article judicially defining  
214 such interest or approving a separation agreement which defines  
215 such interest. Neither this article nor the doctrine of equitable  
216 distribution of marital property shall be construed to create  
217 community property nor any other interest or estate in property  
218 except those previously recognized in this state. A husband or  
219 wife may alienate property at any time prior to the entry of an  
220 order under the provisions of this article or prior to the  
221 recordation of a notice of lis pendens in accordance with the  
222 provisions of section thirty-five of this article, and at anytime  
223 and in any manner not otherwise prohibited by an order under  
224 this article, in like manner and with like effect as if this article  
225 and the doctrine of equitable distribution had not been adopted:  
226 *Provided*, That as to any transfer prior to the entry of an order  
227 under the provisions of this article, a transfer other than to a  
228 bona fide purchaser for value shall be voidable if the court finds  
229 such transfer to have been effected to avoid the application of

230 the provisions of this article or to otherwise be a fraudulent  
231 conveyance. Upon the entry of any order under this article or  
232 the admission to record of any notice with respect to an action  
233 under this article, restraining the alienation of property of a  
234 party, a bona fide purchaser for value shall take such title or  
235 interest as he or she might have taken prior to the effective date  
236 of this section and no purchaser for value need see to the  
237 application of the proceeds of such purchase except to the  
238 extent he or she would have been required so to do prior to the  
239 effective date of this section: *Provided, however,* That as to  
240 third parties nothing in this section shall be construed to limit  
241 or otherwise defeat the interests or rights to property which any  
242 husband or wife would have had in property prior to the  
243 enactment of this section or prior to the adoption of the doctrine  
244 of equitable distribution by the supreme court of appeals on the  
245 twenty-fifth day of May, one thousand nine hundred eighty-  
246 three: *Provided further,* That no order entered under this article  
247 shall be construed to defeat the title of a third party transferee  
248 thereof except to the extent that the power to effect such a  
249 transfer of title or interest in such property is secured by a valid  
250 and duly perfected lien and, as to any personal property,  
251 secured by a duly perfected security interest.

252 (i) Notwithstanding the provisions of chapter eleven of this  
253 code, no transfer of interest in or title to property under this  
254 section shall be taxable as a transfer of property without  
255 consideration nor, except as to alimony, create liability for  
256 sales, use, inheritance and transfer or income taxes due the state  
257 or any political subdivision nor require the payment of the  
258 excise tax imposed under article twenty-two, chapter eleven of  
259 this code.

260 (j) Whenever under the terms of this article a court enters  
261 an order requiring a division of property, if the court anticipates  
262 the division of property will be effected by requiring sums to be  
263 paid out of "disposable retired or retainer pay" as that term is  
264 defined in 10 U.S.C. §1408, relating to members or former  
265 members of the uniformed services of the United States, the  
266 court shall specifically provide for the payment of an amount,  
267 expressed in dollars or as a percentage of disposable retired or

268 retainer pay, from the disposable retired or retainer pay of the  
269 payor party to the payee party.

270 (k) A court may not award support or order equitable  
271 distribution of property between individuals who are not  
272 married to one another in accordance with the provisions of  
273 article one of this chapter.

274 (l) The amendments to this section effected by the  
275 reenactment of this section during the regular session of the  
276 Legislature, one thousand nine hundred ninety-six, are to be  
277 applied prospectively and shall have no application to any  
278 action for annulment, divorce or separate maintenance that was  
279 commenced on or before the effective date 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 chapter  
2 and the rate is not specified, the rate is that specified in section  
3 thirty-one, article six, chapter fifty-six of this code. On or after  
4 the ninth day of June, one thousand nine hundred ninety-five,  
5 interest shall accrue only upon the outstanding principal of such  
6 obligation. This section shall be construed to permit the  
7 accumulation of simple interest, and may not be construed to  
8 permit the compounding of interest. Interest which has accrued  
9 on unpaid installments accruing before the ninth day of June,  
10 one thousand nine hundred ninety-five, may not be modified by  
11 any court, irrespective of whether such installment accrued  
12 simple or compound interest: *Provided*, That unpaid install-  
13 ments upon which interest was compounded before the ninth  
14 day of June, one thousand nine hundred ninety-five, shall  
15 accrue only simple interest thereon on and after the ninth day of  
16 June, one thousand nine hundred ninety-five.

17 (b) Except as otherwise provided in this subsection,  
18 prejudgment interest shall not be awarded in a domestic  
19 relations action. The circuit court may only award prejudgment  
20 interest in a domestic relations action against a party if the court  
21 finds, in writing, that the party engaged in conduct that would  
22 violate subsection (b), rule eleven of the West Virginia rules of

23 civil procedure. If prejudgment interest is awarded, the court  
24 shall calculate prejudgment interest from the date the offending  
25 representation 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; pro-  
cess.**

1 (a) *Jurisdiction.* — Circuit courts and magistrate courts, as  
2 constituted under chapter fifty of this code, have concurrent  
3 jurisdiction over proceedings under this article: *Provided*, That  
4 after the thirty-first day of December, one thousand nine  
5 hundred ninety-nine, magistrate court jurisdiction shall be  
6 limited, and thereafter, full hearings wherein a protective order  
7 is sought shall be heard before a circuit judge or a family court  
8 judge.

9 (b) *Venue.* — The action may be heard in the county in  
10 which the domestic or family violence occurred, in the county  
11 in which the respondent is living or in the county in which the  
12 petitioner is living, either temporarily or permanently. If the  
13 parties are married to each other, the action may also be brought  
14 in the county in which an action for divorce between the parties  
15 may be brought as provided by section eight, article two of this  
16 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 a  
19 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 other  
22 civil action before the court, except actions in which trial is in  
23 progress, and shall be docketed immediately upon filing. Any  
24 appeal to the circuit court of a magistrate's judgment on a  
25 petition for relief under this article shall be heard within ten  
26 working days of the filing of the appeal.

27 (e) *Full faith and credit.* — Any temporary or final protec-  
28 tive order issued pursuant to this article shall be effective



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

44 (f) *Service by publication.* — A protective order may be  
45 served on the respondent by means of a Class I legal advertise-  
46 ment published notice, with the publication area being the  
47 county in which the respondent resides, published in accordance  
48 with the provisions of section two, article three, chapter fifty-  
49 nine of this code if: (i) The petitioner files an affidavit with the  
50 court stating that an attempt at personal service pursuant to rule  
51 four of the West Virginia rules of civil procedure has been  
52 unsuccessful or evidence is adduced at the hearing for the  
53 protective order that the respondent has left the state of West  
54 Virginia; and (ii) a copy of the order is mailed by certified or  
55 registered mail to the respondent at the respondent's last known  
56 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 that he  
3 or she reported or witnessed domestic or family violence  
4 against another and has, as a result, been abused, threatened,  
5 harassed or has been the subject of other actions to attempt to  
6 intimidate him or her, by a preponderance of the evidence, the  
7 court shall issue a protective order directing the respondent to  
8 refrain from abusing, harassing, stalking, threatening or

9 otherwise intimidating the petitioner, the person who reported  
10 or witnessed family or domestic violence or the minor children,  
11 or engaging in other conduct that would place the petitioner, the  
12 person who reported or witnessed family or domestic violence  
13 or the minor children in reasonable fear of bodily injury. Where  
14 the respondent is present at the hearing and elects not to contest  
15 the allegations of domestic or family violence or does not  
16 contest the relief sought, the petitioner is not required to adduce  
17 evidence and prove the allegations of domestic or family  
18 violence and the court may directly address the issues of the  
19 relief requested.

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

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

24 (2) Awarding temporary custody of or establishing tempo-  
25 rary visitation rights with regard to minor children named in the  
26 order;

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

31 (4) Ordering the noncustodial parent to pay to the custodial  
32 parent a sum for temporary support and maintenance of the  
33 petitioner and children, if any;

34 (5) Ordering the respondent to pay to the petitioner a sum  
35 for temporary support and maintenance of the petitioner, where  
36 appropriate;

37 (6) Ordering the respondent to refrain from entering the  
38 school, business or place of employment of the petitioner or  
39 household or family members for the purpose of violating the  
40 protective order;

41 (7) Ordering the respondent to participate in an intervention  
42 program for perpetrators;

43 (8) Ordering the respondent to refrain from contacting,  
44 telephoning, communicating, harassing or verbally abusing the  
45 petitioner;

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

52 (10) Prohibiting the respondent from using or possessing a  
53 firearm or other weapon, notwithstanding the fact that the  
54 respondent has a valid license to possess such firearm or other  
55 weapon;

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

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

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

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

71 (1) Ordering the respondent to refrain from abusing,  
72 contacting, telephoning, communicating, harassing, verbally  
73 abusing or otherwise intimidating the petitioner or other person  
74 to be protected;

75 (2) Ordering the respondent to refrain from entering the  
76 school, business or place of employment of the petitioner or  
77 other person to be protected, for the purpose of violating the  
78 protective order.

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

89 (e) To be effective, a written request to extend an order  
90 from ninety days to one hundred eighty days must be submitted  
91 to the court prior to the expiration of the original ninety-day  
92 period. A notice of the extension shall be sent by the clerk of  
93 the court to the respondent by first class mail, addressed to the  
94 last known address of the respondent as indicated by the court's  
95 case filings. The extension of time is effective upon mailing of  
96 the notice.

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

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

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

110 (i) Mutual protective orders are prohibited unless both  
111 parties have filed a petition under section four of this article and  
112 have proven the allegations of domestic or family violence by  
113 a preponderance of the evidence. This shall not prevent other  
114 persons, including the respondent, from filing a separate

115 petition. The court may consolidate two or more petitions if he  
116 or she determines that consolidation will further the interests of  
117 justice and judicial economy. The court shall enter a separate  
118 order for each petition filed.

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

122 **“VIOLATION OF THIS ORDER MAY BE PUNISHED**  
123 **BY CONFINEMENT IN A REGIONAL OR COUNTY**  
124 **JAIL FOR AS LONG AS ONE YEAR AND BY A FINE OF**  
125 **AS MUCH AS TWO THOUSAND DOLLARS”**

126 (k) Any person against whom a protective order is issued  
127 after a full hearing pursuant to this section shall be assessed a  
128 fee of twenty-five dollars, payable to the family court fund  
129 established pursuant to section twenty-three, article four,  
130 chapter forty-eight-a of this code.

**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 declarations.**

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

4 (b) The Legislature finds and declares that it is the public  
5 policy of this state to assure that the best interest of children is  
6 the court’s primary concern in allocating custodial and  
7 decision-making responsibilities between parents who no longer  
8 live together. In furtherance of this policy, the Legislature  
9 declares that a child’s best interest will be served by assuring  
10 that minor children have frequent and continuing contact with  
11 parents who have shown the ability to act in the best interest of  
12 their children, to educate parents on their rights and responsibil-  
13 ities and the effect their separation may have on children, to  
14 encourage mediation of disputes, and to encourage parents to  
15 share in the rights and responsibilities of rearing their children

16 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 a  
10 high priority on doing so;

11 (6) Security from exposure to physical or emotional harm;  
12 and

13 (7) Expeditious, predictable decision-making and avoidance  
14 of prolonged uncertainty respecting arrangements for the  
15 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 partici-  
2 pate 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; or

5 (b) An adult allocated custodial responsibility or decision-  
6 making responsibility under a parenting plan regarding the child  
7 that is then in effect.

8 (2) In exceptional cases the court may, in its discretion,  
9 grant permission to intervene to other persons or public  
10 agencies whose participation in the proceedings under this  
11 article it determines is likely to serve the child's best interests.

12 The court may place limitations on participation by the inter-  
13 vening party as the court determines to be appropriate. Such  
14 persons or public agencies do not have standing to initiate an  
15 action under this article.

**§48-11-104. Parent education classes.**

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

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

20 (c) The circuit court may require that each person attending  
21 a parental education class pay a fee, not to exceed twenty-five  
22 dollars, to the clerk of such court to defray the cost of materials  
23 and of hiring teachers: *Provided*, That where it is determined  
24 that a party is indigent and unable to pay for such classes, the  
25 court shall waive the payment of the fee for such party. The  
26 clerk of the circuit court shall, on or before the tenth day of  
27 each month, transmit all fees collected under this subsection to  
28 the state treasurer for deposit in the state treasury to the credit  
29 of special revenue fund to be known as the "parental education  
30 fund", which is hereby created. All moneys collected and  
31 received under this subsection and paid into the state treasury  
32 and credited to the "parental education fund" shall be used by

33 the administrative office of the supreme court of appeals solely  
34 for reimbursing the provider of parental education classes for  
35 the costs of materials and of providing such classes. Such  
36 moneys shall not be treated by the auditor and treasurer as part  
37 of the general revenue of the state.

38 (d) The administrative office of the supreme court of  
39 appeals shall submit a report to the joint committee on govern-  
40 ment and finance summarizing the effectiveness of any program  
41 of parent education no later than two years from the initiation  
42 of the program.

#### PART 2. PARENTING PLANS.

##### **§48-11-201. Parental 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 specific  
3 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 determine  
8 whether there is a factual basis for a finding under subdivision  
9 (1) or (2), subsection (a) of this section. When there is credible  
10 information that child abuse as defined by section three, article  
11 one, chapter forty-nine of this code or domestic violence as  
12 defined by section two, article two-a, chapter forty-eight-a of  
13 this code has occurred, a hearing is mandatory and if the court  
14 determines that abuse has occurred, appropriate protective  
15 measures shall be ordered.

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

##### **§48-11-202. Court ordered services.**

1 (a) (1) The court shall inform the parents, or require them  
2 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 re-  
8 sources for addressing domestic abuse; and

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

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

13 (3) If parents are unable to resolve issues and agree to a  
14 parenting plan, the court shall require mediation.

15 (b) The court shall not order services under subsection (a)  
16 of this section that require a parent to have face-to-face  
17 meetings with the other parent if credible evidence of domestic  
18 violence exists.

19 (c) A mediator shall not conduct a mediation, even by  
20 parental agreement, without first screening for domestic  
21 violence. If credible evidence thereof exists, the mediator shall  
22 take steps:

23 (1) To ensure the voluntary consent of the victim of the  
24 abuse to participate in the mediation, and to any agreement  
25 reached as a result of the mediation; and

26 (2) To protect the safety of the victim.

27 (d) A mediator shall not make a recommendation to the  
28 court and may not reveal information that either parent has  
29 disclosed during mediation under a reasonable expectation of  
30 confidentiality, except that a mediator may reveal to the court  
31 credible information that he or she has received concerning  
32 domestic violence or child abuse.

33 (e) Services authorized under subsection (a) of this section  
34 shall be ordered at a cost that is reasonable in light of the  
35 financial circumstances of each parent. Where one parent's

36 ability to pay for such services is significantly greater than the  
37 other, the court may order that parent to pay some or all of the  
38 expenses of the other.

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

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

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

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

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

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

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

25 (b) At the hearing, the court shall enter a temporary  
26 parenting order incorporating a temporary parenting plan which  
27 includes:

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

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

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

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

38 (5) Restraining orders, if applicable.

39 (c) A parent may make a motion for an order to show cause  
40 and the court may enter a temporary order, including a tempo-  
41 rary parenting plan, upon a showing of necessity.

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

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

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

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

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

12 (b) The court shall also consider the factors used to  
13 determine residential provisions in the permanent parenting  
14 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 verified  
5 and shall state, to the extent known or reasonably discoverable  
6 by the filing party or parties:

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

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

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

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

21 (5) A description of the child's school and extracurricular  
22 activities;

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

27 (7) Required financial information; and

28 (8) A description of the known areas of agreement and  
29 disagreement with any other parenting plan submitted in the  
30 case.

31 The court shall maintain the confidentiality of any informa-  
32 tion required to be filed under this section when the person  
33 giving that information has a reasonable fear of domestic abuse  
34 and disclosure of the information would increase that fear.

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

51 (c) Upon motion of a party and after consideration of the  
52 evidence, the court shall order a parenting plan consistent with  
53 the provisions of section two hundred six through two hundred  
54 nine of this article, containing:

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

57 (A) A custodial schedule that designates in which parent's  
58 home each minor child will reside on given days of the year; or

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

62 (2) An allocation of decision-making responsibility as to  
63 significant matters reasonably likely to arise with respect to the  
64 child; and

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

68 (d) A parenting plan may, at the court's discretion, contain  
69 provisions that address matters that are expected to arise in the

70 event of a party's relocation, or provide for future modifications  
71 in the parenting plan if specified contingencies occur.

72 (e) The court may order a temporary allocation of custodial  
73 responsibility or decision-making responsibility as the court  
74 determines is in the child's best interests, considering the  
75 factors in section two hundred six and two hundred seven of  
76 this article. Such an order ordinarily should not preclude access  
77 to the child by a parent who has been exercising a reasonable  
78 share of parenting functions. Upon credible evidence of one or  
79 more of the circumstances set forth in subsection (a) section  
80 two hundred nine of this article, the court shall issue a tempo-  
81 rary order limiting or denying access to the child as required by  
82 that section, in order to protect the child or the other party,  
83 pending adjudication of the underlying facts.

84 (f) Expedited procedures shall be instituted to facilitate the  
85 prompt issuance of a parenting plan.

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

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

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

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

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

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

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

31 (6) To avoid an allocation of custodial responsibility that  
32 would be extremely impractical or that would interfere substan-  
33 tially with the child's need for stability in light of economic,  
34 physical, or other circumstances, including the distance  
35 between the parents' residences, the cost and difficulty of  
36 transporting the child, the parents' and child's daily schedules,  
37 and the ability of the parents to cooperate in the arrangement;  
38 and

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

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

52 (c) If the court is unable to allocate custodial responsibility  
53 under subsection (a) of this section because the allocation under  
54 that subsection would be manifestly harmful to the child, or  
55 because there is no history of past performance of caretaking

56 functions, as in the case of a newborn, or because the history  
57 does not establish a pattern of caretaking sufficiently  
58 dispositive of the issues of the case, the court shall allocate  
59 custodial responsibility based on the child's best interest, taking  
60 into account the factors in considerations that are set forth in  
61 this section and in section two hundred nine and subsection (d),  
62 section four hundred three of this article and preserving to the  
63 extent possible this section's priority on the share of past  
64 caretaking functions each parent performed.

65 (d) In determining how to schedule the custodial time  
66 allocated to each parent, the court shall take account of the  
67 economic, physical and other practical circumstances such as  
68 those listed in subdivision (6), subsection (a) of this section.

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

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

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

9 (2) The level of each parent's participation in past decision-  
10 making on behalf of the child;

11 (3) The wishes of the parents;

12 (4) The level of ability and cooperation the parents have  
13 demonstrated in decision-making on behalf of the child;

14 (5) Prior agreements of the parties; and

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

17 (b) If each of the child's legal parents has been exercising  
18 a reasonable share of parenting functions for the child, the court  
19 shall presume that an allocation of decision-making responsibil-



20 ity to both parents jointly is in the child's best interests. The  
21 presumption is overcome if there is a history of domestic abuse,  
22 or by a showing that joint allocation of decision-making  
23 responsibility is not in the child's best interest.

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

29 (d) Even if a legal parent is not allocated decision-making  
30 responsibility under this section, a legal parent shall have  
31 access to school and health-care records concerning the child to  
32 which legal parents have access by other law, except insofar as  
33 access is not in the child's best interests or where the provision  
34 of such information might endanger a parent who has been the  
35 victim of domestic abuse.

**§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 parental agreement under  
3 section two hundred one of this article, the court shall order a  
4 method of resolving disputes that serves the child's best interest  
5 in light of:

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

7 (2) Circumstances, including, but not limited to, financial  
8 circumstances, that may affect the parents ability to participate  
9 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 such  
15 a person or agency. The disposition of a dispute through a non-  
16 judicial method of dispute resolution that has been ordered by  
17 the court without prior parental agreement is subject to de novo  
18 judicial review. If the parents have agreed in a parenting plan

19 or by agreement thereafter to a binding resolution of their  
20 dispute by nonjudicial means, a decision by such means is  
21 binding upon the parents and must be enforced by the court,  
22 unless it is shown to be contrary to the best interests of the  
23 child, beyond the scope of the parents' agreement, or the result  
24 of fraud, misconduct, corruption or other serious irregularity.

25 (c) This section is subject to the limitations imposed by  
26 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 whether  
3 a parent who would otherwise be allocated responsibility under  
4 a parenting plan:

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

7 (2) Has inflicted domestic violence, as defined in section  
8 two, article two-a, chapter forty-eight of this code;

9 (3) Has interfered persistently with the other parent's access  
10 to the child, except in the case of actions taken for the purpose  
11 of protecting the safety of the child or the interfering parent or  
12 another family member, pending adjudication of the facts  
13 underlying that belief; or

14 (4) Has made a false report of domestic violence or child  
15 abuse.

16 (b) If a parent is found to have engaged in any activity  
17 specified by subsection (a) of this section, the court shall  
18 impose limits that are reasonably calculated to protect the child  
19 or child's parent from harm. The limitations that the court shall  
20 consider include, but are not limited to:

21 (1) An adjustment of the custodial responsibility of the  
22 parents, including the allocation of exclusive custodial respon-  
23 sibility to one of them;

24 (2) Supervision of the custodial time between a parent and  
25 the child;

26 (3) Exchange of the child between parents through an  
27 intermediary, or in a protected setting;

28 (4) Restraints on the parent from communication with or  
29 proximity to the other parent or the child;

30 (5) A requirement that the parent abstain from possession  
31 or consumption of alcohol or nonprescribed drugs while  
32 exercising custodial responsibility and in the twenty-four hour  
33 period immediately preceding such exercise;

34 (6) Denial of overnight custodial responsibility;

35 (7) Restrictions on the presence of specific persons while  
36 the parent is with the child;

37 (8) A requirement that the parent post a bond to secure  
38 return of the child following a period in which the parent is  
39 exercising custodial responsibility or to secure other perfor-  
40 mance required by the court;

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

44 (10) Any other constraints or conditions that the court  
45 deems necessary to provide for the safety of the child, a child's  
46 parent, or any person whose safety immediately affects the  
47 child's welfare.

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

PART 3. FACT FINDING.

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

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

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

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

35 (e) Services and tests ordered under this section shall be  
36 ordered only if at no cost to the individuals involved, or at a

37 cost that is reasonable in light of the available financial  
38 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 guardian's  
4 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 terms  
7 of the representation and court has a reasonable basis for  
8 finding that the appointment would be helpful in resolving the  
9 issues of the case. The court shall specify the terms of the  
10 appointment, including the lawyer's role, duties and scope of  
11 authority.

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

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

29 (e) The investigator who submits a report or evidence to the  
30 court that has been requested under section three hundred one  
31 of this article and a guardian ad litem appointed under subsec-  
32 tion (a) of this section who submits information or recommen-  
33 dations to the court are subject to cross-examination by the

34 parties. A lawyer appointed under subsection (b) of this section  
35 may not be a witness in the proceedings, except as allowed  
36 under standards applicable in other civil proceedings.

37 (f) Services and tests ordered under this section shall be  
38 ordered only if at no cost to the individuals involved, or at a  
39 cost that is reasonable in light of the available financial  
40 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, in  
3 order to obtain information relating to the issues of the case. A  
4 parent or counsel for a parent or for the child shall be permitted  
5 to submit questions to the court that may be asked of the child  
6 if the court approves. A transcript, videotape or other reliable  
7 means of recording the complete interview shall be made part  
8 of the record of the proceedings, and shall be confidential  
9 except for purposes of appeal of the court's order.

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

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

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

16 (1) Circumstances resulting in an involuntary loss of  
17 income, by loss of employment or otherwise, affecting the  
18 parents economic status;

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

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

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

**§48-11-402. Modification without showing of changed circum-  
stances.**

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

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

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

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

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

19 (c) Evidence of a false report of domestic violence or child  
20 abuse is admissible in a domestic relations action between the  
21 involved parties when the allocation of custodial responsibili-  
22 ties is in issue, and the false accusation may be a factor consid-  
23 ered by the court in making the allocation of custodial responsi-  
24 bilities.

**§48-11-403. Relocation of a parent.**

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

6 (b) Unless otherwise ordered by the court, a parent who has  
7 responsibility under a parenting plan who changes, or intends  
8 to change, residences for more than ninety days must give a  
9 minimum of sixty days advance notice, or the most notice  
10 practicable under the circumstances, to any other parent with  
11 responsibility under the same parenting plan. Notice shall  
12 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 may  
19 respond to the proposed relocation or modification of custodial  
20 responsibility.

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

27 The supreme court of appeals shall make available through  
28 the offices of the circuit clerks and the family court judges a



29 form notice that complies with the provisions of this subsection.  
30 The supreme court of appeals shall promulgate procedural rules  
31 that provide for an expedited hearing process to resolve issues  
32 arising from a relocation or proposed relocation.

33 (c) When changed circumstances are shown under subsec-  
34 tion (a) of this section, the court shall, if practical, revise the  
35 parenting plan so as to both accommodate the relocation and  
36 maintain the same proportion of custodial responsibility being  
37 exercised by each of the parents.

38 (d) When the relocation constituting changed circumstances  
39 under subsection (a) of this section renders it impractical to  
40 maintain the same proportion of custodial responsibility as that  
41 being exercised by each parent, the court shall modify the  
42 parenting plan in accordance with the child's best interests and  
43 in accordance with the following principles:

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

64 (2) If a relocation of the parent is in good faith for legiti-  
65 mate purpose and to location that is reasonable in light of the

66 purpose, and if neither has been exercising a significant  
67 majority of custodial responsibility for the child, the court shall  
68 reallocate custodial responsibility based on the best interest of  
69 the child, taking into account all relevant factors including the  
70 effects of the relocation on the child.

71 (3) If a parent does not establish that the purpose for that  
72 parent's relocation is in good faith for a legitimate purpose into  
73 a location that is reasonable in light of the purpose, the court  
74 may modify the parenting plan in accordance with the child's  
75 best interests and the effects of the relocation on the child.  
76 Among the modifications the court may consider is a reallocation  
77 of primary custodial responsibility, effective if and when  
78 the relocation occurs, but such a reallocation shall not be  
79 ordered if the relocating parent demonstrates that the child's  
80 best interests would be served by the relocation.

81 (4) The court shall attempt to minimize impairment to a  
82 parent-child relationship caused by a parent's relocation  
83 through alternative arrangements for the exercise of custodial  
84 responsibility appropriate to the parents' resources and circum-  
85 stances and the developmental level of the child.

86 (e) In determining the proportion of caretaking functions  
87 each parent previously performed for the child under the  
88 parenting plan before relocation, the court shall not consider a  
89 division of functions arising from any arrangements made after  
90 a relocation but before a modification hearing on the issues  
91 related to relocation.

#### 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 of the  
3 court-ordered parenting plan, it shall enforce the remedy  
4 specified in the plan or, if no remedies are specified or they are  
5 clearly inadequate, it shall find the plan has been violated and  
6 order an appropriate remedy, which may include:

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

10 (2) In the case of missed time by a parent, costs in recogni-  
11 tion of lost opportunities by the other parent, in child care costs  
12 and other reasonable expenses in connection with the missed  
13 time;

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

20 (4) An order that the parent who violated the plan obtain  
21 appropriate counseling;

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

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

30 (7) Any other appropriate remedy.

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

37 (c) An agreement between the parents to depart from the  
38 parenting plan can be a defense to a claim that the plan has been  
39 violated, even though the agreement was not made part of a  
40 court order, but only as to acts or omissions consistent with the  
41 agreement that occur before the agreement is disaffirmed by  
42 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. Neither  
3 parent may veto the access requested by the other parent.  
4 Educational records are academic, attendance, and disciplinary  
5 records of public and private schools in all grades kindergarten  
6 through twelve and any form of alternative school. Educational  
7 records are any and all school records concerning the child that  
8 would otherwise be properly released to the primary custodial  
9 parent, including, but not limited to, report cards and progress  
10 reports, attendance records, disciplinary reports, results of the  
11 child's performance on standardized tests and statewide tests  
12 and information on the performance of the school that the child  
13 attends on standardized statewide tests; curriculum materials of  
14 the class or classes in which the child is enrolled; names of the  
15 appropriate school personnel to contact if problems arise with  
16 the child; information concerning the academic performance  
17 standards, proficiencies, or skills their child is expected to  
18 accomplish; school rules, attendance policies, dress codes, and  
19 procedures for visiting the school; and information about any  
20 psychological testing the school does involving their child;

21 (2) In addition to the right to receive school records, the  
22 nonresidential parent has the right to participate as a member of  
23 a parent advisory committee or any other organization com-  
24 prised of parents of children at the school that the child attends.

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

29 (4) Each parent has a right to arrange appointments for  
30 parent-teacher conferences absent a court order to the contrary.  
31 Neither parent can be compelled against their will to exercise  
32 this right by attending conferences jointly with the other parent.

33 (b) (1) Each parent has full and equal access to a child's  
34 medical records absent a court order to the contrary. Neither

35 parent may veto the access requested by the other parent. If  
36 necessary, either parent is required to authorize medical  
37 providers to release to the other parent copies of any and all  
38 information concerning medical care provided to the child  
39 which would otherwise be properly released to either parent.

40 (2) If the child is in the actual physical custody of one  
41 parent, that parent is required to promptly inform the other  
42 parent of any illness of the child which requires medical  
43 attention.

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

55 (c) Each parent has full and equal access to a child's  
56 juvenile court records, process and pleadings, absent a court  
57 order to the contrary. Neither parent may veto any access  
58 requested by the other parent. Juvenile court records are limited  
59 to those records which are normally available to a parent of a  
60 child who is a subject of the 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 statutes  
2 which require a designation or determination of custody, a  
3 parenting plan shall designate the parent with whom the child  
4 is scheduled to reside the majority of the time as the custodian  
5 of the child. However, this designation shall not affect either  
6 parent's rights and responsibilities under a parenting plan. In  
7 the absence of such as designation, the parent with whom the  
8 child is scheduled to reside the majority of the time shall be

9 deemed to be the custodian of the child for the purposes of such  
10 federal and state statutes.

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

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

4 (b) The provisions of subsection two hundred two of this  
5 article, insofar as they make parental education and mediation  
6 mandatory, become operative on the first day of January, two  
7 thousand. Until that date, parental education and mediation with  
8 regard to custody issues are not mandatory unless made so  
9 under a particular program or pilot project by rule or direction  
10 of the supreme court of appeals or a circuit court.

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

19 (d) Persons who are parties to child custody order in  
20 existence on the thirty-first day of December, one thousand nine  
21 hundred ninety-nine, even without a change of circumstances,  
22 may move for a modification of the order if the motion for  
23 modification is made before the first day of January, two  
24 thousand one.

**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 chapter,  
2 the rate of interest is that specified in section thirty-one, article  
3 six, chapter fifty-six of this code. Interest shall accrue only  
4 upon the outstanding principal of such obligation. On and after

5 the ninth day of June, one thousand nine hundred ninety-five,  
6 this section shall be construed to permit the accumulation of  
7 simple interest, and may not be construed to permit the com-  
8 pounding of interest. Interest which accrued on unpaid install-  
9 ments accruing before the ninth day of June, one thousand nine  
10 hundred ninety-five, may not be modified by any court,  
11 irrespective of whether such installment accrued simple or  
12 compound interest: *Provided*, That unpaid installments upon  
13 which interest was compounded before the effective date of this  
14 section shall accrue only simple interest thereon on and after  
15 the ninth day of June, one thousand nine hundred ninety-five.

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

**ARTICLE 1A. DEFINITIONS.**

**§48A-1A-19. Gross income.**

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

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

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

14 (2) Any payment from a pension plan, an insurance  
15 contract, an annuity, social security benefits, unemployment

16 compensation, supplemental employment benefits, workers'  
17 compensation benefits and state lottery winnings and prizes;

18 (3) Interest, dividends or royalties;

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

25 (5) Attributed income of the parent, calculated in accor-  
26 dance with the provisions of section three, article one-a of this  
27 chapter;

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

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

48 (8) Income from seasonal employment or other sporadic  
49 sources: *Provided*, That the amount of monthly income to be  
50 included in gross income shall be determined by averaging the  
51 income from seasonal employment or other sporadic sources



52 received during the previous thirty-six-month period or during  
53 a period beginning with the month in which the parent first  
54 received such compensation, whichever period is shorter; and

55 (9) Alimony and separate maintenance receipts.

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

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

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

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

64 (3) Means-tested assistance such as aid to families with  
65 dependent children, supplemental security income and food  
66 stamps; and

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

**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 obligations:

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

## 65 [Enr. Com. Sub. for H. B. 2678

COMBINED						
GROSS	ONE	TWO	THREE	FOUR	FIVE	SIX
MONTHLY	CHILD	CHILDREN	CHILDREN	CHILDREN	CHILDREN	CHILDREN
INCOME						
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

Enr. Com. Sub. for H. B. 2678] 66

COMBINED						
GROSS	ONE	TWO	THREE	FOUR	FIVE	SIX
MONTHLY	CHILD	CHILDREN	CHILDREN	CHILDREN	CHILDREN	CHILDREN
INCOME						
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

COMBINED						
GROSS	ONE	TWO	THREE	FOUR	FIVE	SIX
MONTHLY	CHILD	CHILDREN	CHILDREN	CHILDREN	CHILDREN	CHILDREN
INCOME						
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

Enr. Com. Sub. for H. B. 2678] 68

COMBINED						
GROSS	ONE	TWO	THREE	FOUR	FIVE	SIX
MONTHLY	CHILD	CHILDREN	CHILDREN	CHILDREN	CHILDREN	CHILDREN
INCOME						
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

COMBINED						
GROSS	ONE	TWO	THREE	FOUR	FIVE	SIX
MONTHLY	CHILD	CHILDREN	CHILDREN	CHILDREN	CHILDREN	CHILDREN
INCOME						
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

COMBINED						
GROSS	ONE	TWO	THREE	FOUR	FIVE	SIX
MONTHLY	CHILD	CHILDREN	CHILDREN	CHILDREN	CHILDREN	CHILDREN
INCOME						
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

COMBINED						
GROSS	ONE	TWO	THREE	FOUR	FIVE	SIX
MONTHLY	CHILD	CHILDREN	CHILDREN	CHILDREN	CHILDREN	CHILDREN
INCOME						
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



COMBINED						
GROSS	ONE	TWO	THREE	FOUR	FIVE	SIX
MONTHLY	CHILD	CHILDREN	CHILDREN	CHILDREN	CHILDREN	CHILDREN
INCOME						
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

COMBINED						
GROSS	ONE	TWO	THREE	FOUR	FIVE	SIX
MONTHLY	CHILD	CHILDREN	CHILDREN	CHILDREN	CHILDREN	CHILDREN
INCOME						
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

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

12 (c) This subsection provides for incomes above table. If  
13 combined adjusted gross income is above fifteen thousand

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

22 (1) One child —  $\$1,338 + 0.088 \times$  combined adjusted gross  
23 income above fifteen thousand dollars per month;

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

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

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

30 (5) Five children —  $\$2,726 + 0.183 \times$  combined adjusted  
31 gross income above fifteen thousand dollars per month; and

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

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

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

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

15 (c) Child support for sole custody cases shall be calculated  
16 using the following worksheet:

**WORKSHEET A: SOLE PHYSICAL CUSTODY**

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

Mother: \_\_\_\_\_ SS No.: \_\_\_\_\_ Primary Custodial parent? Yes No

Father: \_\_\_\_\_ SS No.: \_\_\_\_\_ 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(6)			0	+	
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.)	\$	\$	
<b>PART II. ABILITY TO PAY CALCULATION</b> (Complete if the noncustodial parent's adjusted monthly gross income is below \$1,550.)			
10. Spendable Income (0.75 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:	

17 (d) In cases where the noncustodial parent's adjusted gross  
18 income is below one thousand five hundred fifty dollars per  
19 month, an additional calculation in Worksheet A, Part II shall  
20 be made. This additional calculation sets the child support order  
21 at whichever is lower: (i) Child support at the amount deter-  
22 mined in Part I; or (ii) the difference between seventy-five  
23 percent of the noncustodial parent's adjusted gross income and  
24 five hundred dollars, 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 method  
3 should be used only for shared physical custody as defined in  
4 section twenty-six, article one-a of this chapter: That is, cases  
5 where each parent has the child for more than one hundred  
6 twenty-seven days per year (thirty-five percent).

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

19 (c) Adjustments for each parent's additional direct expenses  
20 on the child are made by apportioning the sum of the parent's  
21 direct expenditures on the child's share of any unreimbursed  
22 child health care expenses, work-related child care expenses  
23 and any other extraordinary expenses agreed to by the parents  
24 or ordered by the court or master less any extraordinary credits  
25 agreed to by the parents or ordered by the court or master to  
26 each parent according to their income share. In turn each  
27 parent's net share of additional direct expenses is determined by  
28 subtracting the parent's actual direct expenses on the child's

29 share of any unreimbursed child health care expenses, work-  
30 related child care expenses and any other extraordinary ex-  
31 penses agreed to by the parents or by the court or master less  
32 any extraordinary credits agreed to by the parents or ordered by  
33 the court or master from their share. The parent with a positive  
34 net share of additional direct expenses owes the other parent the  
35 amount of his or her net share of additional direct expenses. The  
36 parent with zero or a negative net share of additional direct  
37 expenses owes zero dollars for additional direct expenses.

38 (d) The final amount of the child support order is deter-  
39 mined by summing what each parent owes for the basic support  
40 obligation and additional direct expenses as defined in subsec-  
41 tions (b) and (c) of this section. The respective sums are then  
42 offset, with the parent owing more paying the other parent the  
43 difference between the two amounts.

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

**WORKSHEET B: SHARED PHYSICAL CUSTODY**

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

Mother: \_\_\_\_\_ SS No.: \_\_\_\_\_ Primary Custodial parent? Yes No

Father: \_\_\_\_\_ SS No.: \_\_\_\_\_ 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 (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(6)			0	+	
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.)	\$	\$	
<b>PART III. ADJUSTMENTS FOR ADDITIONAL EXPENSES</b> (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.	\$	\$	
<b>PART IV. RECOMMENDED CHILD SUPPORT ORDER</b>			
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 modified  
2 if there is a substantial change of circumstances. If application  
3 of the guideline would result in a new order that is more than  
4 fifteen percent different, then the circumstances are considered  
5 to be a substantial change.

6 (b) An expedited process for modification of a child support  
7 order may be utilized if an obligor experiences a substantial  
8 decrease in income due to loss of employment or other involun-  
9 tary cause. The party seeking the recalculation of support and  
10 modification of the support order shall file a description of the  
11 decrease in income and an explanation of the cause of the  
12 decrease on a standardized form to be provided by the  
13 secretary-clerk or other employee of the family court. Any  
14 available documentary evidence may be filed with the standard-  
15 ized form. Based upon the filing and information available in  
16 the case record, the amount of support shall be tentatively  
17 recalculated. The secretary-clerk shall cause a notice of the  
18 filing, a copy of the standardized form, and the support calcula-

19 tions to be mailed to the support obligee by first class mail. The  
20 notice shall fix a date fourteen days from the date of mailing,  
21 and inform the support obligee that unless the recalculation is  
22 contested and a hearing request is made on or before the date  
23 fixed, the modification will be made effective. If the filing is  
24 contested, the proposed modification shall be set for hearing;  
25 otherwise, the family court judge shall prepare a default order  
26 for entry by the circuit judge as provided for in section one  
27 hundred four of this article. After a modification has been made  
28 through this expedited process, based upon a substantial  
29 decrease in income, the same expedited process is available to  
30 a support obligee if the support obligor experiences a substan-  
31 tial increase in income due to reemployment or other cause.

**§48A-1B-14. Disregard of formula.**

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

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

13 (1) Special needs of the child or support obligor;

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

18 (3) Families with more than six children;

19 (4) Long distance visitation costs;

20 (5) The child resides with third party;

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

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

25 (8) Whether the total of alimony, child support and child  
26 care costs subtracted from an obligor's income reduces that  
27 income to less than the federal poverty level and conversely,  
28 whether deviation from child support guidelines would reduce  
29 the income of the child's household to less than the federal  
30 poverty level.

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

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

8 (b) If the amount of child support ordered for a child  
9 exceeds the sum of two thousand dollars per month, the court  
10 is required to make a finding, in writing, as to whether invest-  
11 ments shall be made as provided for in subsection (a) of this  
12 section.

13 (c) A trustee named by the court shall use the judgment and  
14 care under the circumstances then prevailing that persons of  
15 prudence, discretion and intelligence exercise in the manage-  
16 ment of their own affairs, not in regard to speculation but in  
17 regard to the permanent disposition of their funds, considering  
18 the probable income as well as the probable safety of their  
19 capital. A trustee shall be governed by the provisions of the  
20 uniform prudent investor act as set forth in article six-c, chapter  
21 forty-four of this code. The court may prescribe the powers of  
22 the trustee and provide for the management and control of the  
23 trust. Upon petition of a party or the child's guardian or next  
24 friend and upon a showing of good cause, the court may order  
25 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 regular  
2 session of the Legislature, one thousand nine hundred ninety-  
3 nine, are operable after the thirtieth day of June, one thousand  
4 nine hundred ninety-nine.

**ARTICLE 2. WEST VIRGINIA SUPPORT ENFORCEMENT COMMISSION;  
CHILD SUPPORT ENFORCEMENT DIVISION; ESTAB-  
LISHMENT AND ORGANIZATION.**

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

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

**§48A-2-34. Employment and income reporting.**

1       (a) For purposes of this section:

2       (1) "Employee" means an individual who is an "employee"  
3 for purposes of federal income tax withholding, as defined in 26  
4 U.S.C. §3401;

5       (2) "Employer" means the person or entity for whom an  
6 individual performs or performed any service of whatever  
7 nature and who has control of the payment of the individual's  
8 wages for performance of such service or services, as defined  
9 in 26 U.S.C. §3401;

10       (3) An individual is considered a "new hire" on the first day  
11 in which that individual performs services for remuneration and  
12 on which an employer begins to withhold amounts for income  
13 tax purposes.

14 (b) Except as provided in subsections (c) and (d) of this  
15 section, all employers doing business in the state shall report to  
16 the child support enforcement division:

17 (1) The hiring of any person who resides or works in this  
18 state to whom the employer anticipates paying earnings;

19 (2) The rehiring or return to work of any employee who  
20 resides or works in this state;

21 (3) The discharge or layoff of any employee who resides or  
22 works in this state; and

23 (4) The resignation or voluntary quitting of any employee  
24 who resides or works in this state.

25 (c) Employers are not required to report the hiring, rehiring  
26 or return to work of any person who is an employee of a federal  
27 or state agency performing intelligence or counterintelligence  
28 functions if the head of such agency has determined that  
29 reporting could endanger the safety of the employee or compro-  
30 mise an ongoing investigation or intelligence mission.

31 (d) An employer that has employees in states other than this  
32 state and that transmits reports magnetically or electronically is  
33 not required to report to the child support enforcement division  
34 the hiring, rehiring or return to work of any employee if the  
35 employer has filed with the secretary of the federal department  
36 of health and human services, as required by 42 U.S.C. §653A,  
37 a written designation of another state in which it has employees  
38 as the reporting state.

39 (e) Employers shall report by mailing to the child support  
40 enforcement division a copy of the employee's W-4 form;  
41 however, an employer may transmit such information through  
42 another means if approved in writing by the child support  
43 enforcement division prior to the transmittal. The report shall  
44 include the employee's name, address and social security  
45 number, the employer's name and address, any different  
46 address of the payroll office and the employer's federal tax  
47 identification number. The employer may report other informa-  
48 tion, such as date of birth or income information, if desired.

49 (f) Employers shall submit a report within fourteen days of  
50 the date of the hiring, rehiring or return to work of the em-  
51 ployee. However, if the employer transmits the reports magneti-  
52 cally or electronically by two monthly submissions, the reports  
53 shall be submitted not less than twelve days nor more than  
54 sixteen days apart.

55 (g) An employer shall provide to the child support enforce-  
56 ment division, upon its written request, information regarding  
57 an obligor's employment, wages or salary, medical insurance,  
58 and location of employment.

59 (h) Any employer who fails to report in accordance with the  
60 provisions of this section shall be assessed a civil penalty of no  
61 more than twenty-five dollars per failure. If the failure to report  
62 is the result of a conspiracy between the employer and the  
63 employee not to supply the required report or to supply a false  
64 or incomplete report, the employer shall be assessed a civil  
65 penalty of no more than five hundred dollars.

66 (i) Employers required to report under this section may  
67 assess each employee so reported one dollar for the administra-  
68 tive costs of reporting.

69 (j) Uses for the new hire information include, but are not  
70 limited to, the following:

71 (1) The state directory of new hires shall furnish the  
72 information to the national directory of new hires;

73 (2) The child support enforcement division shall use  
74 information received pursuant to this section to locate individu-  
75 als for purposes of establishing paternity and of establishing,  
76 modifying and enforcing child support obligations, and may  
77 disclose such information to any agent of the agency that is  
78 under contract with the division to carry out such purposes;

79 (3) State agencies responsible for administering a program  
80 specified in 42 U.S.C. §1320b-7(b) shall have access to  
81 information reported by employers for purposes of verifying  
82 eligibility for the program; and

83 (4) The bureau of employment programs shall have access  
84 to information reported by employers for purposes of adminis-

85 tering employment security and workers' compensation  
86 programs.

**ARTICLE 4. PROCEEDING BEFORE A FAMILY COURT JUDGE.**

**§48A-4-9. Hearing procedures.**

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

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

7 (c) A family court judge presiding at a hearing under the  
8 provisions of this chapter may:

9 (1) Administer oaths and affirmations, compel the atten-  
10 dance of witnesses and the production of documents, examine  
11 witnesses and parties and otherwise take testimony, receive  
12 relevant evidence and establish a record;

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

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

16 (4) Regulate the course of the hearing;

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

22 (6) Make and enter temporary orders on procedural matters,  
23 including, but not limited to, substitution of counsel, amend-  
24 ment of pleadings, requests for hearings and other similar  
25 matters;

26 (7) Accept voluntary acknowledgments of support liability  
27 or paternity;

28 (8) Accept stipulated agreements;



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

32       (10) Recommend orders in accordance with the provisions  
33 of section thirteen of this article;

34       (11) Require the issuance of subpoenas and subpoenas  
35 duces tecum, issue writs of attachment, hold hearings in aid of  
36 execution and propound interrogatories in aid of execution and  
37 fix bond or other security in connection with an action for  
38 enforcement in a child or spousal support matter; and

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

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

54       (e) Hearings before a family court judge shall be recorded  
55 electronically. A magnetic tape or other electronic recording  
56 medium on which a hearing is recorded shall be indexed and  
57 securely preserved by the secretary-clerk of the family court  
58 judge and shall not be placed in the case file in the office of the  
59 circuit clerk: *Provided*, That upon the request of the family  
60 court judge, such magnetic tapes or other electronic recording  
61 media shall be stored by the clerk of the circuit court. When  
62 requested by either of the parties, a family court judge shall  
63 provide a duplicate copy of the tape or other electronic record-  
64 ing medium of each hearing held. For evidentiary purposes, a

65 duplicate of such electronic recording prepared by the secre-  
 66 tary-clerk shall be a “writing” or “recording” as those terms are  
 67 defined in rule 1001 of the West Virginia rules of evidence, and  
 68 unless the duplicate is shown not to reflect the contents accu-  
 69 rately, it shall be treated as an original in the same manner that  
 70 data stored in a computer or similar data is regarded as an  
 71 “original” under such rule. The party requesting the copy shall  
 72 pay to the family court judge an amount equal to the actual cost  
 73 of the tape or other medium or the sum of five dollars, which-  
 74 ever is greater. Unless otherwise ordered by the court, the  
 75 preparation of a transcript and the payment of the cost thereof  
 76 shall be the responsibility of the party requesting the transcript.

77 (f) The recording of the hearing or the transcript of testi-  
 78 mony, as the case may be, and the exhibits, together with all  
 79 papers and requests filed in the proceeding, constitute the  
 80 exclusive record for recommending an order in accordance with  
 81 section one hundred five of this article, and on payment of  
 82 lawfully prescribed costs, shall be made available to the parties.  
 83 When a family court judge’s final recommended order rests on  
 84 official notice of a material fact not appearing in the evidence  
 85 in the record, a party is entitled, on timely request, to an  
 86 opportunity to show the contrary.

87 (g) After a temporary parenting plan has been agreed to by  
 88 the parties or ordered by the family court judge, or after a  
 89 temporary support order has been entered by the court, a  
 90 scheduled final evidentiary hearing cannot be continued without  
 91 the agreement of the parties or without a review of the tempo-  
 92 rary parenting plan and the temporary support order.

**§48A-4-20. Circuit court review of family court judge’s recom-  
 mended order.**

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

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

5 (2) A petition and an answer in opposition have been filed,  
 6 or the time for filing an answer in opposition has expired, or the

7 parties have expressly waived the right to file an answer in  
8 opposition, as the case may be.

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

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

25 (1) Arbitrary, capricious, an abuse of discretion or other-  
26 wise not in conformance with the law;

27 (2) Contrary to constitutional right, power, privilege or  
28 immunity;

29 (3) In excess of statutory jurisdiction, authority or limita-  
30 tions or short of statutory right;

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

32 (5) Unsupported by substantial evidence; or

33 (6) Unwarranted by the facts.

34 (d) In making its determinations under this section, the  
35 circuit court shall review the whole record or those parts of it  
36 cited by a party. If the circuit court finds that a family court  
37 judge's recommended order is deficient as to matters which  
38 might be affected by evidence not considered or inadequately  
39 developed in the family court judge's recommended order, the  
40 court may recommit the recommended order to the family court

41 judge, with instructions indicating the court's opinion, or the  
42 circuit court may proceed to take such evidence without  
43 recommitting the matter.

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

49 (f) If a case is recommitted by the circuit court, the family  
50 court judge shall retry the matter within twenty days.

51 (g) At the time a case is recommitted, the circuit court shall  
52 enter appropriate temporary orders awarding custody, visitation,  
53 child support, spousal support or such other temporary relief as  
54 the circumstances of the parties 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 costs  
3 received for the services of the office under this chapter to the  
4 state treasurer for deposit in the state treasury to the credit of a  
5 special revenue fund to be known as the "family court fund",  
6 which is hereby created. All moneys collected and received  
7 under this chapter and paid into the state treasury and credited  
8 to the "family court fund" shall be used by the administrative  
9 office of the supreme court of appeals solely for paying the  
10 costs associated with the duties imposed upon the family court  
11 judges under the provisions of this chapter which require  
12 activities by the family court judges which are not subject to  
13 being matched with federal funds or subject to reimbursement  
14 by the federal government. Such moneys shall not be treated by  
15 the auditor and treasurer as part of the general revenue of the  
16 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 county  
2 in this state, a division of the circuit court to be designated as  
3 “The Family Court of \_\_\_\_\_ County, West Virginia.”

**§51-2A-2. Appointment of commissioners to be designated as family court judges; administrative and judicial functions of family court judge.**

1       (a) In each of the family court circuits, as provided in  
2 section three of this article, the circuit judges whose courts are  
3 served by that circuit shall constitute the “Circuit Court Family  
4 Law Panel.” A majority of the judges of the circuit court family  
5 law panel shall appoint the initial commissioners to serve, as  
6 allocated to that circuit by the provisions of said section three.

7       (b) A commissioner appointed under subsection (a) of this  
8 section may be designated by the name “Family Court Judge”  
9 by administrative rule of the supreme court of appeals upon  
10 notification from the secretary of the department of health and  
11 human resources that the department has received adequate  
12 written assurances from the appropriate federal authorities that  
13 the state will not be denied or become ineligible for federal  
14 funds as the result of the designation of the commissioner by  
15 the name “Family Court Judge.” Until an administrative rule is  
16 issued as provided in this subsection, a commissioner appointed  
17 under subsection (a) of this section shall be designated by the  
18 name “Family Law Master”, and the term “Family Court  
19 Judge” as used in this article or any other provision of this code  
20 enacted during one thousand nineteen hundred ninety-nine shall  
21 mean “Family Law Master.”

22       (c) The family court judge will conduct hearings in family  
23 court cases, take testimony, hear the parties, enter orders of a  
24 temporary or interlocutory nature, make findings of fact and  
25 conclusions of law on the record, formulate recommendations,  
26 and report to the circuit court. The family court judge will  
27 exercise any other power or authority provided for in this article  
28 or article four, chapter forty-eight-a of this code.

29       (d) The family court judge, as a commissioner of the circuit  
30 court, has both administrative and judicial functions to perform,

31 as described in subsections (e) and (f) of this section.

32 (e) The family court judge has responsibility for the  
 33 administration of the family court division of the circuit court.  
 34 The circuit court family law panel must monitor the administra-  
 35 tion of the family court divisions within the family court circuit  
 36 and regulate those activities, including naming one or more  
 37 circuit judges to serve as administrative supervisor of the family  
 38 court judge, through appropriate administrative orders. The  
 39 administrative orders of the administrative supervisor regarding  
 40 the family court division will be compiled and indexed in the  
 41 office of the circuit clerk and be available for public inspection.

42 (f) In exercising the judicial function of the family court,  
 43 the family court judge, free of direct oversight by a circuit  
 44 judge, is responsible for the preparation or preliminary consid-  
 45 eration of issues requiring judicial decision, subject only to a  
 46 subsequent review by a circuit judge. Conclusions of law of the  
 47 family court judge are subject to de novo review by the circuit  
 48 court. In reviewing the findings of fact of a family court judge,  
 49 the circuit court is held to the clearly erroneous standard.

50 (g) A family court judge shall not be eligible to participate  
 51 in the judges retirement system under the provisions of article  
 52 nine, chapter fifty-one of this code.

53 (h) Beginning the first day of January, two thousand, each  
 54 family law judge is required to file a quarterly activity report  
 55 with the supreme court of appeals and the joint committee on  
 56 government and finance. The report shall include, but is not  
 57 limited to, the number of cases heard before the family law  
 58 judge, the date the case was heard, the date the case was filed  
 59 and the number and types of hearings held before the family  
 60 law judge in a particular case.

### **§51-2A-3. Assignment of judges by family court regions.**

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

5       The counties of Brooke, Hancock, Marshall and Ohio shall  
6 constitute the first family court circuit and shall have two  
7 judges; the counties of Pleasants, Ritchie, Tyler, Wetzel and  
8 Wirt shall constitute the second family court circuit and shall  
9 have one judge; the county of Wood shall constitute the third  
10 family court circuit and shall have one judge; the counties of  
11 Calhoun, Gilmer, Jackson and Roane shall constitute the fourth  
12 family court circuit and shall have one judge; the counties of  
13 Cabell, Mason and Putnam shall constitute the fifth family  
14 court circuit and shall have three judges; the county of  
15 Kanawha shall constitute the sixth family court circuit and shall  
16 have four judges; the counties of Lincoln and Wayne shall  
17 constitute the seventh family court circuit and shall have one  
18 judge; the counties of Boone, Logan and Mingo shall constitute  
19 the eighth family court circuit and shall have two judges; the  
20 counties of McDowell and Mercer shall constitute the ninth  
21 family court circuit and shall have two judges; the counties of  
22 Raleigh, Summers and Wyoming shall constitute the tenth  
23 family court circuit and shall have two judges; the counties of  
24 Greenbrier and Monroe shall constitute the eleventh family  
25 court circuit and shall have one judge; the counties of Braxton,  
26 Clay and Lewis shall constitute the twelfth family court circuit  
27 and shall have one judge; the counties of Fayette, Nicholas,  
28 Pocahontas and Webster shall constitute the thirteenth family  
29 court circuit and shall have two judges; the counties of  
30 Pendleton, Randolph, Tucker and Upshur shall constitute the  
31 fourteenth family court circuit and shall have one judge; the  
32 counties of Doddridge and Harrison shall constitute the  
33 fifteenth family court circuit and shall have one judge; the  
34 counties of Barbour, Preston and Taylor shall constitute the  
35 sixteenth family court circuit and shall have one judge; the  
36 county of Marion shall constitute the seventeenth family court  
37 circuit and shall have one judge; the county of Monongalia shall  
38 constitute the eighteenth family court circuit and shall have one  
39 judge; the counties of Grant, Hampshire, Hardy and Mineral  
40 shall constitute the nineteenth family court circuit and shall  
41 have one judge; the counties of Berkeley, Jefferson and Morgan  
42 shall constitute the twentieth family court circuit and shall have  
43 two judges.

44 (b) The chief justice of the supreme court of appeals may  
45 temporarily assign a family court judge from one family court  
46 circuit to another family court circuit, as caseload, disqualifica-  
47 tion, recusal, vacation or illness may dictate. In each case of  
48 temporary assignment, the chief justice shall appoint only a  
49 family court judge appointed pursuant to section two of this  
50 article who is actually serving at the time of such appointment.

**§51-2A-4. Qualifications of family court judges.**

1 (a) An individual appointed to serve as a family court judge  
2 prior to the general election held in the year two thousand must  
3 be a member in good standing of the West Virginia state bar.  
4 An individual elected to serve in the general election in the year  
5 two thousand and thereafter, or appointed thereafter, must be a  
6 member in good standing of the West Virginia state bar and  
7 must have at least five years experience as a practicing attorney  
8 prior to taking office.

9 (b) Upon assuming his or her duties, a family court judge  
10 with no prior experience as a family law master or family court  
11 judge shall, as soon as is practicable, attend and complete a  
12 course of instruction in principles of family law and procedure  
13 that is given in accordance with the supervisory rules of the  
14 supreme court of appeals. All family court judges shall attend  
15 courses of continuing educational instruction as may be  
16 required by supervisory rule of the supreme court of appeals.  
17 Failure to attend the required courses of continuing educational  
18 instruction without good cause constitutes neglect of duty.  
19 Persons attending such courses outside of the county of their  
20 residence will be reimbursed by the supreme court of appeals  
21 for expenses actually incurred in accordance with the supervi-  
22 sory rules of the supreme court of appeals.

23 (c) A family court judge may not engage in any other  
24 business, occupation or employment inconsistent with the  
25 expeditious, proper and impartial performance of his or her  
26 duties as a judicial officer. A family court judge is not permit-  
27 ted to engage in the outside practice of law and shall devote full  
28 time to his or her duties as a judicial officer.



**§51-2A-5. Term of office of family court judge; elections.**

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

9 (b) Beginning with the primary and general elections to be  
10 conducted in the year two thousand, family court judges shall  
11 be elected at large from the entire family court circuit. In  
12 accordance with the numbers designated for each family court  
13 circuit pursuant to the provisions of section three of this article,  
14 the candidate or candidates receiving the highest votes cast  
15 shall be nominated or elected to serve as family court judge, as  
16 the case may be.

17 (c) The term of office for all family court judges elected in  
18 two thousand shall be for four years, commencing on the first  
19 day of January, two thousand one and ending on the thirty-first  
20 day of December, two thousand four. Subsequent terms of  
21 office for family court judges elected thereafter shall be for four  
22 years.

**§51-2A-6. Vacancy in the office of family court judge.**

1 If a vacancy occurs in the office of family court judge, the  
2 circuit court family law panel shall, within thirty days after the  
3 vacancy occurs, fill the vacancy by appointment for the  
4 unexpired term. If the circuit court family law panel fails to act  
5 timely to fill a vacancy, the chief justice of the supreme court  
6 of appeals may fill the vacancy for the 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 four,  
4 chapter forty-eight-a of this code are continued in their term of

5 office through the thirtieth day of September, one thousand nine  
6 hundred ninety-nine.

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

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

6 (b) Charges may be preferred by:

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

9 (2) By the administrative director of the supreme court of  
10 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 by the  
13 judicial investigation commission, such charge may recommend  
14 removal and the convening of a three judge court as provided  
15 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 with the  
18 supreme court of appeals. The petition must request the  
19 impaneling or convening of a three-judge court consisting of  
20 three circuit judges of the state. The chief justice of the supreme  
21 court of appeals shall, without delay, designate and appoint  
22 three circuit judges within the state, none of whom is from the  
23 region in which the family court judge serves. In the order of  
24 appointment, the chief justice shall designate the date, time and  
25 place for the convening of the three-judge court. The date and  
26 time of hearing on the petition must be more than twenty days  
27 from the date of the filing of the petition.

28 The three-judge court shall, without a jury, hear the charges  
29 and all evidence offered in support thereof or in opposition  
30 thereto and upon satisfactory proof of the charges shall remove  
31 the family court judge from office and place the records, papers

32 and property of his or her office in the possession of some other  
33 officer or person for safekeeping or in the possession of the  
34 person appointed as hereinafter provided to fill the office  
35 temporarily. Final orders shall set out the court's decision to  
36 dismiss the charges or to suspend or remove the family court  
37 judge, with or without recommendations to refer the matter for  
38 investigation by the office of disciplinary counsel under the  
39 rules of judicial disciplinary procedure, or to provide other  
40 disposition appropriate to the case.

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

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

64 (f) Notwithstanding any other provision, the conduct of  
65 family court judges who begin serving terms of office on the  
66 first day of January, two thousand one and thereafter, shall be  
67 governed by the code of judicial conduct adopted by the  
68 supreme court of appeals and any complaint of violation of the

69 code of judicial conduct against a family law judge shall be  
70 filed and considered in accordance with the rules of judicial  
71 disciplinary procedure adopted by the supreme court of appeals.

**§51-2A-8. Compensation and expenses of family court judges and  
their staffs.**

1 (a) Beginning the first day of October, one thousand nine  
2 hundred ninety-nine, a family court judge is entitled to receive  
3 as compensation for his or her services an annual salary of  
4 sixty-five thousand dollars.

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

20 (c) After the first day of October, one thousand nine  
21 hundred ninety-nine, the family court judge may employ not  
22 more than one family case coordinator who serves at his or her  
23 will and pleasure: *Provided*, That for purposes of the initial  
24 employment of family case coordinators, the administrative  
25 director of the supreme court of appeals shall designate sixteen  
26 family court judges who are authorized to employ family case  
27 coordinators, and the additional fifteen family case coordinators  
28 may only be employed when authorized by the administrative  
29 director of the supreme court of appeals. The annual salary of  
30 the family case coordinator of the family court judge shall be  
31 established by the administrative director of the supreme court  
32 of appeals but may not exceed thirty-five thousand dollars. The

33 family case coordinator will receive such percentage or  
34 proportional salary increases as may be provided for by general  
35 law for other public employees and is entitled to receive the  
36 annual incremental salary increase as provided for in article  
37 five, chapter five of this code.

38 (d) Subject to the approval of the chief judge of the circuit,  
39 the sheriff or his or her designated deputy, shall serve as a  
40 bailiff for a family court judge. The sheriff of each county shall  
41 serve or designate persons to serve so as to assure that a bailiff  
42 is available when a family court judge determines the same is  
43 necessary for the orderly and efficient conduct of the business  
44 of the family court division of the circuit court.

45 (e) A special commissioner of the court appointed pursuant  
46 to subdivision (4), subsection (a) section ten of this article is  
47 entitled to be compensated by the supreme court of appeals at  
48 an hourly rate not to exceed the hourly rate paid to panel  
49 attorneys for performing work in court pursuant to the provi-  
50 sions of section thirteen-a, article twenty-one, chapter  
51 twenty-nine of this code.

52 (f) Disbursement of salaries for family court judges and  
53 members of their staffs are made by or pursuant to the order of  
54 the director of the administrative office of the supreme court of  
55 appeals.

56 (g) Family court judges, members of their staffs and special  
57 commissioners of the court are allowed their actual and  
58 necessary expenses incurred in the performance of their duties.  
59 The expenses and compensation will be determined and paid by  
60 the director of the administrative office of the supreme court of  
61 appeals under such guidelines as he or she may prescribe, as  
62 approved by the 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 court judge are governed by rules of practice and  
3 procedure for family law promulgated by the supreme court of  
4 appeals pursuant to section four, article one of this chapter.

5 (b) The West Virginia rules of evidence apply to proceed-  
6 ings before a family court judge.

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

**§51-2A-10. Matters to be heard by a family court judge.**

1 (a) A chief judge of a circuit court shall refer to the family  
2 court judge 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 of  
5 this code;

6 (2) All actions to establish paternity brought under the  
7 provisions of article six of chapter forty-eight-a of this code,  
8 and any dependent claims related to such action regarding child  
9 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 custody,  
13 visitation, child support, spousal support or domestic or family  
14 violence, wherein either party has requested such referral or the  
15 court on its own motion in individual cases or by general order  
16 has referred such motions to the family court judge: *Provided*,  
17 That if the family court judge determines, in his or her discre-  
18 tion, that the pleadings raise substantial issues concerning the  
19 identification of separate property or the division of marital  
20 property which may have a bearing on an award of support, the  
21 family court judge shall notify the appropriate circuit court of  
22 this fact and the circuit court may refer the case to a special  
23 commissioner chosen by the circuit court to serve in such

24 capacity;

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

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

34 (7) All actions wherein an obligor is contesting the enforce-  
35 ment of an order of support through the withholding from  
36 income of amounts payable as support or is contesting an  
37 affidavit of accrued support, filed with a circuit clerk, which  
38 seeks to collect arrearage;

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

41 (9) Proceedings for the enforcement of support, custody or  
42 visitation orders;

43 (10) All actions to establish custody of a minor child or  
44 visitation with a minor child, including actions brought pursu-  
45 ant to the uniform child custody jurisdiction act and actions  
46 brought to establish grandparent visitation: *Provided*, That any  
47 action instituted under article six, chapter forty-nine shall be  
48 heard by a circuit judge;

49 (11) Civil contempt and direct contempts: *Provided*, That  
50 criminal contempts must be heard by a circuit judge; and

51 (12) After the thirty-first day of December, one thousand  
52 nine hundred ninety-nine, full hearings in domestic or family  
53 violence proceedings wherein a protective order is sought.

54 (b) On its own motion or upon motion of a party, the circuit  
55 court may revoke the referral of a particular matter to a family  
56 court judge if the family court judge is recused, if the matter is  
57 uncontested, or for other good cause, or if the matter will be

58 more expeditiously and inexpensively heard by a circuit judge  
59 without substantially affecting the rights of parties.

**§51-2A-11. Contempt powers of family court judge.**

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

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

6 (2) Regulate all proceedings in a hearing before the family  
7 court judge;

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

11 (b) A family court judge may enforce compliance with his  
12 or her lawful orders with remedial or coercive sanctions  
13 designed to compensate a complainant for losses sustained and  
14 to coerce obedience for the benefit of the complainant. Sanc-  
15 tions must give the contemnor an opportunity to purge himself.  
16 In selecting sanctions, the court must use the least possible  
17 power adequate to the end proposed. A person who lacks the  
18 present ability to comply with the order of the court may not be  
19 confined for a civil contempt. Sanctions may include, but are  
20 not limited to, seizure or impoundment of property to secure  
21 compliance with a prior order. Ancillary relief may provide for  
22 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 regular  
3 session of the Legislature, one thousand nine hundred ninety-  
4 nine become operable on the first day of July, one thousand  
5 nine hundred ninety-nine. It is intended that the family law  
6 master system in existence on the twenty-first day of March,  
7 one thousand nine hundred ninety-nine will continue to function  
8 under the prior enactment of article four, chapter forty-eight-a  
9 of this code, notwithstanding the repeal or the amendment and



10 reenactment of sections of that article, until the first day of  
11 October, one thousand nine hundred ninety-nine when the  
12 family law master system is replaced with the system of family  
13 court judges 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 and  
2 the circuit courts shall, on or before the tenth day of each  
3 month, transmit all fees and costs received for the court security  
4 fund in accordance with the provisions of sections one and two,  
5 article three, chapter fifty of this code and section eleven,  
6 article one, chapter fifty-nine of this code for deposit in the  
7 state treasury to the credit of a special revenue fund to be  
8 known as the "Court Security Fund", which is hereby created  
9 under the department of military affairs and public safety. The  
10 court security fund may receive any gifts, grants, contributions  
11 or other money from any source which is specifically desig-  
12 nated for deposit in the fund. All moneys collected and received  
13 and paid into the state treasury and credited to the court security  
14 fund shall be expended by the board exclusively to implement  
15 the improvement measures agreed upon in accordance with the  
16 security plans submitted pursuant to section sixteen of this  
17 article and in accordance with an appropriation by the Legisla-  
18 ture: *Provided*, That for the fiscal year ending the thirtieth day  
19 of June, one thousand nine hundred ninety-seven, expenditures  
20 are authorized from collections rather than pursuant to an  
21 appropriation by the Legislature. Amounts collected which are  
22 found from time to time to exceed the funds needed for the  
23 purposes set forth in this article may be transferred to other  
24 accounts or funds and redesignated for other purposes upon  
25 appropriation by the Legislature.

26 (b) Notwithstanding the provisions of subsection (a) of this  
27 section, during the fiscal year two thousand, all fees and costs  
28 received for the court security fund in accordance with the  
29 provisions of sections one and two, article three, chapter fifty  
30 of this code and section eleven, article one, chapter fifty-nine of  
31 this code for deposit in the state treasury to the credit of a

32 special revenue fund to be known as the "Court Security Fund"  
 33 shall not be deposited in the court security fund, but such fees  
 34 and costs shall be transferred to the family court fund as  
 35 established under section twenty-three, article four, chapter  
 36 forty-eight-a of this code. The fees and costs that are transferred  
 37 are hereby redesignated for the purposes set forth in said section  
 38 twenty-three.

39 (c) Notwithstanding any other provisions of this code,  
 40 during the fiscal year two thousand, all fees and costs received  
 41 for the court security fund in accordance with the provisions of  
 42 this code in addition to those specified in subsection (a) of this  
 43 section for deposit in the state treasury to the credit of a special  
 44 revenue fund to be known as the court security fund shall not be  
 45 deposited in the court security fund, but such fees and costs  
 46 shall be transferred to the family court fund as established  
 47 under section twenty-three, article four, chapter forty-eight-a of  
 48 this code. The fees and costs that are transferred are hereby  
 49 redesignated for the purposes set forth in said section twenty-  
 50 three.

**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 for  
 2 services rendered as such clerk the following fees, and such  
 3 fees shall be paid in advance by the parties for whom such  
 4 services are to be rendered:

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

11 (2) Beginning the first day of April, one thousand nine  
 12 hundred ninety-nine, for petitioning for the modification of an  
 13 order involving child custody, child visitation, child support or  
 14 spousal support, seventy-five dollars.

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

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

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

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

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

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

27 (6) For vacation or modification of a suggestee execution,  
28 one dollar;

29 (7) For docketing and issuing an execution on a transcript  
30 of judgment from magistrate's court, three dollars;

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

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

36 (10) For each subpoena, on the part of either plaintiff or  
37 defendant, to be paid by the party requesting the same, fifty  
38 cents;

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

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

44 (1) In the case of any misdemeanor, fifty-five dollars;

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

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

**§59-1-11a. Fees to be charged by clerk of circuit court beginning  
the first day of July, two thousand one.**

1 The following fees shall be charged by the clerk of the  
2 circuit court effective the first day of July, two thousand one:

3 (a) The clerk of a circuit court shall charge and collect for  
4 services rendered as such clerk the following fees, and such  
5 fees shall be paid in advance by the parties for whom such  
6 services are to be rendered:

7 (1) For instituting any civil action under the rules of civil  
8 procedure, any statutory summary proceeding, any extraordi-  
9 nary remedy, the docketing of civil appeals, or any other action,  
10 cause, suit or proceeding, one hundred twenty-five dollars; and

11 (2) For petitioning for the modification of an order involv-  
12 ing child custody, child visitation, child support or spousal  
13 support, seventy-five dollars.

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

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

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

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

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

22 (5) For issuing or renewing a suggestee execution, includ-  
23 ing copies, postage, registered or certified mail fees and the fee  
24 provided by section four, article five-a, chapter thirty-eight of  
25 this code, three dollars;

26 (6) For vacation or modification of a suggestee execution,  
27 one dollar;

28 (7) For docketing and issuing an execution on a transcript  
29 of judgment from magistrate's court, three dollars;

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

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

35 (10) For each subpoena, on the part of either plaintiff or  
36 defendant, to be paid by the party requesting the same, fifty  
37 cents;

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

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

43 (1) In the case of any misdemeanor, fifty-five dollars;

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

45 (d) No such clerk shall be required to handle or accept for  
46 disbursement any fees, costs or amounts, of any other officer or  
47 party not payable into the county treasury, except it be on order  
48 of the court or in compliance with the provisions of law  
49 governing such fees, costs or accounts.

50 (e) Notwithstanding any provisions of this code, the  
51 increase in fees authorized pursuant to subdivision (1), subsec-  
52 tion (a) of this section and the fee authorized pursuant to  
53 subdivision (2), subsection (a) of this section pursuant to the  
54 enactment of this section shall be appropriated by the Legisla-  
55 ture to the family court fund established pursuant to the  
56 provisions of section twenty-three, article four, chapter forty-  
57 eight-a of this code or to the domestic violence legal services  
58 fund established pursuant to the provisions of section four-c,  
59 article two-c, chapter forty-eight of this code.

**§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, for each  
4 civil action instituted under the rules of civil procedure, any  
5 statutory summary proceeding, any extraordinary remedy, the  
6 docketing of civil appeals, or any other action, cause, suit or  
7 proceeding in the circuit court, the clerk of the court shall, at  
8 the end of each month, pay into the funds or accounts described  
9 in this subsection an amount equal to the amount set forth in  
10 this subsection of every filing fee received for instituting such  
11 action as follows:

12       (1) Into the regional jail and correctional facility develop-  
13 ment fund in the state treasury established pursuant to the  
14 provisions of section ten, article twenty, chapter thirty-one of  
15 this code, the amount of sixty dollars;

16       (2) Into the court security fund in the state treasury estab-  
17 lished pursuant to the provisions of section fourteen, article  
18 three, chapter fifty-one of this code, the amount of five dollars.

19       (b) For each divorce action instituted in the circuit court,  
20 the clerk of the court shall, at the end of each month, pay into  
21 the funds or accounts in this subsection an amount equal to the  
22 amount set forth in this subsection of every filing fee received  
23 for instituting such divorce action as follows:

24       (1) Into the regional jail and correctional facility develop-  
25 ment fund in the state treasury established pursuant to the  
26 provisions of section ten, article twenty, chapter thirty-one of  
27 this code, the amount of ten dollars;

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

31       (3) Into the family court fund in the state treasury, estab-  
32 lished pursuant to section twenty-three, article four, chapter  
33 forty-eight-a of this code, an amount of fifty dollars; and

34 (4) Into the court security fund in the state treasury,  
35 established pursuant to the provisions of section fourteen,  
36 article three, chapter fifty-one of this code, the amount of five  
37 dollars.

38 (c) For each action instituted in the circuit court petitioning  
39 for modification of an order involving child custody, child  
40 visitation, child support or spousal support, the clerk of the  
41 court shall, at the end of each month, pay into the family court  
42 fund in the state treasury, established pursuant to section  
43 twenty-three, article four, chapter forty-eight-a of this code, an  
44 amount equal to the amount of every filing fee received for  
45 instituting such modification proceeding. The family law  
46 masters fund established pursuant to section twenty-three,  
47 article four, chapter forty-eight-a of this code will hereafter be  
48 known as "the family court fund".

49 (e) The clerk of each circuit court shall, at the end of each  
50 month, pay into the regional jail and prison development fund  
51 in the state treasury an amount equal to forty dollars of every  
52 fee for service received in any criminal case against any  
53 defendant convicted in such court and shall pay an amount  
54 equal to five dollars of every such fee into the court security  
55 fund in the state treasury established pursuant to the provisions  
56 of section fourteen, article three, chapter fifty-one of this code.

## **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 support  
2 which he or she can reasonably provide and which he or she  
3 knows he or she has a duty to provide to a minor; or (b) is  
4 subject to court order to pay any amount for the support of a  
5 minor child and is delinquent in meeting the full obligation  
6 established by the order and has been delinquent for a period of  
7 at least six months' duration, is guilty of a misdemeanor and,  
8 upon conviction thereof, shall be fined not less than one  
9 hundred dollars nor more than one thousand dollars, or impris-

10 oned in the county jail for not more than one year, or both fined  
11 and imprisoned.

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

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



Enr. Com. Sub. for H. B. 2678] 112

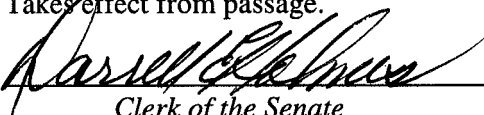
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.


  
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Chairman Senate Committee

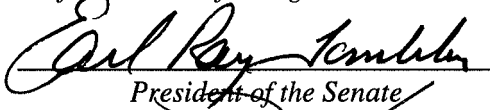
  
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Chairman House Committee

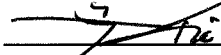
Originating in the House.

Takes effect from passage.

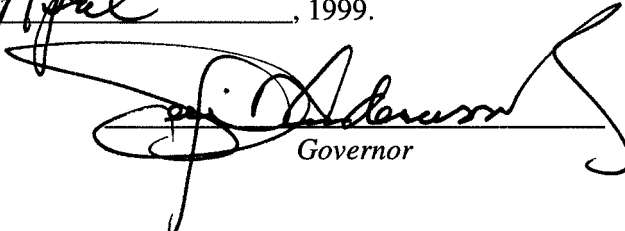
  
\_\_\_\_\_  
Clerk of the Senate

  
\_\_\_\_\_  
Clerk of the House of Delegates

  
\_\_\_\_\_  
President of the Senate

  
\_\_\_\_\_  
Speaker of the House of Delegates

The within disapproved this the 8th  
day of April, 1999.

  
\_\_\_\_\_  
Governor

PRESENTED TO

GOVERNOR

Date 4/6/97

Time 8:42 pm