WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 2001

ENROLLED

COMMITTEE SUBSTITUTE
FOR
House Bill No. 2199

(By Delegates Staton, Amores, Mahan, Pino, Wills, Faircloth and Riggs)

Passed March 22, 2001
In Effect from Passage
AN ACT to repeal chapters forty-eight-a, forty-eight-b and forty-eight-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section one, article two, chapter five-f of said code; to amend and reenact sections twelve and eighteen-b, article five, chapter sixteen of said code; to amend and reenact section thirteen, article five-b of said chapter; to amend and reenact section ten, article two, chapter seventeen-b of said code; to amend and reenact sections thirteen and eighteen, article four, chapter twenty-three of said code; to amend and reenact section twenty-seven-a, article twenty-two, chapter twenty-nine of said code; to amend and reenact section eleven, article eight, chapter thirty-eight of said code; to amend and reenact section five, article one, chapter forty-two of said code; to amend and reenact chapter forty-eight of said code; to amend and reenact section one, article three, chapter forty-nine of said code; to amend and reenact section ten, article two-a, chapter
Be it enacted by the Legislature of West Virginia:

That chapters forty-eight-a, forty-eight-b and forty-eight-c of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section one, article two, chapter five-f of said code be amended and reenacted; that sections twelve and eighteen-b, article five, chapter sixteen of said code be amended and reenacted; that section thirteen, article five-b of said chapter be amended and reenacted; that section ten, article two, chapter seventeen-b of said code be amended and reenacted; that sections thirteen and eighteen, article four, chapter twenty-three of said code be amended and reenacted; that section twenty-seven-a, article twenty-two, chapter twenty-nine of said code be amended and reenacted; that section eleven, article eight, chapter thirty-eight of said code be amended and reenacted; that chapter forty-eight of said code be amended and reenacted; that section one, article three, chapter forty-nine of said code be amended and reenacted; that section ten, article two-a, chapter fifty-one of said code be amended and reenacted; that section eight, article ten, chapter fifty-six of said code be amended and reenacted; and that section twenty-eight-a, article one, chapter fifty-nine of said code be amended and reenacted, all to read as follows:

CHAPTER 5F. REORGANIZATION OF THE EXECUTIVE BRANCH OF STATE GOVERNMENT.

ARTICLE 2. TRANSFER OF AGENCIES AND BOARDS.

§5F-2-1. Transfer and incorporation of agencies and boards; funds.
(a) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any such agency or board, are hereby transferred to and incorporated in and shall be administered as a part of the department of administration:

1. Building commission provided for in article six, chapter five of this code;
2. Public employees insurance agency and public employees insurance agency advisory board provided for in article sixteen, chapter five of this code;
3. Governor's mansion advisory committee provided for in article five, chapter five-a of this code;
4. Commission on uniform state laws provided for in article one-a, chapter twenty-nine of this code;
5. Education and state employees grievance board provided for in article twenty-nine, chapter eighteen of this code and article six-a, chapter twenty-nine of this code;
6. Board of risk and insurance management provided for in article twelve, chapter twenty-nine of this code;
7. Boundary commission provided for in article twenty-three, chapter twenty-nine of this code;
8. Public defender services provided for in article twenty-one, chapter twenty-nine of this code;
9. Division of personnel provided for in article six, chapter twenty-nine of this code;
10. The West Virginia ethics commission provided for in article two, chapter six-b of this code; and
11. Consolidated public retirement board provided for in article ten-d, chapter five of this code.
(b) The department of commerce, labor and environmental resources and the office of secretary of the department of commerce, labor and environmental resources are hereby abolished. For purposes of administrative support and liaison with the office of the governor, the following agencies and boards, including all allied, advisory and affiliated entities shall be grouped under three bureaus as follows:

(1) Bureau of commerce:

(A) Division of labor provided for in article one, chapter twenty-one of this code, which shall include:

     (i) Occupational safety and health review commission provided for in article three-a, chapter twenty-one of this code; and

     (ii) Board of manufactured housing construction and safety provided for in article nine, chapter twenty-one of this code;

(B) Office of miners' health, safety and training provided for in article one, chapter twenty-two-a of this code. The following boards are transferred to the office of miners' health, safety and training for purposes of administrative support and liaison with the office of the governor:

     (i) Board of coal mine health and safety and coal mine safety and technical review committee provided for in article six, chapter twenty-two-a of this code;

     (ii) Board of miner training, education and certification provided for in article seven, chapter twenty-two-a of this code; and

     (iii) Mine inspectors' examining board provided for in article nine, chapter twenty-two-a of this code;

(C) The West Virginia development office provided for in article two, chapter five-b of this code, which shall include:
(i) Enterprise zone authority provided for in article two-b, chapter five-b of this code;

(ii) Economic development authority provided for in article fifteen, chapter thirty-one of this code; and

(iii) Tourism commission provided for in article two, chapter five-b of this code and the office of the tourism commissioner;

(D) Division of natural resources and natural resources commission provided for in article one, chapter twenty of this code. The Blennerhassett historical state park provided for in article eight, chapter twenty-nine of this code shall be under the division of natural resources;

(E) Division of forestry provided for in article one-a, chapter nineteen of this code;

(F) Geological and economic survey provided for in article two, chapter twenty-nine of this code;

(G) Water development authority and board provided for in article one, chapter twenty-two-c of this code;

(2) Bureau of employment programs provided for in article one, chapter twenty-one-a of this code;

(3) Bureau of environment:

(A) Air quality board provided for in article two, chapter twenty-two-b of this code;

(B) Solid waste management board provided for in article three, chapter twenty-two-c of this code;

(C) Environmental quality board, or its successor board, provided for in article three, chapter twenty-two-b of this code;

(D) Division of environmental protection provided for in article one, chapter twenty-two of this code;
(E) Surface mine board provided for in article four, chapter twenty-two-b of this code;

(F) Oil and gas inspectors’ examining board provided for in article seven, chapter twenty-two-c of this code; and

(G) Shallow gas well review board provided for in article eight, chapter twenty-two-c of this code; and

(H) Oil and gas conservation commission provided for in article nine, chapter twenty-two-c of this code.

(c) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any such agency or board, are hereby transferred to and incorporated in and shall be administered as a part of the department of education and the arts:

(1) Library commission provided for in article one, chapter ten of this code;

(2) Educational broadcasting authority provided for in article five, chapter ten of this code;

(3) University of West Virginia board of trustees provided for in article two, chapter eighteen-b of this code;

(4) Board of directors of the state college system provided for in article three, chapter eighteen-b of this code;

(5) Joint commission for vocational-technical-occupational education provided for in article three-a, chapter eighteen-b of this code;

(6) Division of culture and history provided for in article one, chapter twenty-nine of this code; and

(7) Division of rehabilitation services provided for in section two, article ten-a, chapter eighteen of this code.
(d) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any such agency or board, are hereby transferred to and incorporated in and shall be administered as a part of the department of health and human resources:

1. Human rights commission provided for in article eleven, chapter five of this code;

2. Division of human services provided for in article two, chapter nine of this code;

3. Bureau of public health provided for in article one, chapter sixteen of this code;

4. Office of emergency medical services and advisory council thereto provided for in article four-c, chapter sixteen of this code;

5. Health care cost review authority provided for in article twenty-nine-b, chapter sixteen of this code;

6. Commission on mental retardation provided for in article fifteen, chapter twenty-nine of this code;

7. Women's commission provided for in article twenty, chapter twenty-nine of this code; and

8. The bureau for child support enforcement provided for in chapter forty-eight of this code.

(e) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any such agency or board, are hereby transferred to and incorporated in and shall be administered as a part of the department of military affairs and public safety:

1. Adjutant general's department provided for in article one-a, chapter fifteen of this code;
(2) Armory board provided for in article six, chapter fifteen of this code;

(3) Military awards board provided for in article one-g, chapter fifteen of this code;

(4) West Virginia state police provided for in article two, chapter fifteen of this code;

(5) Office of emergency services and disaster recovery board provided for in article five, chapter fifteen of this code and emergency response commission provided for in article five-a of said chapter;

(6) Sheriffs’ bureau provided for in article eight, chapter fifteen of this code;

(7) Division of corrections provided for in chapter twenty-five of this code;

(8) Fire commission provided for in article three, chapter twenty-nine of this code;

(9) Regional jail and correctional facility authority provided for in article twenty, chapter thirty-one of this code;

(10) Board of probation and parole provided for in article twelve, chapter sixty-two of this code; and

(11) Division of veterans’ affairs and veterans’ council provided for in article one, chapter nine-a of this code.

(f) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any such agency or board, are hereby transferred to and incorporated in and shall be administered as a part of the department of tax and revenue:

(1) Tax division provided for in article one, chapter eleven of this code;
(2) Racing commission provided for in article twenty-three, chapter nineteen of this code;

(3) Lottery commission and position of lottery director provided for in article twenty-two, chapter twenty-nine of this code;

(4) Agency of insurance commissioner provided for in article two, chapter thirty-three of this code;

(5) Office of alcohol beverage control commissioner provided for in article sixteen, chapter eleven of this code and article two, chapter sixty of this code;

(6) Board of banking and financial institutions provided for in article three, chapter thirty-one-a of this code;

(7) Lending and credit rate board provided for in chapter forty-seven-a of this code; and

(8) Division of banking provided for in article two, chapter thirty-one-a of this code.

(g) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any such agency or board, are hereby transferred to and incorporated in and shall be administered as a part of the department of transportation:

(1) Division of highways provided for in article two-a, chapter seventeen of this code;

(2) Parkways, economic development and tourism authority provided for in article sixteen-a, chapter seventeen of this code;

(3) Division of motor vehicles provided for in article two, chapter seventeen-a of this code;

(4) Driver’s licensing advisory board provided for in article two, chapter seventeen-b of this code;
(5) Aeronautics commission provided for in article two-a, chapter twenty-nine of this code;

(6) State rail authority provided for in article eighteen, chapter twenty-nine of this code; and

(7) Port authority provided for in article sixteen-b, chapter seventeen of this code.

(h) Except for such powers, authority and duties as have been delegated to the secretaries of the departments by the provisions of section two of this article, the existence of the position of administrator and of the agency and the powers, authority and duties of each administrator and agency shall not be affected by the enactment of this chapter.

(i) Except for such powers, authority and duties as have been delegated to the secretaries of the departments by the provisions of section two of this article, the existence, powers, authority and duties of boards and the membership, terms and qualifications of members of such boards shall not be affected by the enactment of this chapter and all boards which are appellate bodies or were otherwise established to be independent decision makers shall not have their appellate or independent decision-making status affected by the enactment of this chapter.

(j) Any department previously transferred to and incorporated in a department created in section two, article one of this chapter by prior enactment of this section in chapter three, acts of the Legislature, first extraordinary session, one thousand nine hundred eighty-nine, and subsequent amendments thereto, shall henceforth be read, construed and understood to mean a division of the appropriate department so created. Wherever elsewhere in this code, in any act, in general or other law, in any rule or regulation, or in any ordinance, resolution or order, reference is made to any department transferred to and incorporated in a department created in section two, article one of this chapter, such reference shall henceforth be read, construed and understood to mean a division of the appropriate department so
created, and any reference elsewhere to a division of a department so transferred and incorporated shall henceforth be read, construed and understood to mean a section of the appropriate division of the department so created.

(k) When an agency, board or commission is transferred under a bureau or agency other than a department headed by a secretary pursuant to this section, that transfer shall be construed to be solely for purposes of administrative support and liaison with the office of the governor, a department secretary or a bureau. The bureaus created by the Legislature upon the abolishment of the department of commerce, labor and environmental resources in the year one thousand nine hundred ninety-four shall be headed by a commissioner or other statutory officer of an agency within that bureau. Nothing in this section shall be construed to extend the powers of department secretaries under section two of this article to any person other than a department secretary and nothing herein shall be construed to limit or abridge the statutory powers and duties of statutory commissioners or officers pursuant to this code. Upon the abolishment of the office of secretary of the department of commerce, labor and environmental resources, the governor may appoint a statutory officer serving functions formerly within that department to a position which was filled by the secretary ex officio.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 5. VITAL STATISTICS.

§16-5-12. Birth registration generally; acknowledgment of paternity.

(a) A certificate of birth for each live birth which occurs in this state shall be filed with the local registrar of the district in which the birth occurs within seven days after the birth and shall be registered by the registrar if it has been completed and filed in accordance with this section. When a birth occurs in a moving conveyance, a birth certificate shall be filed in the district in which the child is first removed from the conveyance. When a birth occurs in a district other than where the mother
resides, a birth certificate shall be filed in the district in which
the child is born and in the district in which the mother resides.

(b) When a birth occurs in an institution, the person in
charge of the institution or his or her designated representative
shall obtain the personal data, prepare the certificate, secure the
signatures required for the certificate and file it with the local
registrar. The physician in attendance shall certify to the facts
of birth and provide the medical information required for the
certificate within five days after the birth.

(c) When a birth occurs outside an institution, the certificate
shall be prepared and filed by one of the following in the
indicated order of priority:

(1) The physician in attendance at or immediately after the
birth, or in the absence of such a person;

(2) Any other person in attendance at or immediately after
the birth, or in the absence of such a person; or

(3) The father, the mother, or, in the absence of the father
and the inability of the mother, the person in charge of the
premises where the birth occurred.

(d) Either of the parents of the child shall sign the certifi-
cate of live birth to attest to the accuracy of the personal data
entered thereon, in time to permit its filing within the seven
days prescribed above.

(e) In order that each county may have a complete record of
the births occurring in said county, the local registrar shall
transmit each month to the county clerk of his or her county the
copies of the certificates of all births occurring in said county,
from which copies the clerk shall compile a record of such
births and shall enter the same in a systematic and orderly way
in a well-bound register of births, which said register shall be
a public record: Provided, That such copies and register shall
not state that any child was either legitimate or illegitimate. The
form of said register of births shall be prescribed by the state registrar of vital statistics.

(f) In addition to the personal data furnished for the certificate of birth issued for a live birth in accordance with the provisions of this section, a person whose name is to appear on such certificate of birth as a parent shall contemporaneously furnish to the person preparing and filing the certificate of birth the social security account number (or numbers, if the parent has more than one such number) issued to the parent. A record of the social security number or numbers shall be filed with the local registrar of the district in which the birth occurs within seven days after such birth, and the local registrar shall transmit such number or numbers to the state registrar of vital statistics in the same manner as other personal data is transmitted to the state registrar.

(g) If the mother was married either at the time of conception or birth, the name of the husband shall be entered on the certificate as the father of the child unless paternity has been determined otherwise by a court of competent jurisdiction pursuant to the provisions of article twenty-four, chapter forty-eight of this code or other applicable law, in which case the name of the father as determined by the court shall be entered.

(h) If the mother was not married either at the time of conception or birth, the name of the father shall not be entered on the certificate of birth without the written consent of the mother and of the person to be named as the father unless a determination of paternity has been made by a court of competent jurisdiction pursuant to the provisions of article twenty-four, chapter forty-eight of this code or other applicable law, in which case the name of the father as determined by the court shall be entered.

(i) A written, notarized acknowledgment of both the man and the woman that the man is the father of a named child legally establishes the man as the father of the child for all purposes, and child support may be established pursuant to the provisions of chapter forty-eight of this code.
(1) The written acknowledgment shall include filing instructions, the parties' social security number and addresses and a statement, given orally and in writing, of the alternatives to, the legal consequences of, and the rights and obligations of acknowledging paternity, including, but not limited to, the duty to support a child. If either of the parents is a minor, the statement shall include an explanation of any rights that may be afforded due to the minority status.

(2) The failure or refusal to include all information required by subdivision (1) of this subsection shall not affect the validity of the written acknowledgment, in the absence of a finding by a court of competent jurisdiction that the acknowledgment was obtained by fraud, duress or material mistake of fact, as provided in subdivision (4) of this subsection.

(3) The original written acknowledgment should be filed with the state registrar of vital statistics. Upon receipt of any acknowledgment executed pursuant to this section, the registrar shall forward the copy of the acknowledgment to the bureau for child support enforcement and the parents, if the address of the parents is known to the registrar. If a birth certificate for the child has been previously issued which is incorrect or incomplete, a new birth certificate shall be issued.

(4) An acknowledgment executed under the provisions of this subsection may be rescinded as follows:

(A) The parent wishing to rescind the acknowledgment shall file with the clerk of the circuit court of the county in which the child resides a verified complaint stating the name of the child, the name of the other parent, the date of the birth of the child, the date of the signing of the affidavit, and a statement that he or she wishes to rescind the acknowledgment of the paternity. If the complaint is filed more than sixty days from the date of execution or the date of an administrative or judicial proceeding relating to the child in which the signatory is a party, the complaint shall include specific allegations concerning the elements of fraud, duress or material mistake of fact.
(B) The complaint shall be served upon the other parent as provided in rule 4 of the West Virginia rules of civil procedure.

(C) The family law master shall hold a hearing within sixty days of the service of process upon the other parent. If the complaint was filed within sixty days of the date the acknowledgment of paternity was executed, the court shall order the acknowledgment to be rescinded without any requirement of a showing of fraud, duress, or material mistake of fact. If the complaint was filed more than sixty days from the date of execution or the date of an administrative or judicial proceeding relating to the child in which the signatory is a party, the court may only set aside the acknowledgment upon a finding, by clear and convincing evidence, that the acknowledgment was executed under circumstances of fraud, duress or material mistake of fact. The circuit clerk shall forward a copy of any order entered pursuant to this proceeding to the state registrar of vital statistics by certified mail.

§16-5-18b. Limitation on use of social security numbers.

A social security account number obtained in accordance with the provisions of this article with respect to the filing of:

(1) A certificate of birth; (2) an application for a delayed registration of birth; (3) a judicial order establishing a record of birth; (4) an adoption order or decree; or (5) a certificate of paternity shall not be transmitted to a clerk of the county commission. The social security account number shall not appear upon the public record of the register of births or upon any certificate of birth registration issued by the state registrar, local registrar, county clerk or other issuing authority, if any. The social security account numbers shall be made available by the state registrar to the bureau for child support enforcement upon the request of the bureau, to be used solely in connection with the enforcement of child support orders.

ARTICLE 5B. HOSPITALS AND SIMILAR INSTITUTIONS.
§16-B-13. Hospital-based paternity program.

(a) Every public and private hospital licensed pursuant to section two of this article and every birthing center licensed pursuant to section two, article two-e of this chapter, that provides obstetrical services in West Virginia shall participate in the hospital-based paternity program.

(b) The bureau for child support enforcement as described in article eighteen, chapter forty-eight of this code shall provide all public and private hospitals and all birthing centers providing obstetric services in this state with:

(1) Information regarding the establishment of paternity;

(2) An acknowledgment of paternity fulfilling the requirements of subsection (i), section twelve, article five, chapter sixteen of this code; and

(3) The telephone contact number for the bureau for child support enforcement that a parent may call for further information regarding the establishment of paternity.

(c) Prior to the discharge from any facility included in this section of any mother who has given birth to a live infant, the administrator, or his or her assignee, shall ensure that the following materials are provided to any unmarried woman and any person holding himself out to be the natural father of the child:

(1) Information regarding the establishment of paternity;

(2) An acknowledgment of paternity fulfilling the requirements of subsection (i), section twelve, article five, chapter sixteen of this code; and

(3) The telephone contact number for the bureau for child support enforcement that a parent may call for further information regarding the establishment of paternity.

(d) The bureau for child support enforcement shall notify the state department of health of any failure of any hospital or birthing center to conform with the requirements of this section.
(e) Any hospital or birthing center described in this article should provide the information detailed in subsection (c) of this section at any time when such facility is providing obstetrical services.

CHAPTER 17B. MOTOR VEHICLE DRIVER'S LICENSES.

ARTICLE 2. ISSUANCE OF LICENSE, EXPIRATION AND RENEWAL.

§17B-2-10. Restricted licenses.

(a) The division upon issuing a driver's license shall have authority whenever good cause appears to impose restrictions suitable to the licensee's driving ability with respect to the type of or special mechanical control devices required on a motor vehicle which the licensee may operate or such other restrictions applicable to the licensee as the division may determine to be appropriate to assure the safe operation of a motor vehicle by the licensee.

(b) The division shall issue a restricted license to a person who has failed to pay overdue child support or comply with subpoenas or warrants relating to paternity or child support proceedings, if a circuit court orders restrictions of the person's license as provided in article fifteen, chapter forty-eight of this code.

(c) The division may either issue a special restricted license or may set forth such restrictions upon the usual license form.

(d) The division may upon receiving satisfactory evidence of any violation of the restrictions of such license suspend or revoke the same but the licensee shall be entitled to a hearing as upon a suspension or revocation under this chapter.

(e) It is a misdemeanor for any person to operate a motor vehicle in any manner in violation of the restrictions imposed in a restricted license issued to such person.

CHAPTER 23. WORKERS' COMPENSATION.

ARTICLE 4. DISABILITY AND DEATH BENEFITS.

Notwithstanding anything herein contained, no sum will be paid to a widow or widower who abandoned the employee before the injury causing death. However, the provisions of this section may not be construed to preclude a widow or widower from receiving compensation in accordance with section ten of this article if the widow or widower was abandoned within a period of two years by the employee for any reason except a reason that would have entitled the deceased employee to an annulment or a divorce as provided in articles three or five, chapter forty-eight of this code.

§23-4-18. Mode of paying benefits generally; exemptions of compensation from legal process.

Except as provided by this section, compensation shall be paid only to such employees or their dependents, and shall be exempt from all claims of creditors and from any attachment, execution or assignment other than compensation to counsel for legal services, under the provisions of, and subject to the limitations contained in section sixteen, article five of this chapter, and other than for the enforcement of orders for child or spousal support entered pursuant to the provisions of chapter forty-eight of this code. Payments may be made in such periodic installments as determined by the division in each case, but in no event less frequently than semimonthly for any temporary award and monthly for any permanent award. Payments for permanent disability shall be paid on or before the third day of the month in which they are due. In all cases where compensation is awarded or increased, the amount thereof shall be calculated and paid from the date of disability.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 22. STATE LOTTERY ACT.

§29-22-27a. Payment of prizes to the bureau for child support enforcement.
(a) Upon notification by the bureau for child support enforcement that a person who is entitled to all or part of a lottery prize is delinquent in the payment of child support or spousal support, the director shall forward to the bureau for child support enforcement the prize or portion to be distributed directly from the state lottery office that is available to be applied to the delinquent support payment.

(b) The director shall enter into a written agreement with the bureau for child support enforcement for the purpose of establishing a procedure for the collection of prizes as set forth in subsection (a) of this section. The director shall include in the agreement a method by which the bureau for child support enforcement will receive the names of lottery winners as expeditiously as possible.

CHAPTER 38. LIENS.

ARTICLE 8. EXEMPTIONS FROM LEVY.

§38-8-11. No exemption from claims for child or spousal support, purchase money or taxes.

No exemption claimed under the preceding sections of this article, or any of them, shall affect or impair any claim for child or spousal support established or enforced under the provisions of chapter forty-eight of this code, the purchase money of the personal estate in respect to which such exemption is claimed, or any proceeding for the collection of taxes, or county or district or municipal levies. Any increase in the exemption provided by a prior enactment of other sections of this article are not applicable to liens and all other debts and liabilities contracted and incurred prior to the effective date of the prior enactment of those sections.

CHAPTER 42. DESCENT AND DISTRIBUTION.

ARTICLE 1. DESCENT.

§42-1-5. From whom children born out of wedlock inherit.
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(a) Children born out of wedlock shall be capable of inheriting and transmitting inheritance on the part of their mother and father.

(b) Prior to the death of the father, paternity shall be established by:

(1) An acknowledgment that he is the child’s father;

(2) An adjudication of paternity pursuant to the provisions of article twenty-four, chapter forty-eight of this code; or

(3) An order of a court of competent jurisdiction issued in another state.

(c) After the death of the father, paternity is established if, after a hearing on the merits, the court finds, by clear and convincing evidence, that the man is the father of the child. The civil action must be filed in the circuit court of the county where the administration of the decedent’s estate has been filed or could be filed:

(1) Within six months of the date of the final order of the county commission admitting the decedent’s will to probate or commencing intestate administration of the estate; or

(2) If none of the above apply, within six months from the date of decedent’s death.

(d) Any putative child who at the time of the decedent’s death is under the age of eighteen years, a convict or a mentally incapacitated person may file such civil action within six months after he or she becomes of age or the disability ceases.

(e) The provisions of this section do not apply where the putative child has been lawfully adopted by another man and stands to inherit property or assets through his or her adopted father.
CHAPTER 48. DOMESTIC RELATIONS.

ARTICLE 1. GENERAL PROVISIONS; DEFINITIONS.

PART 1. GENERAL PROVISIONS.

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

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

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

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

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

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

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

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

The department of health and human resources is not required to change any form or letter that contains a citation to this code that is changed or otherwise affected by the recodification of this chapter during the regular session of the Legislature in the year 2001 through the passage of Committee Substitute for House Bill 2199, unless specifically required by a provision of this code.

PART 2. DEFINITIONS.

§48-1-201. Applicability of definitions.

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


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

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

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

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

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

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

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

§48-1-205. Attributed income defined.

(a) "Attributed income" means income not actually earned by a parent, but which may be attributed to the parent because he or she is unemployed, is not working full time, or is working below full earning capacity, or has nonperforming or under-performing assets. Income may be attributed to a parent if the court or master evaluates the parent's earning capacity in the local economy (giving consideration to relevant evidence that pertains to the parent's work history, qualifications, education and physical or mental condition) and determines that the parent is unemployed, is not working full time, or is working below full earning capacity. Income may also be attributed to a parent if the court or master finds that the obligor has nonperforming or under-performing assets.

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

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

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

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

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

(4) The court or master makes a written finding that other circumstances exist which would make the attribution of income inequitable: Provided, That in such case, the court or master may decrease the amount of attributed income to an extent required to remove such inequity.
52 (d) The court or master may attribute income to a parent's nonperforming or under-performing assets, other than the parent's primary residence. Assets may be considered to be nonperforming or under-performing to the extent that they do not produce income at a rate equivalent to the current six-month certificate of deposit rate, or such other rate that the court or master determines is reasonable.

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

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

1 (1) To control, account for and monitor all of the factors in the support enforcement collection and paternity determination process, including, but not limited to:

(A) Identifiable correlation factors (such as social security numbers, names, dates of birth, home addresses and mailing addresses of any individual with respect to whom support obligations are sought to be established or enforced and with respect to any person to whom such support obligations are owing) to assure sufficient compatibility among the systems of different jurisdictions to permit periodic screening to determine whether such individual is paying or is obligated to pay support in more than one jurisdiction;

(B) Checking of records of such individuals on a periodic basis with federal, interstate, intrastate and local agencies;

(C) Maintaining the data necessary to meet applicable federal reporting requirements on a timely basis; and

(D) Delinquency and enforcement activities;

(2) To control, account for and monitor the collection and distribution of support payments (both interstate and intrastate) the determination, collection and distribution of incentive payments (both interstate and intrastate), and the maintenance of accounts receivable on all amounts owed, collected and distributed;
(3) To control, account for and monitor the costs of all services rendered, either directly or by exchanging information with state agencies responsible for maintaining financial management and expenditure information;

(4) To provide access to the records of the department of health and human resources in order to determine if a collection of a support payment causes a change affecting eligibility for or the amount of aid under such program;

(5) To provide for security against unauthorized access to, or use of, the data in such system;

(6) To facilitate the development and improvement of the income withholding and other procedures designed to improve the effectiveness of support enforcement through the monitoring of support payments, the maintenance of accurate records regarding the payment of support and the prompt provision of notice to appropriate officials with respect to any arrearage in support payments which may occur; and

(7) To provide management information on all cases from initial referral or application through collection and enforcement.

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

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

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

"Bureau for child support enforcement" means the agency created under the provisions of article eighteen of this chapter, or any public or private entity or agency contracting to provide a service. The "bureau for child support enforcement" is that agency intended by the Legislature to be the single and separate organizational unit of state government administering programs of child and spousal support enforcement and meeting the
§48-1-209. Bureau for child support enforcement attorney defined.

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

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

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

(b) Caretaking functions include the following:

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

(A) Feeding;

(B) Dressing;

(C) Bedtime and wake-up routines;

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

(E) Bathing and grooming;

(F) Recreation and play;
(G) Physical safety; and

(H) Transportation.

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

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

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

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

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

(7) Moral guidance; and

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

§48-1-211. Chief judge defined.

“Chief judge” means the circuit judge of the circuit court in a judicial circuit that has only one circuit judge, or the chief judge of the circuit court in a judicial circuit that has two or more circuit judges.
§48-1-212. Clergy defined.

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

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

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

§48-1-214. Commissioner defined.

“Commissioner” means any person appointed pursuant to section 18-102, who directs all child support establishment and enforcement services for the bureau for child support enforcement.

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

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

1. The nature of the particular case or claim which underlies the agreement;
2. The jurisdiction or venue of any projected trial or proceeding;
(3) Any historical data relevant to verdicts or settlements within the jurisdiction where the case or claim is pending or may be brought;

(4) The terms and particulars of the agreement;

(5) The status of the case or claim at valuation date;

(6) The amount of time spent working on the case or claim prior to the valuation date, and an analysis of the nature of how that time was spent, including, but not limited to, such activities such as investigation, research, discovery, trial or appellate practice;

(7) The extent of the person’s active role in the work in process, whether as an actual participant or as an indirect participant such as a partner, local counsel or other ancillary role;

(8) The age of the case or claim;

(9) The expenses accrued or projected to bring the case or claim to resolution, including any office overhead attributable to case or claim; and

(10) The probable tax consequences attendant to a successful resolution of the case or claim.

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

§48-1-216. Court defined.

“Court” means a circuit court of this state, unless the context in which such term is used clearly indicates that reference to some other court is intended.
§48-1-217. Court of competent jurisdiction defined.

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

§48-1-218. Custodial parent defined.

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

§48-1-219. Custodial responsibility defined.

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

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

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

§48-1-221. Divorce defined.

"Divorce" means the judicial termination of a marriage contract. The termination of a marriage contract must be based on misconduct or other statutory cause arising after the marriage. A divorce is established by the order of a circuit court that changes the status of a husband and wife from a state of marriage to that of single persons.
§48-1-222. Domestic relations action defined.

1 "Domestic relations action" means an action:

2 (1) To obtain a divorce;

3 (2) To have a marriage annulled;

4 (3) To be granted separate maintenance;

5 (4) To establish paternity;

6 (5) To establish and enforce child support, including actions brought under the provisions of the uniform interstate family support act; and

7 (6) To allocate custodial responsibility and determine decision-making responsibility, or to otherwise determine child custody, as in an action petitioning for a writ of habeas corpus wherein the issue is child custody.

§48-1-223. Earnings defined.

1 "Earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments pursuant to a pension or retirement program.

2 "Disposable earnings" means that part of the earnings of any individual remaining after the deduction from those earnings of any amounts required by law to be withheld.

§48-1-224. Employer defined.

1 "Employer" means any individual, sole proprietorship, partnership, association, public or private corporation, the United States or any federal agency, this state or any political subdivision of this state, any other state or a political subdivision of another state and any other legal entity which hires and pays an individual for his services.
§48-1-225. Extraordinary medical expenses defined.

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

§48-1-226. Family law master defined.

"Family law master" means a commissioner of the circuit court appointed or elected and authorized to hear certain domestic relations actions under section 51-2A-10 of this code.

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

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

§48-1-228. Gross income defined.

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

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

(1) Earnings in the form of salaries, wages, commissions, fees, bonuses, profit sharing, tips and other income;
(2) Any payment from a pension plan, an insurance contract, an annuity, social security benefits, unemployment compensation, supplemental employment benefits, workers' compensation benefits and state lottery winnings and prizes;

(3) Interest, dividends or royalties;

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

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

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

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


47 (8) Income from seasonal employment or other sporadic
48 sources: Provided, That the amount of monthly income to be
49 included in gross income shall be determined by averaging the
50 income from seasonal employment or other sporadic sources
51 received during the previous thirty-six-month period or during
52 a period beginning with the month in which the parent first
53 received such compensation, whichever period is shorter; and
54
55 (9) Spousal support and separate maintenance receipts.
56
57 (c) Depending on the circumstances of the particular case,
58 the court may also include severance pay, capital gains and net
59 gambling, gifts or prizes as gross income.
60
61 (d) “Gross income” does not include:
62
63 (1) Income received by other household members such as
64 a new spouse;
65
66 (2) Child support received for the children of another
67 relationship;
68
69 (3) Means-tested assistance such as temporary assistance
70 for needy families, supplemental security income and food
71 stamps; and
72
73 (4) A child’s income unless the court determines that the
74 child’s income substantially reduces the family’s living
75 expenses.

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

1 “Guardian of the property of a child” means a person
2 lawfully invested with the power, and charged with the duty, of
3 managing and controlling the estate of a child.

§48-1-230. Income defined.

1 “Income” includes, but is not limited to, the following:
Commissions, earnings, salaries, wages, and other income due or to be due in the future to an individual from his or her employer and successor employers;

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

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

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

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

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

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

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

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

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

§48-1-232. Legal parent defined.

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

§48-1-233. Marital property defined.

"Marital property" means:

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

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

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

§48-1-234. Obligee defined.

“Obligee” means:

(1) An individual to whom a duty of support is or is alleged to be owed or in whose favor a support order has been issued or a judgment determining parentage has been rendered;

(2) A state or political subdivision to which the rights under a duty of support or support order have been assigned or which has independent claims based on financial assistance provided to an individual obligee; or

(3) An individual seeking a judgment determining parentage of the individual’s child.
§48-1-235. Obligor defined.

1 "Obligor" means an individual or the estate of a decedent:
2 (1) Who owes or is alleged to owe a duty of support;
3 (2) Who is alleged, but has not been adjudicated, to be a
4 parent of a child; or
5 (3) Who is liable under a support order.

§48-1-236. Secretary defined.

1 "Secretary" means the secretary of the department of health
2 and human resources.

§48-1-237. Separate property defined.

1 "Separate property" means:
2 (1) Property acquired by a person before marriage;
3 (2) Property acquired by a person during marriage in
4 exchange for separate property which was acquired before the
5 marriage;
6 (3) Property acquired by a person during marriage, but
7 excluded from treatment as marital property by a valid agree-
8 ment of the parties entered into before or during the marriage;
9 (4) Property acquired by a party during marriage by gift,
10 bequest, devise, descent or distribution;
11 (5) Property acquired by a party during a marriage but after
12 the separation of the parties and before ordering an annulment,
13 divorce or separate maintenance; or
14 (6) Any increase in the value of separate property as
15 defined in subdivision (1), (2), (3), (4) or (5) of this section
16 which is due to inflation or to a change in market value result-
17 ing from conditions outside the control of the parties.

§48-1-238. Separation defined.

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

§48-1-239. Shared physical custody defined.

“Shared physical custody” means an arrangement under which each parent keeps a child or children overnight for more than thirty-five percent of the year and under which both parents contribute to the expenses of the child or children in addition to the payment of child support.

§48-1-240. Source of income defined.

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


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

§48-1-242. Spousal support defined.

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

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

“Spousal support in gross” means spousal support payable either in a lump sum, or in periodic payments of a definite amount over a specific period of time. A spousal support award is “spousal support in gross” only if the award grants spousal support in such terms that a determination can be made of the total amount to be paid as well as the time such payments will cease.
§48-1-244. Support defined.

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

2 (1) For a child or spouse, ordered by a court of competent
3 jurisdiction, whether the payment is ordered in an emergency,
4 temporary, permanent or modified order, the amount of unpaid
5 support shall bear simple interest from the date it accrued, at a
6 rate of ten dollars upon one hundred dollars per annum, and
7 proportionately for a greater or lesser sum, or for a longer or
8 shorter time;

9 (2) To third parties on behalf of a child or spouse, includ-
10 ing, but not limited to, payments to medical, dental or educa-
11 tional providers, payments to insurers for health and hospital-
12 ization insurance, payments of residential rent or mortgage
13 payments, payments on an automobile or payments for day
14 care; or

15 (3) For a mother, ordered by a court of competent jurisdic-
16 tion, for the necessary expenses incurred by or for the mother
17 in connection with her confinement or of other expenses in
18 connection with the pregnancy of the mother.

§48-1-245. Support order defined.

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

(b) For all other cases, "support order" means an order as
12 defined in subsection (a) of this section and, in addition, an
13 order for the support and maintenance of a spouse or former
14 spouse.
§48-1-246. Unreimbursed health care expenses defined.

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

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

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

PART 3. MISCELLANEOUS PROVISIONS RELATING TO DOMESTIC RELATIONS.

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

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

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

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

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

(b) The privilege granted by this section shall be in addition to and not in derogation of any other privileges recognized by law.
§48-1-302. Calculation of interest.

(a) If an obligation to pay interest arises under this chapter, the rate of interest is that specified in section 56-6-31 of this code. Interest accrues only upon the outstanding principal of such obligation. On and after the ninth day of June, one thousand nine hundred ninety-five, this section will be construed to permit the accumulation of simple interest, and may not be construed to permit the compounding of interest. Interest which accrued on unpaid installments accruing before the ninth day of June, one thousand nine hundred ninety-five, may not be modified by any court, irrespective of whether such installment accrued simple or compound interest: Provided, That unpaid installments upon which interest was compounded before the effective date of this section shall accrue only simple interest thereon on and after the ninth day of June, one thousand nine hundred ninety-five.

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

(c) Upon written agreement by both parties, an obligor may petition the court to enter an order conditionally suspending the collection of all or part of the interest that has accrued on past due child support prior to the date of the agreement: Provided, That said agreement shall also establish a reasonable payment plan which is calculated to fully discharge all arrearages within twenty-four months. Upon successful completion of the payment plan, the court shall enter an order which permanently relieves the obligor of the obligation to pay the accrued interest. If the obligor fails to comply with the terms of the written agreement, then the court shall enter an order which reinstates the accrued interest. Any proceeding commenced pursuant to the provisions of this subsection may only be filed after the first
§48-1-303. Confidentiality of domestic relations court files.

1 (a) All orders in domestic relations actions entered in the civil order books by circuit clerks are public records.

2 (b) Upon the filing of a domestic relations action, all pleadings, exhibits or other documents, other than orders, that are contained in the court file are confidential and not open for public inspection either during the pendency of the case or after the case is closed.

3 (c) When sensitive information has been disclosed during a hearing or in pleadings, evidence, or documents filed in the record, a circuit judge or family law master may, sua sponte or upon motion of a party, order such information sealed in the court file. Sealed documents or court files can only be opened by order of a circuit judge or family law master.

4 (d) The parties, their designees, their attorneys, a duly appointed guardian ad litem or any other person who has standing to seek modification or enforcement of a support order, has the right to examine and copy any document in a confidential court file that has not been sealed by order of a circuit judge or family law master. Upon motion and for good cause shown, the circuit court or family law master may permit a person who is not a party to the action to examine and copy any documents that are necessary to further the interests of justice.

5 (e) The clerk of the circuit court shall keep a written log of all persons who examine confidential documents as provided for in this section. Every person who examines confidential documents shall first sign the clerk’s written log, except for a circuit judge or family law master before whom the case is pending, or court personnel acting within the scope of their duties. The clerk shall record the time and date of every examination of confidential documents. The log must be

32 retained by the clerk and must be available upon request for
33 inspection by the court or the family law master.


1 (a) Upon a verified petition for contempt, notice of hearing
2 and hearing, if the petition alleges criminal contempt or the
3 court informs the parties that the matter will be treated and tried
4 as a criminal contempt, the matter shall be tried before a jury,
5 unless the party charged with contempt shall knowingly and
6 intelligently waive the right to a jury trial with the consent of
7 the court and the other party. If the jury, or the court sitting
8 without a jury, shall find the defendant in contempt for willfully
9 failing to comply with an order of the court made pursuant to
10 the provisions of this article, as charged in the petition, the
11 court may find the person to be in criminal contempt and may
12 commit such person to the county jail for a determinate period
13 not to exceed six months.

14 (b) If trial is had under the provisions of subsection (a) of
15 this section and the court elects to treat a finding of criminal
16 contempt as a civil contempt, or if the petition alleges civil
17 contempt and the matter is not tried before a jury and the court
18 finds the defendant in contempt for willfully failing to comply
19 with an order of the court made pursuant to the provisions of
20 this article, and if the court further finds the person has the
21 ability to purge himself of contempt, the court shall afford the
22 contemnor a reasonable time and method whereby he may
23 purge himself of contempt. If the contemnor fails or refuses to
24 purge himself of contempt, the court may confine the
25 contemnor to the county jail for an indeterminate period not to
26 exceed six months or until such time as the contemnor has
27 purged himself, whichever shall first occur.

28 (c) In the case of a charge of contempt based upon the
29 failure of the defendant to pay alimony, child support or
30 separate maintenance, if the court or jury finds that the defen-
31 dant did not pay because he was financially unable to pay, the
32 defendant may not be imprisoned on charges of contempt of
33 court.
(d) Regardless of whether the court or jury finds the defendant to be in contempt, if the court shall find that a party is in arrears in the payment of alimony, child support or separate maintenance ordered to be paid under the provisions of this article, the court shall enter judgment for such arrearage and award interest on such arrearage from the due date of each unpaid installment. Following any hearing wherein the court finds that a party is in arrears in the payment of alimony, child support or separate maintenance, the court may, if sufficient assets exist, require security to ensure the timely payment of future installments.

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

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

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

(b) The court may compel either party to pay attorney’s fees and court costs reasonably necessary to enable the other party to prosecute or defend the action in the trial court. An order for temporary relief awarding attorney fees and court costs may be modified at any time during the pendency of the action, as the exigencies of the case or equity and justice may require, including, but not limited to, a modification which would require full or partial repayment of fees and costs by a party to the action to whom or on whose behalf payment of such fees and costs was previously ordered. If an appeal is taken or an intention to appeal is stated, the court may further order either party to pay attorney fees and costs on appeal.
(c) When it appears to the court that a party has incurred attorney fees and costs unnecessarily because the opposing party has asserted unfounded claims or defenses for vexatious, wanton or oppressive purposes, thereby delaying or diverting attention from valid claims or defenses asserted in good faith, the court may order the offending party, or his or her attorney, or both, to pay reasonable attorney fees and costs to the other party.

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

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

ARTICLE 2. MARRIAGE.

PART 1. APPLICATION FOR MARRIAGE LICENSE.


Every marriage in this state must be solemnized under a marriage license issued by a clerk of the county commission in accordance with the provisions of this article. If a ceremony of marriage is performed without a license, the attempted marriage
§48-2-102. Where an application for a marriage license may be made; when an application may be received and a license issued; application by mail.

(a) If one or both of the applicants are residents of this state, they may apply for a marriage license to be issued by the clerk of the county commission of the county in which a resident applicant usually resides. If both parties are nonresidents of this state, they may apply for a license to be issued by the clerk of the county commission in any county in this state.

(b) Applications for licenses may be received and licenses may be issued by the clerk of the county commission when the office of the clerk is officially open for the conduct of business.

§48-2-103. Waiting period before issuance of marriage license; issuance of license in case of emergency or extraordinary circumstances.

(a) Except as otherwise provided in subsection (b) of this section, if either or both of the applicants for a marriage license is under eighteen years of age, the clerk of the county commission may not issue a marriage license until two full days elapse after the day the license application is filed.

(b) In case of an emergency or extraordinary circumstances, as shown by affidavit or other proof, a circuit judge of the county in which an application for a marriage license will be filed may order the clerk of the county commission to issue a license at any time before the expiration of the waiting period prescribed in subsection (a) of this section. The clerk of the county commission shall attach a certified copy of the judge's order to the application and issue the marriage license in accordance with the order. If the judge or judges of the county in which the application will be filed are absent or incapacitated, the order may be made and directed to the clerk of the county commission of the county by a circuit judge in any
§48-2-104. Contents of the application for a marriage license.

1 (a) The application for a marriage license must contain a statement of the full names of both female and male parties, their social security account numbers, dates of birth, places of birth and residence addresses.

2 (b) If either of the parties is a legal alien in the United States of America and has no social security account number, a tourist or visitor visa number or number equivalent to a United States social security account number must be provided.

3 (c) Every application for a marriage license must contain the following statement: “Marriage is designed to be a loving and lifelong union between a woman and a man.

4 The laws of this state affirm your right to enter into this marriage and to live within the marriage free from violence and abuse. Neither of you is the property of the other. Physical abuse, sexual abuse, battery and assault of a spouse or other family member, and other provisions of the criminal laws of this state are applicable to spouses and other family members, and these violations are punishable by law.”

§48-2-105. Execution of the application for a marriage license.

1 Both female and male parties to a contemplated marriage are required to sign the application for a marriage license, under oath. The application must be signed before the clerk of the county commission or another person authorized to administer oaths under the laws of this state.


1 (a) At the time of the execution of the application, the clerk or the person administering the oath to the applicants shall require evidence of the age of each of the applicants. Evidence of age may be as follows:
§48-2-107. Recording an application for a marriage license.

The clerk of the county commission shall record the application for a marriage license in the register of marriages provided for in section 2-203. The clerk shall note the date of the filing of the application in the register. The clerk’s notation, or a certified copy thereof, is legal evidence of the facts contained in the license.

**PART 2. MARRIAGE LICENSE.**

§48-2-201. Form of marriage license.

The marriage license shall be in form substantially as follows:

Marriage License.

State of West Virginia, County of ________________,

to wit:
To any person authorized to celebrate marriages:

You are hereby authorized to join together in matrimony
__________ and __________ 

Given under my hand, as clerk of the county commission of
the county of _____________, this ________ day of
__________, 2_____.

Clerk as aforesaid.

§48-2-202. Endorsement and return of licenses by persons solemnizing marriage; duties of clerk pertaining thereto.

(a) The person solemnizing a marriage shall retain the
marriage license and place an endorsement on it establishing
the fact of the marriage and the time and place it was cele-
brated.

(b) Before the sixth day of the month after the month in
which the marriage was celebrated, the person who solemnized
the marriage shall forward the original of the marriage license
to the clerk who issued the license.

(c) In the event that the marriage authorized by the license
is not solemnized within sixty days from the date of its issu-
ance, then the license is null and void. If the county clerk has
not received the original license within sixty days after the
expiration date on the license, the clerk shall notify each of the
applicants of that fact, by certified mail, return receipt re-
quested.

§48-2-203. Register of marriages.

(a) The clerk of the county commission is required to
maintain a suitable book to be used as a register of marriages.
The clerk shall keep a complete record of the following
information:
(1) Factual information that relates to the eligibility of a person to obtain a marriage license: Provided, That if the license is issued because the female is pregnant, the pregnancy will not be noted by the clerk in the register of marriages;

(2) Each marriage license issued by the clerk; and

(3) An endorsement by a minister, priest, rabbi, or judge certifying that the marriage was solemnized.

(b) The clerk shall index the register of marriages in the names of both parties to the marriage.

§48-2-204. Record of marriage celebrated outside of state.

If at the time of celebrating any marriage out of this state, either or both of the parties thereto is a resident of this state, a certificate or statement of that fact, verified by the affidavit of any person present at such celebration, or a transcript of the marriage record, certified by the custodian of such records, from the state where the marriage was celebrated, may be returned to the clerk of the county commission of the county in which the husband resides, if he is a resident, or otherwise to the clerk of the county in which the wife resides, and an abstract thereof shall be recorded by the clerk in the register of marriages and indexed in the name of both parties.

PART 3. CAPACITY TO MARRY.

§48-2-301. Age of consent for marriage; exception.

(a) The age of consent for marriage for both the male and the female is eighteen years of age. A person under the age of eighteen lacks the capacity to contract a marriage without the consent required by this section.

(b) The clerk of the county commission may issue a marriage license to an applicant who is under the age of eighteen but sixteen years of age or older if the clerk obtains a valid written consent from the applicant’s parents or legal guardian.
Upon order of a circuit judge, the clerk of the county commission may issue a marriage license to an applicant who is under the age of sixteen, if the clerk obtains a valid written consent from the applicant's parents or legal guardian. A circuit judge of the county in which the application for a marriage license is filed may order the clerk of the county commission to issue a license to an applicant under the age of sixteen if, in the court's discretion, the issuance of a license is in the best interest of the applicant and if consent is given by the parents or guardian.

A consent to marry must be duly acknowledged before an officer authorized to acknowledge a deed. If the parents are living together at the time the application for a marriage license is made and the consent is given, the signatures of both parents or the applicant's legal guardian is required. If one parent is dead, the signature of the surviving parent or the applicant's legal guardian is required. If both parents are dead, the signature of the applicant's legal guardian is required. If the parents of the applicant are living separate and apart, the signature of the parent having custody of the applicant or the applicant's legal guardian is required.

If a person under the age of consent is married in violation of this section, the marriage is not void for this reason, and such marriage is valid until it is actually annulled.

A marriage by an underage person without a valid consent as required by this section, though voidable at the time it is entered into, may be ratified and become completely valid and binding when the underage party reaches the age of consent. Validation of a marriage by ratification is established by some unequivocal and voluntary act, statement, or course of conduct after reaching the age of consent. Ratification includes, but is not limited to, continued cohabitation as husband and wife after the age of consent is attained.
§48-2-302. Prohibition against marriage of persons related within certain degrees.

(a) A man is prohibited from marrying his mother, grandmother, sister, daughter, granddaughter, half sister, aunt, brother’s daughter, sister’s daughter, first cousin or double cousin. A woman is prohibited from marrying her father, grandfather, brother, son, grandson, half brother, uncle, brother’s son, sister’s son, first cousin or double cousin.

(b) The prohibitions described in subsection (a) of this section are applicable to consanguineous relationships where persons are blood related by virtue of having a common ancestor.

(c) The prohibitions described in subsection (a) of this section are applicable to persons related by affinity, where the relationship is founded on a marriage, and the prohibition continues in force even though the marriage is terminated by death or divorce, unless the divorce was ordered for a cause which made the marriage, originally, unlawful or void.

§48-2-303. Prohibition against marriage not to include persons related by adoption.

For the purpose of section 2-302, cousin or double cousin does not include persons whose relationship is created solely by adoption. If it necessary to open and examine the record of any adoption proceeding in the state to ascertain that a relationship of cousin or double cousin is created solely by adoption, then an application may be made to the circuit court that held the adoption proceeding, by the clerk of the county commission seeking to issue the marriage license, or either party applying for the license, to open the record and cause it to be examined. Upon such application, the judge shall examine the record confidentially and report to the clerk whether the record discloses any consanguinity prohibited by this section and may grant such other relief prayed for which may be proper under article 22 of this chapter.

PART 4. MARRIAGE CEREMONY.

§48-2-401. Persons authorized to perform marriages.
A religious representative who has complied with the provisions of section 2-402, or a judge of any court of record in this state, is authorized to celebrate the rites of marriage in any county of this state. Celebration or solemnization of a marriage means the performance of the formal act or ceremony by which a man and woman contract marriage and assume the status of husband and wife.

For purposes of this chapter, the term “religious representative” means a minister, priest, or rabbi and includes, without being limited to, a leader or representative of a generally recognized spiritual assembly, church, or religious organization which does not formally designate or recognize persons as ministers, priests or rabbis.

§48-2-402. Qualifications of religious representative for celebrating marriages.

(a) The county commission of any county in this state may make an order authorizing a person who is a religious representative to celebrate the rites of marriage in all the counties of the state, upon proof that the person:

(1) Is eighteen years of age or older;

(2) Is duly authorized to perform marriages by his or her church, synagogue, spiritual assembly or religious organization; and

(3) Is in regular communion with the church, synagogue, spiritual assembly or religious organization of which he or she is a member.

(b) The person shall give bond in the penalty of one thousand five hundred dollars, with surety approved by the commission. Any religious representative who gives proof before the county commission of his or her ordination or authorization by his or her respective church, synagogue, spiritual assembly or religious organization, is exempt from giving the bond.
§48-2-403. Ritual for ceremony of marriage by a religious representative.

1 A religious representative authorized to celebrate the rites of marriage shall perform the ceremony of marriage according to the rites and ceremonies of his or her religious denomination, church, synagogue, spiritual assembly or religious organization and the laws of the state of West Virginia.

§48-2-404. Ritual for ceremony of marriage by a judge.

1 The ritual for the ceremony of marriages by judges of courts of record in this state may be as follows: At the time appointed, the persons to be married, being qualified according to the law of the state of West Virginia, standing together facing the judge, the man at the judge’s left hand and the woman at the right, the judge shall say:

“We are gathered here, in the presence of these witnesses, to join together this man and this woman in matrimony. It is not to be entered into unadvisedly but discreetly, sincerely, and in dedication of life.

(Then shall the judge say to the man, using his christian name:)

“N., wilt thou have this woman to be thy wedded wife, to live together in the bonds of matrimony? Wilt thou love her, comfort her, honor and keep her in sickness and in health?

(Then the man shall answer:)

“I will.

(Then the judge shall say to the woman, using her christian name:)

“N., wilt thou have this man to be thy wedded husband, to live together in the bonds of matrimony? Wilt thou love him, comfort him, honor and keep him in sickness and health?
(The woman shall answer:)

"I will.

(Then may the judge say:)

"Who giveth this woman to be married to this man?

(The father of the woman, or whoever giveth her in marriage, shall answer:)

"I do.

(Then the judge shall ask the man to say after him:)

"I, N., take thee, N., to be my wedded wife, to have and to hold, from this day forward, for better, for worse, for richer, for poorer, in sickness and in health, to love, and to cherish, as long as life shall last, and thereto I pledge thee my faith.

(Then the judge shall ask the woman to repeat after him:)

"I, N., take thee, N., to be my wedded husband, to have and to hold, from this day forward, for better, for worse, for richer, for poorer, in sickness and in health, to love and to cherish, as long as life shall last, and thereto I pledge thee my faith.

(Then, if there be a ring, the judge shall say:)

"The wedding ring is an outward and visible sign--signifying unto all, the uniting of this man and this woman in matrimony.

(The judge then shall deliver the ring to the man to put on the third finger of the woman's left hand. The man shall say after the judge:)

"In token and pledge of the vow between us made, with this ring, I thee wed."
(Then, if there be a second ring, the judge shall deliver it to the woman to put upon the third finger of the man’s left hand; and the woman shall say after the judge:)

“In token and pledge of the vow between us made, with this ring, I thee wed.

(Then shall the judge say:)

“Forasmuch as N. and N. have consented together in wedlock, and have witnessed the same each to the other and before these witnesses, and thereto have pledged their faith each to the other, and have declared the same by giving (and receiving) a ring, by virtue of the authority vested in me as judge of this court, I pronounce that they are husband and wife together.”

§48-2-405. Record of marriage to be kept by person officiating.

A record of each marriage performed, with the names of the parties, their respective places of residence prior to marriage, and the date of marriage, shall be kept by the officiating religious representative in the permanent record of the church, synagogue, spiritual assembly or religious organization which he or she serves.

PART 5. OFFENSES AND PENALTIES.

§48-2-501. Unlawful acts by clerk of the county commission; penalties.

(a) It is unlawful for a clerk of the county commission to do any of the following acts:

(1) To make a false entry as to the date of application for a marriage license;

(2) To issue a marriage license prior to the end of the required three-day period (unless a circuit judge dispenses with this requirement by order pursuant to section 2-103);
(3) To issue a license on any Sunday or a legal holiday; or

(4) To receive an application for a marriage license or issue a marriage license in any place other than the office of the clerk of the county commission.

(b) A clerk of the county commission who violates the provisions of subsection (a) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than two hundred dollars nor more than one thousand dollars, or by confinement in the county or regional jail for not less than three months nor more than nine months, or by both such fine and confinement, in the discretion of the court.

§48-2-502. Issuing marriage license contrary to law; penalty.

A clerk of the county commission who knowingly issues a marriage license contrary to law is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not exceeding five hundred dollars, or by confinement in the county or regional jail for not more than one year, or by both such fine and confinement, in the discretion of the court.

§48-2-503. Consanguineous marriage; penalty.

(a) If a person marries another who is within the degrees of relationship described in section 2-302, and the relationship is founded on consanguinity, the person is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than five hundred dollars, or be confined in the county or regional jail for not more than six months, or both, in the discretion of the court.

(b) If a person who is a resident of this state marries in another state or country, the person violates subsection (a) of this section if:

(1) The persons married are within the degrees of relationship described in section 2-302 and the relationship is founded on consanguinity;
(2) The person intends to evade the law of this state;
(3) The person intends to return and reside in this state; and
(4) The persons, after marrying, return to this state and cohabit as man and wife.

(c) For purposes of this section, the fact of cohabitation of the persons as man and wife is evidence of their marriage.

§48-2-504. Failure to endorse and return license; penalties.

If a person who is authorized to celebrate marriages in this state willfully fails to comply with the provisions of section 2-202, relating to the endorsement and return of a license, his or her authority must be suspended for a period of not less than six months nor more than one year. If the person gave bond under the provisions of section 2-402, the conditions of the bond are deemed to be broken and the bond must be forfeited as otherwise provided by law. The county clerk shall notify the prosecuting attorney of the county of any failure to comply with section 2-202. The prosecuting attorney shall institute proceedings before the circuit court to suspend the person's authority to celebrate marriages. The court shall determine all questions of law and fact.

§48-2-505. Unlawful solicitation of a celebration of marriage.

(a) It is unlawful for any religious representative in any manner to solicit the celebration of a marriage ceremony.

(b) It is unlawful for a religious representative to give anything of value, directly or indirectly, as a reward to any person who may accompany, bring, send or direct the holders of a marriage license to the religious representative.

(c) If a person violates the provisions of subsection (a) or (b) of this section, his or her license to celebrate marriages shall be revoked, and no such license shall thereafter be issued to the person. It is the duty of the prosecuting attorney of the county in which the violation occurs to institute proceedings in the

12 circuit court to revoke the license. Reasonable notice of
13 proceedings to revoke a license shall be given to the licensee.
14 The court shall determine all questions of law and fact.

PART 6. MISCELLANEOUS PROVISIONS.

§48-2-601. Belief of parties in lawful marriage validates certain
defects.

If a marriage is solemnized by a person professing to be
authorized to celebrate marriages when, in fact, the person is
not authorized, or if a marriage is solemnized after the license
is expired, the marriage is not void and subject to a judgment of
nullity based on that fact alone if:

(1) The marriage is lawful in all other respects, and

(2) The marriage is consummated with a full belief on the
part of either or both of the persons married that they have been
lawfully joined in marriage.

§48-2-602. Marriage out of state to evade law.

If a resident of this state marries in another state or country,
the marriage is governed by the same law, in all respects, as if
it had been solemnized in this state if, at the time of the
marriage:

(1) The marriage would have been in violation of section 3-
103 if performed in this state;

(2) The person intended to evade the law of this state; and

(3) The person intended to return and reside in this state.

§48-2-603. Certain acts, records, and proceedings not to be given
effect in this state.

A public act, record or judicial proceeding of any other
state, territory, possession or tribe respecting a relationship
between persons of the same sex that is treated as a marriage
under the laws of the other state, territory, possession, or tribe,
or a right or claim arising from such relationship, shall not be given effect by this state.

§48-2-604. Additional fee to be collected for each marriage license issued.

In addition to any fee heretofore established for the issuance of a marriage license, the county clerk shall collect a sum of fifteen dollars for each marriage license issued which additional sum shall be paid into a special revenue account of the state treasury to be dispersed to local family protection shelters as provided in article 26-101, et seq.

ARTICLE 3. ANNULMENT OR AFFIRMATION OF MARRIAGE.

§48-3-101. Right to sue to annul or affirm marriage.

(a) Except as otherwise provided in subsection (b) of this section, an action to annul or affirm a marriage is not maintainable unless one of the parties is a resident of this state at the time the action is commenced.

(b) Even if neither party is a resident of this state, an action to annul a marriage that was performed in this state is maintainable if the parties have not established a matrimonial domicile elsewhere.

§48-3-102. Venue of actions for annulment or affirmation.

(a) If the respondent to an action for annulling or affirming a marriage is a resident of this state, the petitioner has an option to bring the action in the county in which the parties last cohabited or in the county where the respondent resides.

(b) If the respondent to an action for annulling or affirming a marriage is not a resident of this state, the petitioner has an option to bring the action in the county in which the parties last cohabited or in the county where the petitioner resides.

(c) If neither party is a resident of this state, the action must be brought in the county where the marriage was performed.
§48-3-103. Voidable marriages.

(a) The following marriages are voidable and are void from the time they are so declared by a judgment order of nullity:

(1) Marriages that are prohibited by law on account of either of the parties having a wife or husband of a prior marriage, when the prior marriage has not been terminated by divorce, annulment or death;

(2) Marriages that are prohibited by law on account of consanguinity or affinity between the parties;

(3) Marriages solemnized when either of the parties:
   (A) Was an insane person, idiot or imbecile;
   (B) Was afflicted with a venereal disease;
   (C) Was incapable, because of natural or incurable impotency of the body, of entering into the marriage state;
   (D) Was under the age of consent; or
   (E) Had been, prior to the marriage and without the knowledge of the other party, convicted of an infamous offense;

(4) Marriages solemnized when, at the time of the marriage, the wife, without the knowledge of the husband:
   (A) Was with child by some person other than the husband; or
   (B) Had been, prior to the marriage, notoriously a prostitute; or

(5) Marriages solemnized when, prior to the marriage, the husband, without the knowledge of the wife, had been notoriously a licentious person.
§48-3-104. Affirmation or annulment of marriage.

1 If a marriage is supposed to be void, or voidable, or any doubt exists as to its validity, for any of the causes set forth in section 3-103, or for any other cause recognized in law, either party may, except as provided in section 3-105, institute an action for annulling or affirming the marriage. Upon hearing the proofs and allegations of the parties, the court shall enter a judgment order annulling or affirming the marriage. In every case where the validity of a marriage is called into question, it is presumed that the marriage is valid, unless the contrary is clearly proved. If the court orders that the marriage is valid, the finding of the court is conclusive upon all persons concerned.

§48-3-105. What persons may not institute annulment action.

1 An action for annulling a marriage may not be instituted:

2 (a) Where the cause is the natural or incurable impotency of body of either of the parties to enter the marriage state, by the party who had knowledge of such incapacity at the time of marriage; or

3 (b) Where the cause is fraud, force or coercion, by the party who was guilty of such fraud, force or coercion, nor by the injured party if, after knowledge of the facts, he or she has by acts or conduct confirmed such marriage; or

4 (c) Where the cause is affliction with a venereal disease existing at the time of marriage, by the party who was so afflicted if such party has subsequent to the marriage become cured of such disease, nor by the person who was not so afflicted if he or she after the curing of the afflicted person has by acts or conduct confirmed the marriage; or

5 (d) Where the cause is the nonage of either of the parties, by the party who was capable of consenting, nor by the party not so capable if he or she has by acts or conduct confirmed the marriage after arriving at the age of consent; or
(e) Where the cause is lack of consent on the part of either
of the parties, by the party consenting or bringing about the
marriage; or

(f) Where the cause is that either of the parties has been
convicted of an infamous offense prior to marriage, by the other
party if, after knowledge of such fact, he or she has cohabited
with the party so convicted; or

(g) Where the cause is that the wife was at the time of
marriage with child by some person other than the husband, or
that prior to the marriage the wife had been notoriously a
prostitute, by the husband, if after knowledge of the fact, he has
cohabited with the wife; or

(h) Where the cause is that the husband was prior to the
marriage notoriously a licentious person, by the wife if, after
knowledge of the fact, she has cohabited with the husband.

§48-3-106. Relief ordered in annulment.

In an action for annulment, the court may order all or any
portion of the final relief provided for in sections 5-603 through
5-614 and all or any portion of the temporary relief provided for
in part 5, article 5 of this chapter.

§48-3-107. Modification of order granting annulment.

Upon the petition of either party, the court may revise or
alter an order entered in an action for annulment or make
further orders, concerning the following matters:

(1) The support and maintenance of either spouse;

(2) The interest of one spouse in the property of the other
spouse;

(3) The allocation of responsibility for the children of the
parties; and

(4) The support of the children of the parties.
ARTICLE 4. SEPARATE MAINTENANCE.

§48-4-101. Where an action for separate maintenance may be brought.

An action for separate maintenance may be brought in the circuit court of any county where an action for divorce between the parties could be brought. An action for separate maintenance may be brought whether or not a divorce is prayed for.

§48-4-102. Grounds for separate maintenance.

Separate maintenance may be ordered:

1. If the party seeking separate maintenance has grounds for divorce; or

2. If the party from whom separate maintenance is sought, without good and sufficient cause:

   (A) Has failed to provide suitable support for the other spouse; or
   
   (B) Has abandoned or deserted the other spouse.

§48-4-103. Award of relief in action for separate maintenance.

(a) In an action for separate maintenance, the court may order all or any portion of the temporary or final relief that the court may order in an action for divorce, other than a divorce.

(b) During the pendency of the action, the court has the same powers to make temporary orders as the court would have in actions for divorce, insofar as those powers are applicable, on behalf of either spouse.

(c) Any order entered in the case is effective during the time the court by its order directs, until further order of the court.
§48-4-104. Modification of order awarding separate maintenance.
1 Upon the petition of either party, the court may revise or
2 alter an order entered in an action for separate maintenance, or
3 may make further orders, concerning the following matters:
4 (1) The support and maintenance of either spouse;
5 (2) The interest of one spouse in the property of the other
6 spouse;
7 (3) The allocation of responsibility for the children of the
8 parties; and
9 (4) The support of the children of the parties.

ARTICLE 5. DIVORCE.
PART 1. GENERAL PROVISIONS.

§48-5-101. Absolute divorce.
1 A divorce ordered in this state is an absolute divorce.

1 The circuit courts of this state, by act of the Legislature, are
2 vested with jurisdiction over the subject matter of divorce. A
3 circuit court has the right and authority to adjudicate actions for
4 divorce, and the power to carry its judgment and order into
5 execution. Jurisdiction of the subject matter of divorce em-
6 braces the power to determine every issue or controverted
7 question in an action for divorce, according to the court’s view
8 of the law and the evidence.

§48-5-103. Jurisdiction of parties; service of process.
1 (a) In an action for divorce, it is immaterial where the
2 marriage was celebrated, where the parties were domiciled at
3 the time the grounds for divorce arose, or where the marital
4 offense was committed. If one or both of the parties is domi-
5 ciled in this state at the time the action is commenced, the
6 circuit courts of this state have jurisdiction to grant a divorce
7 for any grounds fixed by law in this state, without any reference
§48m5-104. Retention of jurisdiction when divorce is denied.

If a divorce is denied, the court shall retain jurisdiction of the case and may order all or any portion of the relief provided for in this article that has been demanded in the pleadings.

§48-5-105. Residency requirements for maintaining an action for divorce.

(a) Except as otherwise provided in subsection (b) of this section:

(1) If the marriage was entered into within this state, an action for divorce is maintainable if one of the parties is an actual bona fide resident of this state at the time of commencement of the action, without regard to the length of time residency has continued; or

(2) If the marriage was not entered into within this state, an action for divorce is maintainable if:

(A) One of the parties was an actual bona fide resident of this state at the time the cause of action arose, or has become a resident since that time; and

(B) The residency has continued uninterrupted through the one-year period immediately preceding the filing of the action.

(b) An action for divorce cannot be maintained if the cause for divorce is adultery, whether the cause of action arose in or out of this state, unless one of the parties, at the commencement of the action, is a bona fide resident of this state. In such case, if the respondent is a nonresident of this state and cannot be personally served with process within this state, the action is
not maintainable unless the petitioner has been an actual bona
fide resident of this state for at least one year next preceding the
commencement of the action; or

(c) When a divorce is granted in this state upon constructive
service of process and personal jurisdiction is thereafter
obtained of the respondent in the case, the court may order all
or any portion of the relief that has been demanded in the
pleadings.

§48-5-106. Venue of actions for divorce.

(a) If the respondent in an action for divorce is a resident of
this state, the petitioner has an option to bring the action in the
county in which the parties last cohabited or in the county
where the respondent resides.

(b) If the respondent in an action for divorce is not a
resident of this state, the petitioner has an option to bring the
action in the county in which the parties last cohabited or in the
county where the petitioner resides.

§48-5-107. Parties to a divorce action.

(a) Either or both of the parties to a marriage may initiate
an action for divorce.

(b) A spouse who is under the age of majority has standing
in a divorce action to sue, answer, or plead by a next friend.

(c) An incompetent or insane person shall sue, answer or
plead by his or her committee. If a person has not been adjudic-
cated incompetent or insane and has not been divested of the
power to act on his or her own behalf, it is presumed that the
person has the capacity to bring the action or be made a party
respondent. This presumption may be rebutted by evidence
which shows that the person cannot reasonably understand the
nature and purpose of the action and the effect of his or her acts
with reference to the action.
(d) The appointment of a guardian ad litem for a minor, an incompetent or an insane party is not required unless specifically ordered by the judge or law master hearing the action.

(e) Anyone charged as a particeps criminis shall be made a party to a divorce action, upon his or her application to the court, subject to such terms and conditions as the court may prescribe.

(f) In a divorce action where the interests of the minor children of the parties are or may be substantially different from those of either or both of the parents, and the best interests of the children may be in conflict with the desires of either or both parents, the court may make the children parties respondent and appoint a guardian ad litem to advocate and protect their rights and welfare.

PART 2. GROUNDS FOR DIVORCE.

§48-5-201. Grounds for divorce; irreconcilable differences.

A circuit judge may order a divorce if the complaint alleges that irreconcilable differences exist between the parties and an answer is filed admitting that allegation. A complaint alleging irreconcilable differences shall set forth the names of any dependent children of either or both of the parties. A divorce on this ground does not require corroboration of the irreconcilable differences or of the issues of jurisdiction or venue. The court may approve, modify or reject any agreement of the parties and make orders concerning spousal support, custodial responsibility, child support, visitation rights or property interests.


(a) A divorce may be ordered when the parties have lived separate and apart in separate places of abode without any cohabitation and without interruption for one year. The separation may occur as a result of the voluntary act of one of the parties or the mutual consent of both parties.
§48-5-203. Grounds for divorce; cruel or inhuman treatment.

(a) A divorce may be ordered for cruel or inhuman treatment by either party against the other. Cruel or inhuman treatment includes, but is not limited to, the following:

(1) Reasonable apprehension of bodily harm;

(2) False accusation of adultery or homosexuality; or

(3) Conduct or treatment which destroys or tends to destroy the mental or physical well-being, happiness and welfare of the other and render continued cohabitation unsafe or unendurable.

(b) It is not necessary to allege or prove acts of physical violence in order to establish cruel and inhuman treatment as a ground for divorce.

§48-5-204. Grounds for divorce; adultery.

A divorce may be ordered for adultery. Adultery is the voluntary sexual intercourse of a married man or woman with a person other than the offender’s wife or husband. The burden is on the party seeking the divorce to prove the alleged adultery by clear and convincing evidence.
§48-5-205. Grounds for divorce; conviction of crime.

1 A divorce may be ordered when either of the parties
2 subsequent to the marriage has, in or out of this state, been
3 convicted for the commission of a crime that is a felony, and
4 the conviction is final.

§48-5-206. Grounds for divorce; permanent and incurable insanity.

1 (a) A divorce may be ordered for permanent and incurable
2 insanity, only if the person is permanently and incurably insane
3 and has been confined in a mental hospital or other similar
4 institution for a period of not less than three consecutive years
5 next preceding the filing of the complaint and the court has
6 heard competent medical testimony that such insanity is
7 permanently incurable.

8 (b) A court granting a divorce on this grounds may in its
9 discretion order support and maintenance for the permanently
10 incurably insane party by the other.

11 (c) In an action for divorce or annulment, where the
12 petitioner is permanently incurably insane, the respondent shall
13 not enter a plea of recrimination based upon the insanity of the
14 petitioner.

§48-5-207. Grounds for divorce; habitual drunkenness or drug addiction.

1 (a) A divorce may be ordered for habitual drunkenness of
2 either party subsequent to the marriage.

3 (b) A divorce may be ordered for the addiction of either
4 party, subsequent to the marriage, to the habitual use of any
5 narcotic or dangerous drug defined in this code.

§48-5-208. Grounds for divorce; desertion.

1 A divorce may be ordered to the party abandoned, when
2 either party willfully abandons or deserts the other for six
3 months.
§48-5-209. Grounds for divorce; abuse or neglect of a child.

(a) A divorce may be ordered for abuse or neglect of a child of the parties or of one of the parties, “abuse” meaning any physical or mental injury inflicted on such child including, but not limited to, sexual molestation; and “neglect” is willful failure to provide, by a party who has legal responsibility for such child, the necessary support, education as required by law, or medical, surgical or other care necessary for the well-being of such child.

(b) A divorce shall not be granted on this ground except upon clear and convincing evidence sufficient to justify permanently depriving the offending party of any allocation of custodial responsibility for the abused or neglected child.

PART 3. DEFENSES.

§48-5-301. When a divorce not to be granted.

No divorce for adultery shall be granted on the uncorroborated testimony of a prostitute, or a particeps criminis, or when it appears that the parties voluntarily cohabited after the knowledge of the adultery, or that it occurred more than three years before the institution of the action; nor shall a divorce be granted for any cause when it appears that the offense charged has been condoned, or was committed by the procurement or connivance of the plaintiff, or that the plaintiff has, within three years before the institution of action, been guilty of adultery not condoned, but such exception shall not be applicable to causes of action brought pursuant to sections 5-201 and 5-202 of this chapter. The defense of collusion shall not be pleaded as a bar to a divorce.

PART 4. PRACTICE AND PROCEDURE.

§48-5-401. Verification of pleadings.

All pleadings in a divorce action must be verified by the party in whose name they are filed.
§48-5-402. Petition for divorce.

(a) An action for divorce is instituted by a verified petition, and the formal style and the caption for all pleadings is “In Re the marriage of _______ and _______.”. The parties shall be identified in all pleadings as “petitioner” and “respondent.”

(b) The petition must set forth the ground or grounds for divorce. It is not necessary to allege the facts constituting a ground relied on, and a petition or counter-petition is sufficient if a ground for divorce is alleged in the language of the statute as set forth in this article. A judge or law master has the discretionary authority to grant a motion to require a more definite and certain statement, set forth in ordinary and concise language, alleging facts and not conclusions of law.

(c) If the jurisdiction of the circuit court to grant a divorce depends upon the existence of certain facts, including, but not limited to, facts showing domicil or domicil for a certain length of time, the petition must allege those facts. It is not necessary that allegations showing requisite domicil be in the language of the statute, but they should conform substantially thereto so that everything material to the fact of requisite domicil can be ascertained therefrom.

(d) A petition shall not be taken for confessed, and whether the respondent answers or not, the case shall be tried and heard independently of the admissions of either party in the pleadings or otherwise. No judgment order shall be granted on the uncorroborated testimony of the parties or either of them, except for a proceeding in which the grounds for divorce are irreconcilable differences.

§48-5-403. Answer to petition.

(a) The responsive pleading to a petition for divorce is denominated an answer. The form and requisites for an answer to a petition for divorce are governed by the rules of civil procedure for trial courts of record.

(b) Except as provided in subsection (c) of this section, an allegedly guilty party who relies upon an affirmative defense
must assert such defense by both pleadings and proof. Affirmative defenses include, but are not limited to, condonation, connivance, collusion, recrimination, insanity, and lapse of time.

(c) In an action in which a party seeks a divorce based on an allegation that the parties have lived separate and apart in separate places of abode without any cohabitation and without interruption for one year, the affirmative defenses including, but not limited to condonation, connivance, collusion, recrimination, insanity, and lapse of time, shall not be raised.

§48-5-404. Advance filing of divorce petition in actions alleging abandonment or voluntary separation.

(a) At any time after the parties to a marriage have lived separate and apart in separate places of abode without any cohabitation or after a party is abandoned or deserted, either party living separate and apart or the party abandoned may apply for temporary relief in accordance with the provisions of part 5 of this article by instituting an action for divorce alleging that the petitioner reasonably believes that the period of living separate and apart or of abandonment will continue for the periods prescribed by the applicable provisions of sections 5-202 and 5-208.

(b) If the period of abandonment or living separate and apart continues for the period prescribed by the applicable provisions of sections 5-202 and 5-208, the divorce action may proceed to a final hearing without a new petition being filed.

(c) The petitioner shall give the respondent at least twenty days’ notice of the time, place and purpose of the final hearing, unless the respondent files a verified waiver of notice of further proceedings. If the notice is required to be served, it must be served in the same manner as original process under rule 4(d) of the rules of civil procedure, regardless of whether the respondent has appeared or answered.
§48-5-405. Amendments to pleadings.

1 Amendments to pleadings in an action for divorce are permitted upon the same general considerations which govern the practice in other proceedings, and are properly allowed for the purpose of making the allegations of the pleading more definite and certain, of asserting an essential allegation which has been omitted, or of including allegations of misconduct committed subsequent to the commencement of the action.

PART 5. TEMPORARY RELIEF DURING PENDENCY OF ACTION FOR DIVORCE.

§48-5-501. Relief that may be included in temporary order of divorce.

1 At the time of the filing of the complaint or at any time after the commencement of an action for divorce under the provisions of this article and upon motion for temporary relief, notice of hearing and hearing, the court may order all or any portion of the following temporary relief described in this part 5, to govern the marital rights and obligations of the parties during the pendency of the action.

§48-5-502. Temporary spousal support.

1 The court may require either party to pay temporary spousal support in the form of periodic installments, or a lump sum, or both, for the maintenance of the other party.

§48-5-503. Temporary parenting order; child support.

1 (a) The court shall enter a temporary parenting order in accordance with the provisions of sections 9-203 and 9-204 of this chapter that incorporates a temporary parenting plan.

4 (b) When the action involves a minor child or children, the court shall require either party to pay temporary child support in the form of periodic installments for the maintenance of the minor children of the parties.

8 (c) When the action involves a minor child or children, the court shall provide for medical support for any minor children.
§48-5-504. Attorney's fees and court costs.

(a) The court may compel either party to pay attorney’s fees and court costs reasonably necessary to enable the other party to prosecute or defend the action. The question of whether or not a party is entitled to temporary spousal support is not decisive of that party’s right to a reasonable allowance of attorney’s fees and court costs.

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

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

§48-5-505. Costs of health care and hospitalization.

As an incident to requiring the payment of temporary spousal support, the court may order either party to continue in effect existing policies of insurance covering the costs of health care and hospitalization of the other party. If there is no such existing policy or policies, the court may order that such health care insurance coverage be paid for by a party if the court determines that such health care coverage is available to that party at a reasonable cost. Payments made to an insurer pursuant to this subdivision, either directly or by a deduction from wages, may be deemed to be temporary spousal support.
§48-5-506. Use and occupancy of the marital home.

(a) The court may grant the exclusive use and occupancy of the marital home to one of the parties during the pendency of the action, together with all or a portion of the household goods, furniture and furnishings, reasonably necessary for such use and occupancy.

(b) The court may require payments to third parties in the form of home loan installments, land contract payments, rent, payments for utility services, property taxes and insurance coverage. If these third party payments are ordered, the court may specify whether such payments or portions of payments are temporary spousal support, temporary child support, a partial distribution of marital property or an allocation of marital debt.

(c) If the court does not set forth in the temporary order that all or a portion of payments made to third parties pursuant to this section are to be deemed temporary child support, then all the payments made pursuant to this section are deemed to be temporary spousal support. The court may order third party payments to be made without denoting them as either temporary spousal support or temporary child support, reserving such decision until the court determines the interests of the parties in marital property and equitably divides the same. At the time the court determines the interests of the parties in marital property and equitably divides the same, the court may consider the extent to which payments made to third parties under the provisions of this subdivision have affected the rights of the parties in marital property and may treat these payments as a partial distribution of marital property notwithstanding the fact that these payments were denominated temporary spousal support or temporary child support or not so denominated under the provisions of this section.

(d) If the payments are not designated in an order and the parties have waived any right to receive spousal support, the court may designate the payments upon motion by any party.
(c) Nothing contained in this section shall abrogate an existing contract between either of the parties and a third party, or affect the rights and liabilities of either party or a third party under the terms of a contract.

§48-5-507. Use and possession of motor vehicles.

(a) As an incident to requiring the payment of temporary alimony, the court may grant the exclusive use and possession of one or more motor vehicles to either of the parties during the pendency of the action.

(b) The court may require payments to third parties in the form of automobile loan installments or insurance coverage, and payments made to third parties pursuant to this section are deemed to be temporary spousal support, subject to any reservation provided for in subsection (c) of this section.

(c) The court may order that third party payments made pursuant to this section be made without denominating them as temporary spousal support, reserving that decision until the court determines the interests of the parties in marital property and equitably divides the same. At the time the court determines the interests of the parties in marital property and equitably divides the same, the court may consider the extent to which payments made to third parties under the provisions of this section have affected the rights of the parties in marital property and may treat such payments as a partial distribution of marital property notwithstanding the fact that such payments have been denominated temporary spousal support or not so denominated under the provisions of this section.

(d) Nothing contained in this section will abrogate an existing contract between either of the parties and a third party or affect the rights and liabilities of either party or a third party under the terms of a contract.
§48-5-508. Preservation of the properties of the parties.

(a) If the pleadings include a specific request for specific property or raise issues concerning the equitable division of marital property, the court may enter an order that is reasonably necessary to preserve the estate of either or both of the parties.

(b) The court may impose a constructive trust, so that the property is forthcoming to meet any order that is made in the action, and may compel either party to give security to comply with the order, or may require the property in question to be delivered into the temporary custody of a third party.

(c) The court may order either or both of the parties to pay the costs and expenses of maintaining and preserving the property of the parties during the pendency of the action. At the time the court determines the interests of the parties in marital property and equitably divides the same, the court may consider the extent to which payments made for the maintenance and preservation of property under the provisions of this section have affected the rights of the parties in marital property and may treat such payments as a partial distribution of marital property. The court may release all or any part of such protected property for sale and substitute all or a portion of the proceeds of the sale for such property.

§48-5-509. Enjoining abuse.

(a) The court may enjoin the offending party from molesting or interfering with the other, or otherwise imposing any restraint on the personal liberty of the other, or interfering with the custodial or visitation rights of the other. This order may permanently enjoin the offending party from:

(1) Entering the school, business or place of employment of the other for the purpose of molesting or harassing the other;

(2) Contacting the other, in person or by telephone, for the purpose of harassment or threats; or

(3) Verbally abusing the other in a public place.
(b) Any order entered by the court to protect a party from abuse may grant any other relief that may be appropriate for inclusion under the provisions of article 27 of this chapter.


(a) In ordering temporary relief under the provisions of this part 5, the court shall consider the financial needs of the parties, the present income of each party from any source, their income-earning abilities and the respective legal obligations of each party to support himself or herself and to support any other persons.

(b) Except in extraordinary cases supported by specific findings set forth in the order granting relief, payments of temporary spousal support and temporary child support are to be made from a party's income and not from the corpus of a party's separate estate, and an award of such relief shall not be disproportionate to a party's ability to pay as disclosed by the evidence before the court: Provided, That child support shall be established in accordance with the child support guidelines set forth in article 13 of this chapter.

§48-5-511. Disclosure of assets.

To facilitate the resolution of issues arising at a hearing for temporary relief, the court may, or upon the motion of either party shall, order the parties to comply with the disclosure requirements set forth in article 7 of this chapter prior to the hearing for temporary relief. The form for this disclosure shall substantially comply with the form promulgated by the supreme court of appeals, pursuant to said section. If either party fails to timely file a complete disclosure as required by this section or as ordered by the court, the court may accept the statement of the other party as accurate.
§48-5-512. Ex parte orders granting temporary relief.

An ex parte order granting all or part of the relief provided for in this part 5 may be granted without written or oral notice to the adverse party if:

(1) It appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss or damage will result to the applicant before the adverse party or such party’s attorney can be heard in opposition. The potential injury, loss or damage may be anticipated when the following conditions exist: Provided, That the following list of conditions is not exclusive:

(A) There is a real and present threat of physical injury to the applicant at the hands or direction of the adverse party;

(B) The adverse party is preparing to quit the state with a minor child or children of the parties, thus depriving the court of jurisdiction in the matter of child custody;

(C) The adverse party is preparing to remove property from the state or is preparing to transfer, convey, alienate, encumber or otherwise deal with property which could otherwise be subject to the jurisdiction of the court and subject to judicial order under the provisions of this section or part 5-601, et seq.;

and

(2) The moving party or his or her attorney certifies in writing any effort that has been made to give the notice and the reasons supporting his or her claim that notice should not be required.

§48-5-513. Granting of ex parte relief.

(a) Every ex parte order granted without notice must:

(1) Be endorsed with the date and hour of issuance;

(2) Be filed forthwith in the circuit clerk’s office and entered of record; and
(3) Set forth the finding of the court that unless the order is granted without notice there is probable cause to believe that existing conditions will result in immediate and irreparable injury, loss or damage to the moving party before the adverse party or his or her attorney can be heard in opposition.

(b) The order granting ex parte relief must fix a time for a hearing for temporary relief to be held within a reasonable time, not to exceed twenty days, unless before the time fixed for hearing, the hearing is continued for good cause shown or with the consent of the party against whom the ex parte order is directed. The reasons for the continuance must be entered of record. Within the time limits described herein, when an ex parte order is made, a motion for temporary relief must be set down for hearing at the earliest possible time and takes precedence over all matters except older matters of the same character. If the party who obtained the ex parte order fails to proceed with a motion for temporary relief, the court shall set aside the ex parte order.

(c) At any time after ex parte relief is granted, and on two days’ notice to the party who obtained the relief or on such shorter notice as the court may direct, the adverse party may appear and move the court to set aside or modify the ex parte order on the grounds that the effects of the order are onerous or otherwise improper. In that event, the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

§48-5-514. Temporary order not subject to appeal or review.

An order granting temporary relief may not be the subject of an appeal or a petition for review.

PART 6. JUDGMENT ORDERING DIVORCE.

§48-5-601. Relief that may be included in final order of divorce.

In ordering a divorce, the court may order additional relief, including but not limited to, the relief described in the following sections of this part 6.
§48-5-602. Court may require payment of spousal support.

1 The court, in ordering a divorce may require either party to
2 pay spousal support in accordance with the provisions of article
3 8-101, et seq., of this chapter.

§48-5-603. Relief regarding minor child or children.

1 (a) If the action involves a minor child or children, the court
2 may, if appropriate, order the allocation of custodial responsi-
3 bility and the allocation of decision-making responsibility in
4 accordance with the provisions of article 9-101, et seq., of this
5 chapter.

6 (b) If the action involves a minor child or children, the
7 court shall order either or both parties to pay child support in
8 accordance with the provisions of articles 11-101, et seq., and
9 13-101, et seq., of this chapter.

10 (c) If the action involves a minor child or children, the court
11 shall order medical support to be provided for the child or
12 children in accordance with the provisions of article 12-101, et
13 seq., of this chapter.

§48-5-604. Use and occupancy of marital home.

1 (a) A circuit court may award the exclusive use and
2 occupancy of the marital home to a party. An order granting use
3 and occupancy of the marital home shall include the use of any
4 necessary household goods, furniture and furnishings. The order
5 shall establish a definite period for the use and occupancy,
6 ending at a specific time set forth in the order, subject to
7 modification upon the petition of either party.

8 (b) Generally, an award of the exclusive use and occupancy
9 of the marital home is appropriate when necessary to accommo-
10 date rearing minor children of the parties. Otherwise, the court
11 may award exclusive use and occupancy only in extraordinary
cases supported by specific findings set forth in the order that grants relief.

(c) An order awarding the exclusive use and occupancy of the marital home may also require payments to third parties for home loan installments, land contract payments, rent, property taxes and insurance coverage. When requiring third-party payments, the court shall reduce them to a fixed monetary amount set forth in the order. The court shall specify whether third-party payments or portions of payments are spousal support, child support, a partial distribution of marital property or an allocation of marital debt. Unless the court identifies third party payments as child support payments or as installment payments for the distribution of marital property, then such payments are spousal support. If the court does not identify the payments and the parties have waived any right to receive spousal support, the court may identify the payments upon motion by any party.

(d) This section is not intended to abrogate a contract between either party and a third party or affect the rights and liabilities of either party or a third party under the terms of a contract.

§48-5-605. Use and possession of motor vehicles.

(a) A circuit court may award the exclusive use and possession of a motor vehicle or vehicles to either of the parties.

(b) The court may require payments to third parties in the form of automobile loan installments or insurance coverage, if coverage is available at reasonable rates. When requiring third-party payments, the court shall reduce them to a fixed monetary amount set forth in the order. The court shall specify whether third-party payments or portions of payments are spousal support or installment payments for the distribution of marital property.

(c) This section is not intended to abrogate a contract between either party and a third party or affect the rights and
§48-5-606. Relief regarding costs of health care and hospitalization.

As an incident to requiring the payment of spousal support or child support, the court may order either party to provide medical support to the other party. Payments made to an insurer pursuant to this subdivision, either directly or by a deduction from wages, shall be deemed to be spousal support or installment payments for the distribution of marital property, in such proportion as the court shall direct: Provided, That if the court does not set forth in the order that a portion of the payments is to be deemed installment payments for the distribution of marital property, then all payments made pursuant to this section are spousal support. The designation of insurance coverage as spousal support under the provisions of this subdivision shall not, in and of itself, give rise to a subsequent modification of the order to provide for spousal support other than insurance for covering the costs of health care and hospitalization.

§48-5-607. Court may order transfer of accounts for recurring expenses.

The court may order either party to take necessary steps to transfer utility accounts and other accounts for recurring expenses from the name of one party into the name of the other party or from the joint names of the parties into the name of one party. This section is not intended to affect the liability of the parties for indebtedness on any account incurred before the transfer of the account.

§48-5-608. Court may enjoin abuse.

When allegations of abuse have been proved, the court shall enjoin the offending party from molesting or interfering with the other, or otherwise imposing any restraint on the personal liberty of the other or interfering with the custodial or visitation rights of the other. The order may permanently enjoin the
offending party from entering the school, business or place of employment of the other for the purpose of molesting or harassing the other; or from contacting the other, in person or by telephone, for the purpose of harassment or threats; or from harassing or verbally abusing the other in a public place.

§48-5-609. Court may restore to either party his or her property.

Upon ordering a divorce, the court has the power to award to either of the parties whatever of his or her property, real or personal, may be in the possession, or under the control, or in the name, of the other, and to compel a transfer or conveyance.

§48-5-610. Court may order just and equitable distribution of property.

(a) When the pleadings include a specific request for specific property or raise issues concerning the equitable division of marital property, the court shall order such relief as may be required to effect a just and equitable distribution of the property and to protect the equitable interests of the parties therein.

(b) In addition to the disclosure requirements set forth in part 7-201, et seq., of this chapter, the court may order accounts to be taken as to all or any part of marital property or the separate estates of the parties and may direct that the accounts be taken as of the date of the marriage, the date upon which the parties separated or any other time in assisting the court in the determination and equitable division of property.

§48-5-611. Suit money, counsel fees and costs.

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

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

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

§48-5-612. Court may order a party to deliver separate property.

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

§48-5-613. Former name of party; restoration.

The court, upon ordering a divorce, shall if requested to do so by either party, allow such party to resume the name used prior to his or her first marriage. The court shall, if requested to do so by either party, allow such party to resume the name of a former spouse if such party has any living child or children by marriage to such former spouse.

PART 7. MODIFICATION OF FINAL DIVORCE ORDER.
§48-5-701. Revision of order concerning spousal support.

1 After the entry of a final divorce order, the court may revise
2 the order concerning spousal support or the maintenance of the
3 parties and enter a new order concerning the same, as the
4 circumstances of the parties may require.

§48-5-702. Revision of order enjoining abuse.

1 After entering an order enjoining abuse in accordance with
2 the provisions of section 5-508, the court may from time to time
3 afterward, upon motion of either of the parties and upon proper
4 service, revise the order and enter a new order concerning the
5 same, as the circumstances of the parties and the benefit of
6 children may require.

§48-5-703. Revision of order allocating custodial responsibility
and decision-making responsibility.

1 After entering an order allocating custodial responsibility
2 and decision-making responsibility in accordance with the
3 provisions of sections 9-206 and 9-207, the court may also from
4 time to time afterward, upon the motion of either of the parties
5 or other proper person having actual or legal custody of the
6 minor child or children of the parties, revise or alter the order
7 concerning the allocation of custodial responsibility or alloca-
8 tion of decision-making responsibility in accordance with the
9 provisions of article 9 of this chapter, and make a new order
10 concerning the same, issuing it forthwith, as the circumstances
11 of the parents or other proper person or persons and the benefit
12 of the children may require.

§48-5-704. Revision of order establishing child support.

1 (a) After entering an order establishing child support in
2 accordance with the provisions of section 5-603, the court may
3 from time to time afterward, upon the motion of either of the
4 parties or other proper person having actual or legal custody of
5 the minor child or children of the parties, revise or alter the
6 order concerning the support of the children, and make a new
7 order concerning the same, issuing it forthwith, as the circum-
stances of the parents or other proper person or persons and the benefit of the children may require.

(b) All orders modifying an award of child support must conform to the provisions regarding child support guidelines that are set forth in article 13 of this chapter.

(c) An order providing for child support payments may be revised or altered for the reason, inter alia, that the existing order provides for child support payments in an amount that is less than eighty-five percent or more than one hundred fifteen percent of the amount that would be required to be paid under the provisions of the child support guidelines that are set forth in article 13 of this chapter.

§48-5-705. Bureau for child support enforcement may seek revision of order establishing child support.

The bureau for child support enforcement may review a child support order and, if appropriate, file a motion with the court for modification of the child support order.

§48-5-706. Revision of order concerning distribution of marital property.

In modifying a final divorce order, the court may, when other means are not conveniently available, alter any prior order of the court with respect to the distribution of marital property, if:

(1) The property is still held by the parties;

(2) The alteration of the prior order as it relates the distribution of marital property is necessary to give effect to a modification of spousal support, child support or child custody; or

(3) The alteration of the prior order as it relates the distribution of marital property is necessary to avoid an inequitable or unjust result which would be caused by the manner in which the modification will affect the prior distribution of marital property.
§48-5-707. Reduction or termination of spousal support because of de facto marriage.

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

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

(A) The extent to which the ex-spouse and the other person have held themselves out as a married couple by engaging in conduct such as using the same last name, using a common mailing address, referring to each other in terms such as "my husband" or "my wife", or otherwise conducting themselves in a manner that evidences a stable marriage-like relationship;

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

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

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

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

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

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

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

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

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

(3) On the issue of whether spousal support should be reduced or terminated under this subsection, the burden is on the payor to prove by a preponderance of the evidence that a de facto marriage exists. If the court finds that the payor has failed to meet burden of proof on the issue, the court may award reasonable attorney's fees to a payee who prevails in an action that sought to reduce or terminate spousal support on the ground that a de facto marriage exists.

(4) The court shall order that a reduction or termination of spousal support is retroactive to the date of service of the petition on the payee, unless the court finds that reimbursement of amounts already paid would cause an undue hardship on the payee.

(5) An award of rehabilitative spousal support shall not be reduced or terminated because of the existence of a de facto marriage between the spousal support payee and another person.

(6) An award of spousal support in gross shall not be reduced or terminated because of the existence of a de facto
(7) An award of spousal support shall not be reduced or terminated under the provisions of this subsection for conduct by a spousal support payee that occurred before the first day of October, one thousand nine hundred ninety-nine.

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

ARTICLE 6. PROPERTY SETTLEMENT OR SEPARATION AGREEMENTS.

PART 1. DEFINITIONS.

§48-6-101. Property settlement or separation agreement defined.

(a) "Property settlement or separation agreement" means a written agreement between a husband and wife whereby they agree to live separate and apart from each other. A separation agreement may also:

(1) settle the property rights of the parties;

(2) provide for child support;

(3) provide for the allocation of custodial responsibility and the determination of decision-making responsibility for the children of the parties;

(4) provide for the payment or waiver of spousal support by either party; or

(5) otherwise settle and compromise issues arising from the marital rights and obligations of the parties.

(b) To the extent that an antenuptial agreement affects the property rights of the parties or the disposition of property after
an annulment of the marriage or after a divorce or separation of
the parties, the antenuptial agreement is a separation agreement.

PART 2. RELIEF BASED ON AGREEMENT.

§48-6-201. Effect of separation agreement.

(a) In cases where the parties to an action commenced
under the provisions of this chapter have executed a separation
agreement, if the court finds that the agreement is fair and
reasonable, and not obtained by fraud, duress or other uncon-
scionable conduct by one of the parties, and further finds that
the parties, through the separation agreement, have expressed
themselves in terms which, if incorporated into a judicial order,
would be enforceable by a court in future proceedings, then the
court shall conform the relief which it is authorized to order
under the provisions of parts 5 and 6, article 5 of this chapter to
the separation agreement of the parties. The separation agree-
ment may contractually fix the division of property between the
parties and may determine whether spousal support shall be
awarded, whether an award of spousal support, other than an
award of rehabilitative spousal support or spousal support in
gross, may be reduced or terminated because a de facto mar-
riage exists between the spousal support payee and another
person, whether a court shall have continuing jurisdiction over
the amount of a spousal support award so as to increase or
decrease the amount of spousal support to be paid, whether
spousal support shall be awarded as a lump sum settlement in
lieu of periodic payments, whether spousal support shall
continue beyond the death of the payor party or the remarriage
of the payee party, or whether the spousal support award shall
be enforceable by contempt proceedings or other judicial
remedies aside from contractual remedies.

(b) Any award of periodic payments of spousal support
shall be deemed to be judicially decreed and subject to subse-
quent modification unless there is some explicit, well ex-
pressed, clear, plain and unambiguous provision to the contrary
set forth in the court-approved separation agreement or the
order granting the divorce. Child support shall, under all
§48-6-202. Agreement for spousal support beyond the death of the payor.

When a separation agreement is the basis for an award of spousal support, the court, in approving the agreement, shall examine the agreement to ascertain whether it clearly provides for spousal support to continue beyond the death of the payor or the payee or to cease in such event. When spousal support is to be paid pursuant to the terms of a separation agreement which does not state whether the payment of spousal support is to continue beyond the death of the payor or payee or is to cease, or when the parties have not entered into a separation agreement and spousal support is awarded, the court shall have the discretion to determine, as a part of its order, whether such payments of spousal support are to be continued beyond the death of the payor or payee or cease. In the event neither an agreement nor an order makes provision for the death of the payor or payee, spousal support other than rehabilitative spousal support or spousal support in gross shall cease on the death of the payor or payee. In the event neither an agreement nor an order makes provision for the death of the payor, rehabilitative spousal support continues beyond the payor’s death, in the absence of evidence that the payor’s estate is likely to be insufficient to meet other obligations or that other matters would make continuation after death inequitable. Rehabilitative spousal support ceases with the payee’s death. In the event neither an agreement nor an order makes provision for the death of the payor or payee, spousal support in gross continues beyond the payor’s or payee’s death.

§48-6-203. Agreement for spousal support beyond the remarriage of the payee.

When a separation agreement is the basis for an award of spousal support, the court, in approving the agreement, shall examine the agreement to ascertain whether it clearly provides for spousal support to continue beyond the remarriage of the
payee or to cease in such event. When spousal support is to be paid pursuant to the terms of a separation agreement which does not state whether the payment of spousal support is to continue beyond the remarriage of the payee or is to cease, or when the parties have not entered into a separation agreement and spousal support is awarded, the court shall have the discretion to determine, as a part of its order, whether such payments of spousal support are to be continued beyond the remarriage of the payee. In the event neither an agreement nor an order makes provision for the remarriage of the payee, spousal support other than rehabilitative spousal support or spousal support in gross shall cease on the remarriage of the payee. Rehabilitative spousal support does not cease upon the remarriage of the payee during the first four years of a rehabilitative period. In the event neither an agreement nor an order makes provision for the remarriage of the payee, spousal support in gross continues beyond the payee’s remarriage.

PART 3. RELIEF IN ABSENCE OF AGREEMENT.

§48-6-301. Factors considered in awarding spousal support, child support or separate maintenance.

(a) In cases where the parties to an action commenced under the provisions of this article have not executed a separation agreement, or have executed an agreement which is incomplete or insufficient to resolve the outstanding issues between the parties, or where the court finds the separation agreement of the parties not to be fair and reasonable or clear and unambiguous, the court shall proceed to resolve the issues outstanding between the parties.

(b) The court shall consider the following factors in determining the amount of spousal support, child support or separate maintenance, if any, to be ordered under the provisions of parts 5 and 6, article five of this chapter, as a supplement to or in lieu of the separation agreement:

(1) The length of time the parties were married;
(2) The period of time during the marriage when the parties actually lived together as husband and wife;

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

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

(5) The distribution of marital property to be made under the terms of a separation agreement or by the court under the provisions of article seven of this chapter, insofar as the distribution affects or will affect the earnings of the parties and their ability to pay or their need to receive spousal support, child support or separate maintenance: Provided, That for the purposes of determining a spouse's ability to pay spousal support, the court may not consider the income generated by property allocated to the payor spouse in connection with the division of marital property unless the court makes specific findings that a failure to consider income from the allocated property would result in substantial inequity;

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

(7) The educational qualifications of each party;

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

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

(10) The likelihood that the party seeking spousal support, child support or separate maintenance can substantially increase his or her income-earning abilities within a reasonable time by acquiring additional education or training;
(11) Any financial or other contribution made by either party to the education, training, vocational skills, career or earning capacity of the other party;

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

(13) The costs of educating minor children;

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

(15) The tax consequences to each party;

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

(17) The financial need of each party;

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

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

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

ARTICLE 7. EQUITABLE DISTRIBUTION OF PROPERTY.

PART 1. MARITAL PROPERTY DISPOSITION.

§48-7-101. Equal division of marital property.

Except as otherwise provided in this section, upon every judgment of annulment, divorce or separation, the court shall divide the marital property of the parties equally between the parties.
§ 48-7-102. Division of marital property in accordance with a separation agreement.

In cases where the parties to an action commenced under the provisions of this chapter have executed a separation agreement, then the court shall divide the marital property in accordance with the terms of the agreement, unless the court finds:

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

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

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

§ 48-7-103. Division of marital property without a valid agreement.

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

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

(A) Employment income and other earnings; and

(B) Funds which are separate property.

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

(A) Homemaker services;
(B) Child care services;
(C) Labor performed without compensation, or for less than adequate compensation, in a family business or other business entity in which one or both of the parties has an interest;
(D) Labor performed in the actual maintenance or improvement of tangible marital property; and
(E) Labor performed in the management or investment of assets which are marital property.

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

(A) Direct or indirect contributions by either party to the education or training of the other party which has increased the income-earning ability of such other party; and
(B) Foregoing by either party of employment or other income-earning activity through an understanding of the parties or at the insistence of the other party.

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

Provided, That except for a consideration of the economic consequences of conduct as provided for in this subdivision, fault or marital misconduct shall not be considered by the court in determining the proper distribution of marital property.

§48-7-104. Determination of worth of marital property.

After considering the factors set forth in section 7-103, the court shall:
(1) Determine the net value of all marital property of the parties as of the date of the separation of the parties or as of such later date determined by the court to be more appropriate for attaining an equitable result. Where the value of the marital property portion of a spouse's entitlement to future payments can be determined at the time of entering a final order in a domestic relations action, the court may include it in reckoning the worth of the marital property assigned to each spouse. In the absence of an agreement between the parties, when the value of the future payments is not known at the time of entering a final order in a domestic relations action, if their receipt is contingent on future events or not reasonably assured, or if for other reasons it is not equitable under the circumstances to include their value in the property assigned at the time of dissolution, the court may decline to do so; and

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

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

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

(2) Designate the property which constitutes marital property, and define the interest therein to which each party is entitled and the value of their respective interest therein. In the case of an action wherein there is no agreement between the parties and the relief demanded requires the court to consider such factors as are described in subdivisions (1), (2), (3) and
(4), section 7-103, if a consideration of factors only under said subdivisions (1) and (2) would result in an unequal division of marital property, and if an examination of the factors described in said subdivisions (3) and (4) produce a finding that a party:

(A) Expended his or her efforts during the marriage in a manner which limited or decreased such party’s income-earning ability or increased the income-earning ability of the other party; or

(B) conducted himself or herself so as to dissipate or depreciate the value of the marital property of the parties, then the court may, in the absence of a fair and just spousal support award under the provisions of section 5-602 which adequately takes into account the facts which underlie the factors described in subdivisions (3) and (4), section 7-103, equitably adjust the definition of the parties’ interest in marital property, increasing the interest in marital property of a party adversely affected by the factors considered under said subdivisions who would otherwise be awarded less than one half of the marital property, to an interest not to exceed one half of the marital property;

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

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

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

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

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

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

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

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

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

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

§48-7-105. Transfers of property to achieve equitable distribution of marital property.

In order to achieve the equitable distribution of marital property, the court shall, unless the parties otherwise agree, order, when necessary, the transfer of legal title to any property of the parties, giving preference to effecting equitable distribution through periodic or lump sum payments: Provided, That the court may order the transfer of legal title to motor vehicles, household goods and the former marital domicile without regard to such preference where the court determines it to be necessary or convenient. In any case involving the equitable distribution of: (1) Property acquired by bequest, devise, descent, distribution or gift; or (2) ownership interests in a business entity, the court shall, unless the parties otherwise
agree, give preference to the retention of the ownership interests in such property. In the case of such business interests, the court shall give preference to the party having the closer involvement, larger ownership interest or greater dependency upon the business entity for income or other resources required to meet responsibilities imposed under this article, and shall also consider the effects of transfer or retention in terms of which alternative will best serve to preserve the value of the business entity or protect the business entity from undue hardship or from interference caused by one of the parties or by the divorce, annulment or decree of separate maintenance: Provided, however, That the court may, unless the parties otherwise agree, sever the business relationship of the parties and order the transfer of legal title to ownership interests in the business entity from one party to the other, without regard to the limitations on the transfer of title to such property otherwise provided in this subsection, if such transfer is required to achieve the other purposes of this article: Provided further, That in all such cases the court shall order, or the agreement of the parties shall provide for, equitable payment or transfer of legal title to other property, of fair value in money or moneys' worth, in lieu of any ownership interests in a business entity which are ordered to be transferred under this subsection: And provided further, That the court may order the transfer of such business interests to a third party (such as the business entity itself or another principal in the business entity) where the interests of the parties under this article can be protected and at least one party consents thereto.

§48-7-106. Findings; rationale for division of property.

In any order which divides or transfers the title to any property, determines the ownership or value of any property, designates the specific property to which any party is entitled or grants any monetary award, the court shall set out in detail its findings of fact and conclusions of law, and the reasons for dividing the property in the manner adopted.
§48-7-107. Refusal to transfer property; appointment of special commissioner.

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

§48-7-108. Interest or title in property prior to judicial determination.

As to any third party, the doctrine of equitable distribution of marital property and the provisions of this article shall be construed as creating no interest or title in property until and unless an order is entered under this article judicially defining such interest or approving a separation agreement which defines such interest. Neither this article nor the doctrine of equitable distribution of marital property shall be construed to create community property nor any other interest or estate in property except those previously recognized in this state. A husband or wife may alienate property at any time prior to the entry of an order under the provisions of this article or prior to the recordation of a notice of lis pendens in accordance with the provisions of part 7-401, et seq., and at anytime and in any manner not otherwise prohibited by an order under this chapter, in like manner and with like effect as if this article and the doctrine of equitable distribution had not been adopted: Provided, That as to any transfer prior to the entry of an order under the provisions of this article, a transfer other than to a bona fide purchaser for value shall be voidable if the court finds such transfer to have been effected to avoid the application of the provisions of this article or to otherwise be a fraudulent conveyance. Upon the entry of any order under this article or the admission to record of any notice with respect to an action under this article, restraining the alienation of property of a party, a bona fide purchaser for value shall take such title or interest as he or she might have taken prior to the effective date.
of this section and no purchaser for value need see to the
application of the proceeds of such purchase except to the
extent he or she would have been required so to do prior to the
effective date of this section: Provided, however, That as to
third parties nothing in this section shall be construed to limit
or otherwise defeat the interests or rights to property which any
husband or wife would have had in property prior to the
enactment of this section or prior to the adoption of the doctrine
of equitable distribution by the supreme court of appeals on the
twenty-fifth day of May, one thousand nine hundred eighty-
three: Provided further, That no order entered under this article
shall be construed to defeat the title of a third party transferee
thereof except to the extent that the power to effect such a
transfer of title or interest in such property is secured by a valid
and duly perfected lien and, as to any personal property,
secured by a duly perfected security interest.

§48-7-109. Tax consequences of transfer of interest or title.
Notwithstanding the provisions of chapter eleven of this
code, no transfer of interest in or title to property under this
article is taxable as a transfer of property without consideration
nor, except as to spousal support, create liability for sales, use,
inheritance and transfer or income taxes due the state or any
political subdivision nor require the payment of the excise tax
imposed under article twenty-two, chapter eleven of this code.

§48-7-110. Requiring sums to be paid out of disposable retired or retainer pay.
Whenever under the terms of this article a court enters an
order requiring a division of property, if the court anticipates
the division of property will be effected by requiring sums to be
paid out of “disposable retired or retainer pay” as that term is
defined in 10 U.S.C. §1408, relating to members or former
members of the uniformed services of the United States, the
court shall specifically provide for the payment of an amount,
expressed in dollars or as a percentage of disposable retired or
retainer pay, from the disposable retired or retainer pay of the
payor party to the payee party.
§48-7-111. No equitable distribution of property between individuals not married to one another.

A court may not award spousal support or order equitable distribution of property between individuals who are not married to one another in accordance with the provisions of article one of this chapter.

§48-7-112. Prospective effect of prior amendments.

The amendments to this section effected by the reenactment of section 48-2-32 during the regular session of the Legislature, 1996, are to be applied prospectively and have no application to any action for annulment, divorce or separate maintenance that was commenced on or before June 7, 1996.

PART 2. DISCLOSURE OF ASSETS REQUIRED.

§48-7-201. Required disclosure and updates.

In all divorce actions and in any other action involving child support, all parties shall fully disclose their assets and liabilities within forty days after the service of summons or at such earlier time as ordered by the court. The information contained on these forms shall be updated on the record to the date of the hearing.

§48-7-202. Assets that are required to be disclosed.

The disclosure required by this part 2 may be made by each party individually or by the parties jointly. Assets required to be disclosed shall include, but are not limited to, real property, savings accounts, stocks and bonds, mortgages and notes, life insurance, health insurance coverage, interest in a partnership or corporation, tangible personal property, income from employment, future interests whether vested or nonvested and any other financial interest or source.

§48-7-203. Forms for disclosure of assets.

The supreme court of appeals shall make available to the circuit courts a standard form for the disclosure of assets and liabilities required by this part 2. The clerk of the circuit court
shall make these forms available to all parties in any divorce
action or action involving child support. All disclosure required
by this part 2 shall be on a form that substantially complies with
the form promulgated by the supreme court of appeals. The
form used shall contain a statement in conspicuous print that
complete disclosure of assets and liabilities is required by law
and deliberate failure to provide complete disclosure as ordered
by the court constitutes false swearing.

§48-7-204. Discovery under rules; optional disclosure of tax
returns.

Nothing contained in this part 2 shall be construed to
prohibit the court from ordering discovery pursuant to rule
eighty-one of the rules of civil procedure. Additionally, the
court may on its own initiative and shall at the request of either
party require the parties to furnish copies of all state and federal
income tax returns filed by them for the past two years and may
require copies of such returns for prior years.

§48-7-205. Confidentiality of disclosed information.

Information disclosed under this part 2 is confidential and
may not be made available to any person for any purpose other
than the adjudication, appeal, modification or enforcement of
judgment of an action affecting the family of the disclosing
parties. The court shall include in any order compelling
disclosure of assets such provisions as the court considers
necessary to preserve the confidentiality of the information
ordered disclosed.

§48-7-206. Failure to disclose required financial information.

Any failure to timely or accurately disclose financial
information required by this part 2 may be considered as
follows:

(1) Upon the failure by either party timely to file a complete
disclosure statement as required by this part 2 or as ordered by
the court, the court may accept the statement of the other party as accurate.

(2) If any party deliberately or negligently fails to disclose information which is required by this part 2 and in consequence thereof any asset or assets with a fair market value of five hundred dollars or more is omitted from the final distribution of property, the party aggrieved by the nondisclosure may at any time petition a court of competent jurisdiction to declare the creation of a constructive trust as to all undisclosed assets, for the benefit of the parties and their minor or dependent children, if any, with the party in whose name the assets are held declared the constructive trustee, such trust to include such terms and conditions as the court may determine. The court shall impose the trust upon a finding of a failure to disclose such assets as required under this part 2.

(3) Any assets with a fair market value of five hundred dollars or more which would be considered part of the estate of either or both of the parties if owned by either or both of them at the time of the action, but which was transferred for inadequate consideration, wasted, given away or otherwise unaccounted for by one of the parties, within five years prior to the filing of the petition or length of the marriage, whichever is shorter, shall be presumed to be part of the estate and shall be subject to the disclosure requirement contained in this part 2. With respect to such transfers the spouse shall have the same right and remedies as a creditor whose debt was contracted at the time the transfer was made under article one-a, chapter forty of this code. Transfers which resulted in an exchange of assets of substantially equivalent value need not be specifically disclosed when such assets are otherwise identified in the statement of net worth.

(4) A person who knowingly provides incorrect information or who deliberately fails to disclose information pursuant to the provisions of this part 2 is guilty of false swearing.

PART 3. INJUNCTION; SETTING ASIDE CERTAIN TRANSFERS.
§48-7-301. Injunction to prevent removal or disposition of property.

Where it appears to the court that a party is about to remove himself or herself or his or her property from the jurisdiction of the court or is about to dispose of, alienate or encumber property in order to defeat a fair distribution of marital property, or the payment of alimony, child support or separate maintenance, an injunction may issue to prevent the removal or disposition and the property may be attached as provided by this code. The court may issue such injunction or attachment without bond.

§48-7-302. Notice of hearing for injunction; temporary injunction.

Any such injunction may be granted upon proper hearing after notice. For good cause shown, a temporary injunction may be issued after an ex parte proceeding with notice and proper hearing for a permanent injunction to be held forthwith thereafter.

§48-7-303. Applicability of injunction procedures to sale of goods or disposition of major business assets.

The procedures of this part 3 are not intended to apply to the sale of goods in the ordinary course of operating a business but shall apply to the disposition of the major assets of a business.

§48-7-304. Setting aside encumbrance or disposition of property to third persons.

Any encumbrance or disposition of property to third persons, except to bona fide purchasers without notice for full and adequate consideration, may be set aside by the court.

PART 4. LIS PENDENS.

§48-7-401. Lis pendens.

Upon the commencement of an action under the provisions of this article, any party claiming an interest in real property in which the other party has an interest, may cause a notice of lis
pendens to be recorded in the office of the clerk of the county commission of the county wherein the property is located.

§48-7-402. Notice of lis pendens.

The notice shall contain the names of the parties, the nature of the complaint, the court having jurisdiction, the date the complaint was filed, and a description of the real property. Such notice shall, from the time of the recording only, be notice to any person thereafter acquiring any interest in such property of the pendency of the complaint. Each person whose conveyance or encumbrance is subsequently executed or subsequently recorded or whose interest is thereafter acquired by descent, or otherwise, shall be deemed to be a subsequent purchaser or encumbrancer, and shall be bound by all proceedings taken after the recording of the notice, to the same extent as if he were made a party to the complaint. A notice of lis pendens recorded in accordance with this section may be discharged by the court upon substitution of a bond with surety in an amount established by the court, if the court finds that the claim against the property subject to the notice of lis pendens can be satisfied by a monetary award. In cases in which the sale of property is already in process when the notice of lis pendens is filed, and upon application, proper notice and hearing, the court may substitute a lien on the net proceeds of the sale.

PART 5. MISCELLANEOUS PROVISIONS RELATING TO EQUITABLE DISTRIBUTION.

§48-7-501. Retroactive effect of amendments.

Amendments made to the provisions of former article two of this chapter during the regular session of the Legislature in the year one thousand nine hundred eighty-four, shall be of retroactive effect to the extent that such amended provisions shall apply to the distribution of marital property, but not an award of spousal support, in all actions filed under the provisions of former article two of this chapter after the twenty-fifth day of May, one thousand nine hundred eighty-three, or actions pending on that date in which a claim for equitable distribution
ARTICLE 8. SPOUSAL SUPPORT.

§48-8-101. General provisions regarding spousal support.

(a) An obligation that compels a person to pay spousal support may arise from the terms of a court order, an antenuptial agreement or a separation agreement. In an order or agreement, a provision that has the support of a spouse or former spouse as its sole purpose is to be regarded as an allowance for spousal support whether expressly designated as such or not, unless the provisions of this chapter specifically require the particular type of allowance to be treated as child support or a division of marital property. Spousal support may be paid as a lump sum or as periodic installments without affecting its character as spousal support.

(b) Spousal support is divided into four classes which are:
   (1) Permanent spousal support; (2) temporary spousal support, otherwise known as spousal support pendente lite; (3) rehabilitative spousal support; and (4) spousal support in gross.

(c) An award of spousal support cannot be ordered unless the parties are actually living separate and apart from each other.

§48-8-102. Jurisdiction to award spousal support.

Jurisdiction to make a judicial award of spousal support is vested in the circuit courts of this state. A circuit court has jurisdiction to provide for the maintenance of a spouse during the pendency of an appeal to the supreme court of appeals.

§48-8-103. Payment of spousal support.

Upon ordering a divorce or granting a decree of separate maintenance, the court may require either party to pay spousal support in the form of periodic installments, or a lump sum, or
both, for the maintenance of the other party. Payments of
spousal support are to be ordinarily made from a party’s
income, but when the income is not sufficient to adequately
provide for those payments, the court may, upon specific
findings set forth in the order, order the party required to make
those payments to make them from the corpus of his or her
separate estate. An award of spousal support shall not be
disproportionate to a party’s ability to pay as disclosed by the
evidence before the court.

§48-8-104. Effect of fault or misconduct on award of spousal
support.

(a) In determining whether spousal support is to be
awarded, or in determining the amount of spousal support, if
any, to be awarded, the court shall consider and compare the
fault or misconduct of either or both of the parties and the effect
of such fault or misconduct as a contributing factor to the
deterioration of the marital relationship. However, spousal
support shall not be awarded when both parties prove grounds
for divorce and are denied a divorce, nor shall an award of
spousal support under the provisions of this section be ordered
which directs the payment of spousal support to a party
determined to be at fault, when, as a grounds granting the
divorce, such party is determined by the court:

(1) To have committed adultery; or

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

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

(b) At any time after the entry of an order pursuant to the
provisions of this section, the court may, upon motion of either
party, revise or alter the order concerning the maintenance of
the parties, or either of them, and make a new order concerning
the same, issuing it forthwith, as the altered circumstances or
needs of the parties may render necessary to meet the ends of justice.

§48-8-105. Rehabilitative spousal support.

(a) A circuit court may award rehabilitative spousal support for a limited period of time to allow the recipient spouse, through reasonable efforts, to become gainfully employed. When awarding rehabilitative spousal support, the court shall make specific findings of fact to explain the basis for the award, giving due consideration to the factors set forth in section 8-103 of this article. An award of rehabilitative spousal support is appropriate when the dependent spouse evidences a potential for self-support that could be developed through rehabilitation, training or academic study.

(b) A circuit court may modify an award of rehabilitative spousal support if a substantial change in the circumstances under which rehabilitative spousal support was granted warrants terminating, extending or modifying the award or replacing it with an award of permanent spousal support. In determining whether a substantial change of circumstances exists which would warrant a modification of a rehabilitative spousal support award, the trial court may consider a reassessment of the dependent spouse's potential work skills and the availability of a relevant job market, the dependent spouse's age, health and skills, the dependent spouse's ability or inability to meet the terms of the rehabilitative plan, and other relevant factors as provided for in section 8-103 of this article.

§48-8-106. Payments out of disposable retired or retainer pay.

Whenever the court enters an order requiring the payment of spousal support, if the court anticipates the payment or any portion thereof is to be paid out of “disposable retired or retainer pay” as that term is defined in 10 U. S. C. §1408, relating to members or former members of the uniformed services of the United States, the court shall specifically provide for the payment of an amount, expressed in dollars or
ARTICLE 9. CUSTODY OF CHILDREN.

PART 1. SCOPE; OBJECTIVES;
PARTIES AND PARENT EDUCATION CLASSES.

§48-9-101. Scope of article; legislative findings and declarations.

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

(b) The Legislature finds and declares that it is the public policy of this state to assure that the best interest of children is the court's primary concern in allocating custodial and decision-making responsibilities between parents who do not live together. In furtherance of this policy, the Legislature declares that a child's best interest will be served by assuring that minor children have frequent and continuing contact with parents who have shown the ability to act in the best interest of their children, to educate parents on their rights and responsibilities and the effect their separation may have on children, to encourage mediation of disputes, and to encourage parents to share in the rights and responsibilities of rearing their children after the parents have separated or divorced.

§48-9-102. Objectives; best interests of the child.

(a) The primary objective of this article is to serve the child's best interests, by facilitating:

(1) Stability of the child;

(2) Parental planning and agreement about the child's custodial arrangements and upbringing;

(3) Continuity of existing parent-child attachments;
(4) Meaningful contact between a child and each parent;

(5) Caretaking relationships by adults who love the child, know how to provide for the child's needs, and who place a high priority on doing so;

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

and

(7) Expeditious, predictable decision-making and avoidance of prolonged uncertainty respecting arrangements for the child's care and control.

(b) A secondary objective of article is to achieve fairness between the parents.

§48-9-103. Parties to an action under this article.

(a) Persons who have a right to be notified of and participate as a party in an action filed by another are:

(1) A legal parent of the child, as defined in section 1-232 of this chapter;

(2) An adult allocated custodial responsibility or decision-making responsibility under a parenting plan regarding the child that is then in effect; or

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

(b) In exceptional cases the court may, in its discretion, grant permission to intervene to other persons or public agencies whose participation in the proceedings under this article it determines is likely to serve the child's best interests. The court may place limitations on participation by the intervening party as the court determines to be appropriate. Such persons or public agencies do not have standing to initiate an action under this article.
§48-9-104. Parent education classes.

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

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

(c) The circuit court may require that each person attending a parent education class pay a fee, not to exceed twenty-five dollars, to the clerk of such court to defray the cost of materials and of hiring teachers: Provided, That where it is determined that a party is indigent and unable to pay for such classes, the court shall waive the payment of the fee for such party. The clerk of the circuit court shall, on or before the tenth day of each month, transmit all fees collected under this subsection to the state treasurer for deposit in the state treasury to the credit of special revenue fund to be known as the “parent education fund”, which is hereby created. All moneys collected and received under this subsection and paid into the state treasury and credited to the parent education fund shall be used by the administrative office of the supreme court of appeals solely for reimbursing the provider of parent education classes for the costs of materials and of providing such classes. Such moneys
shall not be treated by the auditor and treasurer as part of the general revenue of the state.

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

PART 2. PARENTING PLANS.

§48-9-201. Parenting agreements.

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

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

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

(b) The court, at its discretion and on any basis it deems sufficient, may conduct an evidentiary hearing to determine whether there is a factual basis for a finding under subdivision (1) or (2), subsection (a) of this section. When there is credible information that child abuse as defined by section 49-1-3 of this code or domestic violence as defined by section 27-202 of this code has occurred, a hearing is mandatory and if the court determines that abuse has occurred, appropriate protective measures shall be ordered.

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

§48-9-202. Court-ordered services.

(a)(1) The court shall inform the parents, or require them to be informed, about:
(A) How to prepare a parenting plan;

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

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

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

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

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

(b) The supreme court of appeals shall make and promulgate rules that will provide for premediation screening procedures to determine whether domestic violence, child abuse or neglect, acts or threats of duress or coercion, substance abuse, mental illness or other such elements would adversely affect the safety of a party, the ability of a party to meaningfully participate in the mediation, or the capacity of a party to freely and voluntarily consent to any proposed agreement reached as a result of the mediation. Such rules shall authorize a family law master or judge to consider alternatives to mediation which may aid the parties in establishing a parenting plan. Such rules shall not establish a per se bar to mediation if domestic violence, child abuse or neglect, acts or threats of duress or coercion, substance abuse, mental illness or other such elements exist, but may be the basis for the court, in its discretion, not to order services under subsection (a) of this section, or not to require a parent to have face-to-face meetings with the other parent.
(c) A mediator shall not make a recommendation to the court and may not reveal information that either parent has disclosed during mediation under a reasonable expectation of confidentiality, except that a mediator may reveal to the court credible information that he or she has received concerning domestic violence or child abuse.

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

(e) The supreme court of appeals shall establish standards for the qualification and training of mediators.

§48-9-203. Proposed temporary parenting plan; temporary order; amendment; vacation of order.

(a) A parent seeking a temporary order relating to parenting shall file and serve a proposed temporary parenting plan by motion. The other parent, if contesting the proposed temporary parenting plan, shall file and serve a responsive proposed parenting plan. Either parent may move to have a proposed temporary parenting plan entered as part of a temporary order. The parents may enter an agreed temporary parenting plan at any time as part of a temporary order. The proposed temporary parenting plan may be supported by relevant evidence and shall be verified and shall state at a minimum the following:
(1) The name, address and length of residence with the
person or persons with whom the child has lived for the
preceding twelve months;

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

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

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

(5) Any of the circumstances set forth in section 9-209 that
are likely to pose a serious risk to the child and that warrant
limitation on the award to a parent of temporary residence or
time with the child pending entry of a permanent parenting
plan.

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

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

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

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

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

(5) Restraining orders, if applicable.

(c) A parent may make a motion for an order to show cause
and the court may enter a temporary order, including a tempo-
rary parenting plan, upon a showing of necessity.
(d) A parent may move for amendment of a temporary parenting plan, and the court may order amendment to the temporary parenting plan, if the amendment conforms to the limitations of section 9-209 and is in the best interest of the child.

§48-9-204. **Criteria for temporary parenting plan.**

(a) After considering the proposed temporary parenting plan filed pursuant to section 9-203 and other relevant evidence presented, the court shall make a temporary parenting plan that is in the best interest of the child. In making this determination, the court shall give particular consideration to:

1. (1) Which parent has taken greater responsibility during the last twelve months for performing caretaking functions relating to the daily needs of the child; and
2. (2) Which parenting arrangements will cause the least disruption to the child's emotional stability while the action is pending.

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

c) Upon credible evidence of one or more of the circumstances set forth in subsection 9-209(a), the court shall issue a temporary order limiting or denying access to the child as required by that section, in order to protect the child or the other party, pending adjudication of the underlying facts.

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

§48-9-205. **Permanent parenting plan.**

(a) A party seeking a judicial allocation of custodial responsibility or decision-making responsibility under this article shall file a proposed parenting plan with the court. Parties may file a joint plan. A proposed plan shall be verified
and shall state, to the extent known or reasonably discoverable by the filing party or parties:

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

(2) The name and address of each of the child's parents and any other individuals with standing to participate in the action under section 9-103;

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

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

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

(6) A description of any of the limiting factors as described in section 9-209 that are present, including any restraining orders against either parent to prevent domestic or family violence, by case number and jurisdiction;

(7) Required financial information; and

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

The court shall maintain the confidentiality of any information required to be filed under this section when the person giving that information has a reasonable fear of domestic abuse and disclosure of the information would increase that fear.
(b) The court shall develop a process to identify cases in which there is credible information that child abuse or neglect, as defined in section 49-1-3 of this code, or domestic violence as defined in section 27-202 has occurred. The process shall include assistance for possible victims of domestic abuse in complying with subdivision (6), subsection (a) of this section, and referral to appropriate resources for safe shelter, counseling, safety planning, information regarding the potential impact of domestic abuse on children, and information regarding civil and criminal remedies for domestic abuse. The process shall also include a system for ensuring that jointly submitted parenting plans that are filed in cases in which there is credible information that child abuse or domestic abuse has occurred receive the court review that is mandated by subsection 9-201(b).

(c) Upon motion of a party and after consideration of the evidence, the court shall order a parenting plan consistent with the provisions of sections 9-206 through 9-209 of this article, containing:

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

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

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

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

(3) A provision consistent with section 9-202 for resolution of disputes that arise under the plan, and remedies for violations of the plan.
(d) A parenting plan may, at the court’s discretion, contain provisions that address matters that are expected to arise in the event of a party’s relocation, or provide for future modifications in the parenting plan if specified contingencies occur.


(a) Unless otherwise resolved by agreement of the parents under section 9-201 or unless manifestly harmful to the child, the court shall allocate custodial responsibility so that the proportion of custodial time the child spends with each parent approximates the proportion of time each parent spent performing caretaking functions for the child prior to the parents’ separation or, if the parents never lived together, before the filing of the action, except to the extent required under section 9-209 or necessary to achieve any of the following objectives:

1. To permit the child to have a relationship with each parent who has performed a reasonable share of parenting functions;

2. To accommodate the firm and reasonable preferences of a child who is fourteen years of age or older, and with regard to a child under fourteen years of age, but sufficiently matured that he or she can intelligently express a voluntary preference for one parent, to give that preference such weight as circumstances warrant;

3. To keep siblings together when the court finds that doing so is necessary to their welfare;

4. To protect the child’s welfare when, under an otherwise appropriate allocation, the child would be harmed because of a gross disparity in the quality of the emotional attachments between each parent and the child or in each parent’s demonstrated ability or availability to meet a child’s needs;

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

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

(7) To apply the principles set forth in 9-403(d) of this article if one parent relocates or proposes to relocate at a distance that will impair the ability of a parent to exercise the amount of custodial responsibility that would otherwise be ordered under this section; and

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

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

(c) If the court is unable to allocate custodial responsibility under subsection (a) of this section because the allocation under that subsection would be manifestly harmful to the child, or because there is no history of past performance of caretaking functions, as in the case of a newborn, or because the history does not establish a pattern of caretaking sufficiently dispositive of the issues of the case, the court shall allocate custodial responsibility based on the child's best interest, taking into account the factors in considerations that are set forth in this section and in section two hundred nine and 9-403(d) of this article and preserving to the extent possible this section's
priority on the share of past caretaking functions each parent performed.

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

§48-9-207. Allocation of significant decision-making responsibility.

(a) Unless otherwise resolved by agreement of the parents under section 9-201, the court shall allocate responsibility for making significant life decisions on behalf of the child, including the child's education and health care, to one parent or to two parents jointly, in accordance with the child's best interest, in light of:

(1) The allocation of custodial responsibility under section 9-206 of this article;

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

(3) The wishes of the parents;

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

(5) Prior agreements of the parties; and

(6) The existence of any limiting factors, as set forth in section 9-209 of this article.

(b) If each of the child's legal parents has been exercising a reasonable share of parenting functions for the child, the court shall presume that an allocation of decision-making responsibility to both parents jointly is in the child's best interests. The presumption is overcome if there is a history of domestic abuse, or by a showing that joint allocation of decision-making responsibility is not in the child's best interest.
(c) Unless otherwise provided or agreed by the parents, each parent who is exercising custodial responsibility shall be given sole responsibility for day-to-day decisions for the child, while the child is in that parent’s care and control, including emergency decisions affecting the health and safety of the child.

§48-9-208. Criteria for parenting plan; dispute resolution.

(a) If provisions for resolving parental disputes are not ordered by the court pursuant to parenting agreement under section 9-201, the court shall order a method of resolving disputes that serves the child’s best interest in light of:

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

(2) Circumstances, including, but not limited to, financial circumstances, that may affect the parents ability to participate in a prescribed dispute resolution process; and

(3) The existence of any limiting factor, as set forth in section 9-209 of this article.

(b) The court may order a nonjudicial process of dispute resolution by designating with particularity the person or agency to conduct the process or the method for selecting such a person or agency. The disposition of a dispute through a nonjudicial method of dispute resolution that has been ordered by the court without prior parental agreement is subject to de novo judicial review. If the parents have agreed in a parenting plan or by agreement thereafter to a binding resolution of their dispute by nonjudicial means, a decision by such means is binding upon the parents and must be enforced by the court, unless it is shown to be contrary to the best interests of the child, beyond the scope of the parents’ agreement, or the result of fraud, misconduct, corruption or other serious irregularity.

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

§48-9-209. Parenting plan; limiting factors.

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

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

(2) Has sexually assaulted or sexually abused a child as those terms are defined in articles eight-b and eight-d, chapter sixty-one of this code;

(3) Has committed domestic violence, as defined in section 27-202;

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

(5) Has repeatedly made fraudulent reports of domestic violence or child abuse.

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

(1) An adjustment of the custodial responsibility of the parents, including the allocation of exclusive custodial responsibility to one of them;

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

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

(4) Restraints on the parent from communication with or proximity to the other parent or the child;
(5) A requirement that the parent abstain from possession or consumption of alcohol or nonprescribed drugs while exercising custodial responsibility and in the twenty-four hour period immediately preceding such exercise;

(6) Denial of overnight custodial responsibility;

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

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

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

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

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

PART 3. FACT FINDING.

§48-9-301. Court-ordered investigation.
(a) In its discretion, the court may order a written investigation and report to assist it in determining any issue relevant to proceedings under this article. The investigation and report may be made by the guardian ad litem, the staff of the court or other professional social service organization experienced in counseling children and families. The court shall specify the scope of the investigation or evaluation and the authority of the investigator.

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

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

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

(a) In its discretion, the court may appoint a guardian ad litem to represent the child’s best interests. The court shall specify the terms of the appointment, including the guardian’s role, duties and scope of authority.

(b) In its discretion, the court may appoint a lawyer to represent the child, if the child is competent to direct the terms of the representation and court has a reasonable basis for finding that the appointment would be helpful in resolving the issues of the case. The court shall specify the terms of the appointment, including the lawyer’s role, duties and scope of authority.

(c) When substantial allegations of domestic abuse have been made, the court shall order an investigation under section 9-301 or make an appointment under subsection (a) or (b) of this section, unless the court is satisfied that the information necessary to evaluate the allegations will be adequately presented to the court without such order or appointment.

(d) Subject to whatever restrictions the court may impose or that may be imposed by the attorney-client privilege or by subsection 9-202(d), the court may require the child or parent to provide information to an individual or agency appointed by the court under section 9-301 or subsection (a) or (b) of this section, and it may require any person having information about the child or parent to provide that information, even in the absence of consent by a parent or by the child, except if the information is otherwise protected by law.

(e) The investigator who submits a report or evidence to the court that has been requested under section 9-301 and a guardian ad litem appointed under subsection (a) of this section who submits information or recommendations to the court are subject to cross-examination by the parties. A lawyer appointed
under subsection (b) of this section may not be a witness in the proceedings, except as allowed under standards applicable in other civil proceedings.

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

§48-9-303. Interview of the child by the court.

The court, in its discretion, may interview the child in chambers or direct another person to interview the child, in order to obtain information relating to the issues of the case. The interview shall be conducted in accordance with rule 16 of the rules of practice and procedure for family law, as promulgated by the supreme court of appeals.

PART 4. MODIFICATION OF PARENTING PLAN.

§48-9-401. Modification upon showing of changed circumstances or harm.

(a) Except as provided in section 9-402 or 9-403, a court shall modify a parenting plan order if it finds, on the basis of facts that were not known or have arisen since the entry of the prior order and were not anticipated therein, that a substantial change has occurred in the circumstances of the child or of one or both parents and a modification is necessary to serve the best interests of the child.

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

(c) Unless the parents have agreed otherwise, the following circumstances do not justify a significant modification of a parenting plan except where harm to the child is shown:
(1) Circumstances resulting in an involuntary loss of income, by loss of employment or otherwise, affecting the parent’s economic status;

(2) A parent’s remarriage or cohabitation; and

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

(d) For purposes of subsection (a) of this section, the occurrence or worsening of a limiting factor, as defined in subsection (a), section 9-209, after a parenting plan has been ordered by the court, constitutes a substantial change of circumstances and measures shall be ordered pursuant to section 9-209 to protect the child or the child’s parent.

§48-9-402. Modification without showing of changed circumstances.

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

(b) The court may modify any provisions of the parenting plan without the showing of change circumstances required by subsection 9-401(a) if the modification is in the child’s best interests, and the modification:

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

(2) Constitutes a minor modification in the plan; or
(3) Is necessary to accommodate the reasonable and firm preferences of a child who has attained the age of fourteen.

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

§48-9-403. Relocation of a parent.

(a) The relocation of a parent constitutes a substantial change in the circumstances under subsection 9-401(a) of the child only when it significantly impairs either parent’s ability to exercise responsibilities that the parent has been exercising.

(b) Unless otherwise ordered by the court, a parent who has responsibility under a parenting plan who changes, or intends to change, residences for more than ninety days must give a minimum of sixty days’ advance notice, or the most notice practicable under the circumstances, to any other parent with responsibility under the same parenting plan. Notice shall include:

(1) The relocation date;

(2) The address of the intended new residence;

(3) The specific reasons for the proposed relocation;

(4) A proposal for how custodial responsibility shall be modified, in light of the intended move; and

(5) Information for the other parent as to how he or she may respond to the proposed relocation or modification of custodial responsibility.

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

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

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

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

(1) A parent who has been exercising a significant majority of the custodial responsibility for the child should be allowed to relocate with the child so long as that parent shows that the relocation is in good faith for a legitimate purpose and to a location that is reasonable in light of the purpose. The percentage of custodial responsibility that constitutes a significant majority of custodial responsibility is seventy percent or more. A relocation is for a legitimate purpose if it is to be close to significant family or other support networks, for significant health reasons, to protect the safety of the child or another member of the child’s household from significant risk of harm, to pursue a significant employment or educational opportunity,
or to be with one's spouse who is established, or who is
pursuing a significant employment or educational opportunity,
in another location. The relocating parent has the burden of
proving the legitimacy of any other purpose. A move with a
legitimate purpose is reasonable unless its purpose is shown to
be substantially achievable without moving, or by moving to a
location that is substantially less disruptive of the other parent's
relationship to the child.

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

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

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

(e) In determining the proportion of caretaking functions
each parent previously performed for the child under the
parenting plan before relocation, the court may not consider a
division of functions arising from any arrangements made after
a relocation but before a modification hearing on the issues
related to relocation.
(f) In determining the effect of the relocation or proposed relocation on a child, any interviewing or questioning of the child shall be conducted in accordance with the provisions of rule 17 of the rules of practice and procedure for family law, as promulgated by the supreme court of appeals.

PART 5. ENFORCEMENT OF PARENTING PLANS.


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

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

(2) In the case of missed time by a parent, costs in recognition of lost opportunities by the other parent, in child care costs and other reasonable expenses in connection with the missed time;

(3) A modification of the plan, if the requirements for a modification are met under section 9-209, section 9-401, 402 or 403 of this article, including an adjustment of the custodial responsibility of the parents or an allocation of exclusive custodial responsibility to one of them;

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

(5) A civil penalty, in an amount of not more than one hundred dollars for a first offense, not more than five hundred dollars for a second offense, or not more than one thousand dollars for a third or subsequent offense, to be paid to the parent education fund as established under section 9-104;
(6) Court costs, reasonable attorney’s fees and any other reasonable expenses in enforcing the plan; and

(7) Any other appropriate remedy.

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

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

PART 6. MISCELLANEOUS PROVISIONS.

§48-9-601. Access to a child’s records.

(a)(1) Each parent has full and equal access to a child’s educational records absent a court order to the contrary. Neither parent may veto the access requested by the other parent. Educational records are academic, attendance and disciplinary records of public and private schools in all grades kindergarten through twelve and any form of alternative school. Educational records are any and all school records concerning the child that would otherwise be properly released to the primary custodial parent, including, but not limited to, report cards and progress reports, attendance records, disciplinary reports, results of the child’s performance on standardized tests and statewide tests and information on the performance of the school that the child attends on standardized statewide tests; curriculum materials of the class or classes in which the child is enrolled; names of the appropriate school personnel to contact if problems arise with the child; information concerning the academic performance standards, proficiencies, or skills the child is expected to
accomplish; school rules, attendance policies, dress codes and
procedures for visiting the school; and information about any
psychological testing the school does involving the child.

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

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

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

(b)(1) Each parent has full and equal access to a child’s
medical records absent a court order to the contrary. Neither
parent may veto the access requested by the other parent. If
necessary, either parent is required to authorize medical
providers to release to the other parent copies of any and all
information concerning medical care provided to the child
which would otherwise be properly released to either parent.

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

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

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

§48-9-602. Designation of custody for the purpose of other state and federal statutes.

Solely for the purposes of all other state and federal statutes which require a designation or determination of custody, a parenting plan shall designate the parent with whom the child is scheduled to reside the majority of the time as the custodian of the child. However, this designation shall not affect either parent’s rights and responsibilities under a parenting plan. In the absence of such a designation, the parent with whom the child is scheduled to reside the majority of the time is deemed to be the custodian of the child for the purposes of such federal and state statutes.

§48-9-603. Effect of enactment; operative dates.

(a) The enactment of this article, formerly enacted as article eleven of this chapter during the second extraordinary session of the Legislature, one thousand nine hundred ninety-nine, is prospective in operation unless otherwise expressly indicated.

(b) The provisions of section 9-202, insofar as they provide for parent education and mediation, become operative on the first day of January, two thousand. Until that date, parent education and mediation with regard to custody issues are discretionary unless made mandatory under a particular program or pilot project by rule or direction of the supreme court of appeals or a circuit court.
(c) The provisions of this article that authorize a circuit court in the absence of an agreement of the parents to order an allocation of custodial responsibility and an allocation of significant decision-making responsibility, became operative on the first day of January, two thousand, at which time the primary caretaker doctrine was replaced with a system that allocates custodial and decision-making responsibility to the parents in accordance with this article. Any order entered prior to the first day of January, two thousand, based on the primary caretaker doctrine remains in full force and effect until modified by a court of competent jurisdiction.

ARTICLE 10. GRANDPARENT VISITATION.

PART 1. GENERAL PROVISIONS.

§48-10-101. Legislative findings.

The Legislature finds that circumstances arise where it is appropriate for circuit courts of this state to order that grandparents of minor children may exercise visitation with their grandchildren. The Legislature further finds that in such situations, as in all situations involving children, the best interests of the child or children are the paramount consideration.

§48-10-102. Legislative intent.

It is the express intent of the Legislature that the provisions for grandparent visitation that are set forth in this article are exclusive.

PART 2. DEFINITIONS.

§48-10-201. Applicability of definitions.

For the purposes of this article the words or terms defined in this article, and any variation of those words or terms required by the context, have the meanings ascribed to them in

"Child" means a person under the age of eighteen years who has not been married or otherwise emancipated.

§48-10-203. Grandparent defined.

"Grandparent" means a biological grandparent, a person married or previously married to a biological grandparent, or a person who has previously been granted custody of the parent of a minor child with whom visitation is sought.

PART 3. APPLICATION TO THE CIRCUIT COURT FOR GRANDPARENT VISITATION.

§48-10-301. Persons who may apply for grandparent visitation; venue.

A grandparent of a child residing in this state may, by motion or petition, make application to the circuit court of the county in which that child resides for an order granting visitation with his or her grandchild.

PART 4. PROCEEDINGS FOR VISITATION FOR GRANDPARENTS.

§48-10-401. Motion for grandparent visitation when action for divorce, custody, legal separation, annulment or establishment of paternity is pending.

(a) The provisions of this section apply to any pending actions for divorce, custody, legal separation, annulment or establishment of paternity.

(b) After the commencement of the action, a grandparent seeking visitation with his or her grandchild may, by motion, apply to the circuit court for an order granting visitation. A grandparent moving for an order of visitation will not be
afforded party status, but may be called as a witness by the court, and will be subject to cross-examination by the parties.

§48-10-402. Petition for grandparent visitation when action for divorce, custody, legal separation, annulment or establishment of paternity is not pending.

(a) The provisions of this section apply when no proceeding for divorce, custody, legal separation, annulment or establishment of paternity is pending.

(b) A grandparent may petition the circuit court for an order granting visitation with his or her grandchild, regardless of whether the parents of the child are married. If the grandparent filed a motion for visitation in a previous proceeding for divorce, custody, legal separation, annulment or establishment of paternity, and a decree or final order has issued in that earlier action, the grandparent may petition for visitation if the circumstances have materially changed since the entry of the earlier order or decree.

(c) When a petition under this section is filed, the matter shall be styled “In re grandparent visitation of [petitioner’s(s’) name(s)].”

§48-10-403. Appointment of guardian ad litem for the child.

When a motion or petition is filed seeking grandparent visitation, the court, on its own motion or upon the motion of a party or grandparent, may appoint a guardian ad litem for the child to assist the court in determining the best interests of the child regarding grandparent visitation.

PART 5. FACTORS AFFECTING A DECISION TO GRANT VISITATION FOR GRANDPARENTS.

§48-10-501. Necessary findings for grant of reasonable visitation to a grandparent.

The circuit court shall grant reasonable visitation to a grandparent upon a finding that visitation would be in the best
§48-10-502. Factors to be considered in making a determination as to a grant of visitation to a grandparent.

In making a determination on a motion or petition the court shall consider the following factors:

(1) The age of the child;

(2) The relationship between the child and the grandparent;

(3) The relationship between each of the child’s parents or the person with whom the child is residing and the grandparent;

(4) The time which has elapsed since the child last had contact with the grandparent;

(5) The effect that such visitation will have on the relationship between the child and the child’s parents or the person with whom the child is residing;

(6) If the parents are divorced or separated, the custody and visitation arrangement which exists between the parents with regard to the child;

(7) The time available to the child and his or her parents, giving consideration to such matters as each parent’s employment schedule, the child’s schedule for home, school and community activities, and the child’s and parents’ holiday and vacation schedule;

(8) The good faith of the grandparent in filing the motion or petition;

(9) Any history of physical, emotional or sexual abuse or neglect being performed, procured, assisted or condoned by the grandparent;
(10) Whether the child has, in the past, resided with the grandparent for a significant period or periods of time, with or without the child's parent or parents;

(11) Whether the grandparent has, in the past, been a significant caretaker for the child, regardless of whether the child resided inside or outside of the grandparent's residence;

(12) The preference of the parents with regard to the requested visitation; and

(13) Any other factor relevant to the best interests of the child.

PART 6. INTERVIEW OF CHILD BY JUDGE.

§48-10-601. Interview of child in chambers.

In considering the factors listed in section 10-502 for purposes of determining whether to grant visitation, establishing a specific visitation schedule, and resolving any issues related to the making of any determination with respect to visitation or the establishment of any specific visitation schedule, the court, in its discretion, may interview in chambers any or all involved children regarding their wishes and concerns. No person shall be present other than the court, the child, the child's attorney or guardian ad litem, if any, and any necessary court personnel.

§48-10-602. Prohibitions on use of child's written or recorded statement or affidavit; child not to be called as a witness.

(a) No person shall obtain or attempt to obtain from a child a written or recorded statement or affidavit setting forth the wishes and concerns of the child regarding grandparent visitation matters, and the court, in considering the factors listed in section 10-502 of this article for purposes of determining whether to grant any visitation, establishing a visitation schedule, or resolving any issues related to the making of any

8 determination with respect to visitation or the establishment of
9 any specific visitation schedule, shall not accept or consider
10 such a written or recorded statement or affidavit.

11 (b) A child shall not be called as a witness in any proceed-
12 ing to determine whether grandparent visitation should be
13 awarded.

PART 7. PROOF REQUIRED FOR GRANT OF
GRANDPARENT VISITATION.

§48-10-701. Proof required when action is pending for divorce,
custody, legal separation, annulment or establish-
ment of paternity.

1 If a motion for grandparent visitation is filed in a pending
2 action for divorce, custody, legal separation, annulment or
3 establishment of paternity pursuant to, section 21-401 the
4 grandparent shall be granted visitation if a preponderance of the
5 evidence shows that visitation is in the best interest of the child
6 and that:

7 (1) The party to the divorce through which the grandparent
8 is related to the minor child has failed to answer or otherwise
9 appear and defend the cause of action; or

10 (2) The whereabouts of the party through which the
11 grandparent is related to the minor child are unknown to the
12 party bringing the action and to the grandparent who filed the
13 motion for visitation.

§48-10-702. Proof required when action is not pending for di-
verge, custody, legal separation, annulment or
establishment of paternity.

1 (a) If a petition is filed pursuant to section 10-402 when the
2 parent through whom the grandparent is related to the grand-
3 child does not: (1) Have custody of the child; (2) share custody
4 of the child; or (3) exercise visitation privileges with the child
5 that would allow participation in the visitation by the grandpar-
ent if the parent so chose, the grandparent shall be granted visitation if a preponderance of the evidence shows that visitation is in the best interest of the child.

(b) If a petition is filed pursuant to section 10-402, there is a presumption that visitation privileges need not be extended to the grandparent if the parent through whom the grandparent is related to the grandchild has custody of the child, shares custody of the child, or exercises visitation privileges with the child that would allow participation in the visitation by the grandparent if the parent so chose. This presumption may be rebutted by clear and convincing evidence that an award of grandparent visitation is in the best interest of the child.

PART 8. ORDERS GRANTING OR REFUSING GRANDPARENT VISITATION.

§48-10-801. Order granting or refusing grandparent visitation must state findings of fact and conclusions of law.

An order granting or refusing the grandparent's motion or petition for visitation must state in writing the court's findings of fact and conclusions of law.

§48-10-802. Supervised visitation; conditions on visitation.

In the court's discretion, an order granting visitation privileges to a grandparent may require supervised visitation or may place such conditions on visitation that it finds are in the best interests of the child, including, but not limited to, the following:

(1) That the grandparent not attempt to influence any religious beliefs or practices of the children in a manner contrary to the preferences of the child's parents;

(2) That the grandparent not engage in, permit or encourage activities, or expose the grandchild to conditions or circumstances, that are contrary to the preferences of the child's parents; or
(3) That the grandparent not otherwise act in a manner to contradict or interfere with child-rearing decisions made by the child's parents.

PART 9. EFFECT OF REMARRIAGE OR ADOPTION ON GRANDPARENT VISITATION.

§48-10-901. Effect of remarriage of the custodial parent.

The remarriage of the custodial parent of a child does not affect the authority of a circuit court to grant reasonable visitation to any grandparent.

§48-10-902. Effect of adoption of the child.

If a child who is subject to a grandparent visitation order under this article is later adopted, the order for grandparent visitation is automatically vacated when the order for adoption is entered, unless the adopting parent is a stepparent, grandparent or other relative of the child.

PART 10. MODIFICATION OR TERMINATION OF GRANDPARENT VISITATION.


Any circuit court that grants visitation rights to a grandparent shall retain jurisdiction throughout the minority of the minor child with whom visitation is granted to modify or terminate such rights as dictated by the best interests of the minor child.

§48-10-1002. Termination of grandparent visitation.

A circuit court shall, based upon a petition brought by an interested person, terminate any grant of the right of grandparent visitation upon presentation of a preponderance of the evidence that a grandparent granted visitation has materially violated the terms and conditions of the order of visitation.

PART 11. ATTORNEY’S FEES AND COSTS.
§48-10-1101. Attorney's fees; reasonable costs.

In an action brought under the provisions of this article, a circuit court may order payment of reasonable attorney's fees and costs based upon the equities of the positions asserted by the parties to pay such fees and costs.

PART 12. OFFENSES.

§48-10-1201. Misdemeanor offense for allowing contact between child and person who has been precluded visitation rights; penalties.

Any grandparent who knowingly allows contact between a minor grandchild and a parent or other person who has been precluded visitation rights with the child by court order is guilty of a misdemeanor and, upon conviction thereof, shall be confined in the county or regional jail not more than thirty days or fined not less than one hundred dollars nor more than one thousand dollars.

ARTICLE 11. SUPPORT OF CHILDREN.

§48-11-101. General provisions relating to child support.

(a) It is one of the purposes of the Legislature in enacting this chapter to improve and facilitate support enforcement efforts in this state, with the primary goal being to establish and enforce reasonable child support orders and thereby improve opportunities for children. It is the intent of the Legislature that to the extent practicable, the laws of this state should encourage and require a child's parents to meet the obligation of providing that child with adequate food, shelter, clothing, education, and health and child care.

(b) When the domestic relations action involves a minor child or children, the court shall require either party to pay child support in the form of periodic installments for the maintenance of the minor children of the parties in accordance with support guidelines promulgated pursuant to article 13-101, et seq., of
this chapter. Payments of child support are to be ordinarily made from a party's income, but in cases when the income is not sufficient to adequately provide for those payments, the court may, upon specific findings set forth in the order, order the party required to make those payments to make them from the corpus of his or her separate estate.

§48-11-102. Required information in support orders.

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

1. The name of the custodian;
2. The amount of the support payments;
3. The date the first payment is due;
4. The frequency of the support payments;
5. The event or events which trigger termination of the support obligation;
6. A provision regarding wage withholding;
7. The address where payments shall be sent;
8. A provision for medical support;
9. When child support guidelines are not followed, a specific written finding pursuant to section 13-702.

(b) Effective the first day of October, one thousand nine hundred ninety-nine, any order entered that provides for the payment of child support shall also include a statement that requires both parties to report any changes in gross income, either in source of employment or in the amount of gross income, to the bureau for child support enforcement and to the other party. The notice shall not be required if the change in gross income is less than a fifteen percent change in gross income.
(c) All child support orders shall contain a notice which contains language substantially similar to the following: "The amount of the monthly child support can be modified as provided by law based upon a change in the financial or other circumstances of the parties if those circumstances are among those considered in the child support formula. In order to make the modification a party must file a motion to modify the child support amount. Unless a motion to modify is filed, the child support amount will continue to be due and cannot later be changed retroactively even though there has been a change of circumstances since the entry of the order. Self help forms for modification can be found at the circuit clerk's office." The failure of an order to have such a provision does not alter the effectiveness of the order.

§48-11-103. Child support beyond age eighteen.

(a) Upon a specific finding of good cause shown and upon findings of fact and conclusions of law in support thereof, an order for child support may provide that payments of such support continue beyond the date when the child reaches the age of eighteen, so long as the child is unmarried and residing with a parent and is enrolled as a full-time student in a secondary educational or vocational program and making substantial progress towards a diploma: Provided, That such payments may not extend past the date that the child reaches the age of twenty.

(b) Nothing herein shall be construed to abrogate or modify existing case law regarding the eligibility of handicapped or disabled children to receive child support beyond the age of eighteen.

(c) The reenactment of this section during the regular session of the Legislature in the year one thousand nine hundred ninety-four shall not, by operation of law, have any effect upon or vacate any order or portion thereof entered under the prior enactment of this section which awarded educational and related expenses for an adult child accepted or enrolled and making satisfactory progress in an educational program at a
certified or accredited college. Any such order or portion thereof shall continue in full force and effect until the court, upon motion of a party, modifies or vacates the order upon a finding that:

(1) The facts and circumstances which supported the entry of the original order have changed, in which case the order may be modified;

(2) The facts and circumstances which supported the entry of the original order no longer exist because the child has not been accepted or is not enrolled in and making satisfactory progress in an educational program at a certified or accredited college, or the parent ordered to pay such educational and related expenses is no longer able to make such payments, in which case the order shall be vacated;

(3) The child, at the time the order was entered, was under the age of sixteen years, in which case the order shall be vacated;

(4) The amount ordered to be paid was determined by an application of child support guidelines in accordance with the provisions of article 13-101, et seq., or legislative rules promulgated thereunder, in which case the order may be modified or vacated; or

(5) The order was entered after the fourteenth day of March, one thousand nine hundred ninety-four, in which case the order shall be vacated.

§48-11-104. Payments out of disposable retired or retainer pay.

Whenever under the terms of article 5-601, et seq., or article 5-501, et seq., a court enters an order requiring the payment of child support, if the court anticipates the payment of such child support or any portion thereof to be paid out of "disposable retired or retainer pay" as that term is defined in 10 U.S.C. §1408, relating to members or former members of the uniformed services of the United States, the court shall specifi-
cally provide for the payment of an amount, expressed in
dollars or as a percentage of disposable retired or retainer pay,
from the disposable retired or retainer pay of the payor party to
the payee party.

§48-11-105. Modification of child support order.

(a) A circuit court may modify a child support order, for the
benefit of the child, when a motion is made that alleges a
change in the circumstances of a parent or another proper
person or persons. A motion for modification of a child support
order may be brought by a custodial parent or any other lawful
custodian or guardian of the child, by a parent or other person
obligated to pay child support for the child, or by the bureau for
child support enforcement of the department of health and
human resources of this state.

(b) The provisions of the order may be modified if there is
a substantial change in circumstances. If application of the
guideline would result in a new order that is more than fifteen
percent different, then the circumstances are considered a
substantial change.

(c) An order that modifies the amount of child support to be
paid shall conform to the support guidelines set forth in article
13-101, et seq., of this chapter unless the court disregards the
guidelines or adjusts the award as provided for in section 13-
702.

(d) The supreme court of appeals shall make available to
the courts a standard form for a petition for modification of an
order for support, which form will allege that the existing order
should be altered or revised because of a loss or change of
employment or other substantial change affecting income, or
that the amount of support required to be paid is not within
fifteen percent of the child support guidelines. The clerk of the
circuit shall make the forms available to persons desiring to file
a motion pro se for a modification of the support award.

(a) An expedited process for modification of a child support order may be utilized if:

(1) Either parent experiences a substantial change of circumstances resulting in a decrease in income due to loss of employment or other involuntary cause;

(2) An increase in income due to promotion, change in employment, reemployment; or

(3) Other such change in employment status.

(b) The party seeking the recalculation of support and modification of the support order shall file a description of the decrease or increase in income and an explanation of the cause of the decrease or increase on a standardized form to be provided by the secretary-clerk or other employee of the family court. The standardized form shall be verified by the filing party. Any available documentary evidence shall be filed with the standardized form. Based upon the filing and information available in the case record, the amount of support shall be tentatively recalculated.

(c) The secretary-clerk shall serve a notice of the filing, a copy of the standardized form, and the support calculations upon the other party by certified mail, return receipt requested, with delivery restricted to the addressee, in accordance with rule 4(d)(1)(D) of the West Virginia rules of civil procedure. The secretary-clerk shall also mail a copy, by first-class mail, to the local office of the bureau for child support enforcement for the county in which the circuit court is located in the same manner as original process under rule 4(d) of the rules of civil procedure.

(d) The notice shall fix a date fourteen days from the date of mailing, and inform the party that unless the recalculation is contested and a hearing request is made on or before the date fixed, the proposed modification will be made effective. If the
filing is contested, the proposed modification shall be set for
hearing; otherwise, the family law master shall prepare a
recommended default order for entry by the circuit judge. Either
party may move to set aside a default entered by the circuit
clerk or a judgment by default entered by the clerk or the court,
pursuant to the provisions of rule 55 or rule 60(b) of the rules
of civil procedure.

(e) If an obligor uses the provisions of this section to
expeditiously reduce his or her child support obligation, the
order that effected the reduction shall also require the obligor
to notify the obligee of reemployment, new employment or
other such change in employment status that results in an
increase in income. If an obligee uses the provisions of this
section to expeditiously increase his or her child support
obligation, the order that effected the increase shall also require
the obligee to notify the obligor of reemployment, new employ-
ment or other such change in employment status that results in
an increase in income of the obligee.

(f) The supreme court of appeals shall develop the standar-
dized form required by this section.

§48-11-107. Modification resulting in reduction and overpayment
of support.

In any proceeding filed after the first day of January, two
thousand one, where a petition to modify child support is
granted which results in a reduction of child support owed so
that the obligor has overpaid child support, the court shall grant
a decretal judgment to the obligor for the amount of the
overpayment. The court shall inquire as to whether a support
arrearage was owed by the obligor for support due prior to the
filing of the petition for modification. If an arrearage exists, the
court shall order an offset of the overpayment against the child
support arrearages. If no prior arrearage exists or if the arrear-
age is not sufficient to offset the overpayment, then the court
may direct the bureau for child support enforcement to collect
the overpayment through income withholding, if the person has,
in the court's opinion, sufficient income other than the child support received. The income withholding shall be in all respects as provided for in part 14-401, et seq., except that in no circumstances may the amount withheld exceed thirty-five percent of the disposable earnings for the period, regardless of the length of time that the overpayment has been owed.

ARTICLE 12. MEDICAL SUPPORT.

§48-12-101. Definitions applicable to medical support enforcement.

For the purposes of this article:

(1) "Custodian for the children" means a parent, legal guardian, committee or other third party appointed by court order as custodian of a child or children for whom child support is ordered.

(2) "Obligated parent" means a natural or adoptive parent who is required by agreement or order to pay for insurance coverage and medical care, or some portion thereof, for his or her child.

(3) "Insurance coverage" means coverage for medical, dental, including orthodontic, optical, psychological, psychiatric or other health care service.

(4) "Child" means a child to whom a duty of child support is owed.

(5) "Medical care" means medical, dental, optical, psychological, psychiatric or other health care service for children in need of child support.

(6) "Insurer" means any company, health maintenance organization, self-funded group, multiple employer welfare arrangement, hospital or medical services corporation, trust, group health plan, as defined in 29 U.S.C. § 1167, Section 607(1) of the Employee Retirement Income Security Act of
§48-12-102. Court-ordered medical support.

1 In every action to establish or modify an order which requires the payment of child support, the court shall ascertain the ability of each parent to provide medical care for the children of the parties. In any temporary or final order establishing an award of child support or any temporary or final order modifying a prior order establishing an award of child support, the court shall order one or more of the following:

(1) The court shall order either parent or both parents to provide insurance coverage for a child, if such insurance coverage is available to that parent on a group basis through an employer, multiemployer trust or through an employee’s union. If similar insurance coverage is available to both parents, the court shall order the child to be insured under the insurance coverage which provides more comprehensive benefits. If such insurance coverage is not available at the time of the entry of the order, the order shall require that if such coverage thereafter becomes available to either party, that party shall promptly notify the other party of the availability of insurance coverage for the child.

(2) If the court finds that insurance coverage is not available to either parent on a group basis through an employer, multiemployer trust or employees’ union, or that the group insurer is not accessible to the parties, the court may order either parent or both parents to obtain insurance coverage which is otherwise available at a reasonable cost.

(3) Based upon the respective ability of the parents to pay, the court may order either parent or both parents to be liable for reasonable and necessary medical care for a child. The court shall specify the proportion of the medical care for which each party shall be responsible. If the amount of the award of child support in the order is determined using the child support
guidelines, the court shall order that nonrecurring or subse-
34 quently occurring uninsured medical expenses in excess of two
35 hundred fifty dollars per year per child shall be separately
36 divided between the parties in proportion to their adjusted gross
37 incomes.

37 (4) If insurance coverage is available, the court shall also
determine the amount of the annual deductible on insurance
coverage which is attributable to the children and designate the
proportion of the deductible which each party shall pay.

37 (5) The order shall require the obligor to continue to
provide the bureau for child support enforcement with informa-
tion as to his or her employer's name and address and informa-
tion as to the availability of employer-related insurance
programs providing medical care coverage so long as the child
continues to be eligible to receive support.

§48-12-103. Cost of medical support considered in applying
support guidelines.

1 The cost of insurance coverage shall be considered by the
court in applying the child support guidelines provided for in
article. 13-101, et seq.

§48-12-104. Proof of insurance coverage.

1 Within thirty days after the entry of an order requiring the
obligated parent to provide insurance coverage for the children,
that parent shall submit to the custodian for the child written
proof that the insurance has been obtained or that an application
for insurance has been made. Such proof of insurance coverage
shall consist of, at a minimum:

7 (1) The name of the insurer;
8 (2) The policy number;
9 (3) An insurance card;
(4) The address to which all claims should be mailed;

(5) A description of any restrictions on usage, such as prior approval for hospital admission, and the manner in which to obtain such approval;

(6) A description of all deductibles; and

(7) Five copies of claim forms.

§48-12-105. Notice to insurer or employer.

The custodian for the child shall send the insurer or the obligated parent’s employer the children’s address and notice that the custodian will be submitting claims on behalf of the children. Upon receipt of such notice, or an order for insurance coverage under this section, the obligated parent’s employer, multiemployer trust or union shall, upon the request of the custodian for the child, release information on the coverage for the children, including the name of the insurer.

§48-12-106. Copy of court order for medical support.

A copy of the court order for insurance coverage shall not be provided to the obligated parent’s employer or union or the insurer unless ordered by the court, or unless:

(1) The obligated parent, within thirty days of receiving effective notice of the court order, fails to provide to the custodian for the child written proof that the insurance has been obtained or that an application for insurance has been made;

(2) The custodian for the child serves written notice by mail at the obligated parent’s last known address of intention to enforce the order requiring insurance coverage for the child; and

(3) The obligated parent fails within fifteen days after the mailing of the notice to provide written proof to the custodian for the child that the child has insurance coverage.
§48-12-107. Enrollment of child in insurance plan.

(1) Upon service of the order requiring insurance coverage for the children, the employer, multiemployer trust or union shall enroll the child as a beneficiary in the group insurance plan and withhold any required premium from the obligated parent's income or wages.

(2) If more than one plan is offered by the employer, multiemployer trust or union, the child shall be enrolled in the same plan as the obligated parent at a reasonable cost.

(3) Insurance coverage for the child which is ordered pursuant to the provisions of this section shall not be terminated except as provided in section 12-111.

§48-12-108. Requirements placed on employer.

Where a parent is required by a court or administrative order to provide health coverage, which is available through an employer doing business in this state, the employer is required:

(1) To permit the parent to enroll under family coverage any child who is otherwise eligible for coverage without regard to any enrollment season restrictions;

(2) If the parent is enrolled but fails to make application to obtain coverage of the child, to enroll the child under family coverage upon application by the child's other parent, by the state agency administering the medicaid program or by the bureau for child support enforcement;

(3) Not to disenroll or eliminate coverage of any such child unless the employer is provided satisfactory written evidence that:

(A) The court or administrative order is no longer in effect; or

(B) The child is or will be enrolled in comparable coverage which will take effect no later than the effective date of disenrollment; or
(C) The employer has eliminated family health coverage for all of its employees;

(4) To withhold from the employee’s compensation the employee’s share, if any, of premiums for health coverage and to pay this amount to the insurer: Provided, That the amount so withheld may not exceed the maximum amount permitted to be withheld under 15 U.S.C. § 1673, Section 303(b) of the Consumer Credit Protection Act.

§48-12-109. Processing of claims.

1. The signature of the custodian for the child shall constitute a valid authorization to the insurer for the purposes of processing an insurance payment to the provider of medical care for the child.

2. No insurer, employer or multiemployer trust in this state may refuse to honor a claim for a covered service when the custodian for the child or the obligated parent submits proof of payment for medical bills for the child.

3. The insurer shall reimburse the custodian for the child or the obligated parent who submits copies of medical bills for the child with proof of payment.

4. All insurers in this state shall comply with the provisions of section sixteen, article fifteen, chapter thirty-three of this code and section eleven, article sixteen of said chapter and shall provide insurance coverage for the child of a covered employee notwithstanding the amount of support otherwise ordered by the court and regardless of the fact that the child may not be living in the home of the covered employee.

§48-12-110. Change of employment.

Where an obligated parent changes employment, and the new employer provides the obligated parent’s health care coverage, the bureau for child support enforcement shall transfer to the new employer notice of the obligated parent’s
duty to provide health care coverage. Unless contested by the
obligated parent in writing and in accordance with section 14-
801, the notice shall operate to enroll the child in the new
employer’s health care plan.

§48-12-111. Termination of employment; change in insurance
coverage.

When an order for insurance coverage for a child pursuant
to this section is in effect and the obligated parent’s employ-
ment is terminated, or the insurance coverage for the child is
denied, modified or terminated, the insurer shall in addition to
complying with the requirements of article sixteen-a, chapter
thirty-three of this code, within ten days after the notice of
change in coverage is sent to the covered employee, notify the
custodian for the child and provide an explanation of any
conversion privileges available from the insurer.

§48-12-112. Length of coverage.

A child of an obligated parent shall remain eligible for
insurance coverage until the child is emancipated or until the
insurer under the terms of the applicable insurance policy
terminates said child from coverage, whichever is later in time,
or until further order of the court.

§48-12-113. Failure to comply with order for court-ordered
medical support.

If the obligated parent fails to comply with the order to
provide insurance coverage for the child, the court shall:

(1) Hold the obligated parent in contempt for failing or
refusing to provide the insurance coverage or for failing or
refusing to provide the information required in section 12-104;

(2) Enter an order for a sum certain against the obligated
parent for the cost of medical care for the child and any
insurance premiums paid or provided for the child by the
bureau for child support enforcement during any period in
which the obligated parent failed to provide the required coverage, and directing that such judgment be collected through income withholding;

(3) In the alternative, other enforcement remedies available under part 14-201, et seq., and part 14-401, et seq., of this code, or otherwise available under law, may be used to recover from the obligated parent the cost of medical care or insurance coverage for the child;

(4) In addition to other remedies available under law, the bureau for child support enforcement may initiate an income withholding against the wages, salary or other employment income of, and withhold amounts from state tax refunds to any person who:

(A) Is required by court or administrative order to provide coverage of the cost of health services to a child; and

(B) Has received payment from a third party for the costs of such services but has not used the payments to reimburse either the other parent or guardian of the child or the provider of the services, to the extent necessary to reimburse the state medicaid agency for its costs: Provided, That claims for current and past due child support shall take priority over these claims.

§48-12-114. Effect of failure to maintain court-ordered medical support.

Proof of failure to maintain court ordered insurance coverage for the child constitutes a showing of substantial change in circumstances or increased need and provides a basis for modification of the child support order.

ARTICLE 13. GUIDELINES FOR CHILD SUPPORT AWARDS.

PART 1. GENERAL PROVISIONS.

§48-13-101. Guidelines to ensure uniformity and increase predictability; presumption of correctness.
This article establishes guidelines for child support award amounts so as to ensure greater uniformity by those persons who make child support recommendations and enter child support orders and to increase predictability for parents, children and other persons who are directly affected by child support orders. There is a rebuttable presumption, in any proceeding before a family law master or circuit court judge for the award of child support, that the amount of the award which would result from the application of these guidelines is the correct amount of child support to be awarded.

§48-13-102. Right of children to share in parents’ level of living.

The Legislature recognizes that children have a right to share in their natural parents’ level of living. Expenditures in families are not made in accordance with subsistence level standards, but are made in proportion to household income, and as parental incomes increase or decrease, the actual dollar expenditures for children also increase or decrease correspondingly. In order to ensure that children properly share in their parents’ resources, regardless of family structure, these guidelines are structured so as to provide that after a consideration of respective parental incomes, child support will be related, to the extent practicable, to the standard of living that children would enjoy if they were living in a household with both parents present.

§48-13-103. Financial contributions of both parents to be considered.

The guidelines promulgated under the provisions of this article take into consideration the financial contributions of both parents. The Legislature recognizes that expenditures in households are made in aggregate form and that total family income is pooled to determine the level at which the family can live. These guidelines consider the financial contributions of both parents in relationship to total income, so as to establish and equitably apportion the child support obligation.
PART 2. CALCULATION OF CHILD SUPPORT ORDER.

§48-13-201. Use of both parents’ income in determining child support.

A child support order is determined by dividing the total child support obligation between the parents in proportion to their income. Both parents’ adjusted gross income is used to determine the amount of child support.


In determining the total child support obligation, the judge or master shall:

1. Add to the basic child support obligation any unreimbursed child health care expenses, work-related child care expenses and any other extraordinary expenses agreed to by the parents or ordered by the judge or master, and

2. Subtract any extraordinary credits agreed to by the parents or ordered by the court or master.

§48-13-203. Amount determined by guidelines presumed to be correct.

The amount of support resulting from the application of the guidelines is presumed to be the correct amount, unless the court, in a written finding or a specific finding on the record, disregards the guidelines or adjusts the award as provided for in section 13-702.

§48-13-204. Use of worksheets.

The calculation of the amount awarded by the support order requires the use of one of two worksheets which must be completed for each case. Worksheet A is used for a sole physical custody arrangement. Worksheet B is used for a shared physical custody arrangement.
§48-13-205. Present income as monthly amounts.

To the extent practicable, all information relating to income shall be presented to the court or master based on monthly amounts. For example, when a party is paid wages weekly, the pay should be multiplied by fifty-two and divided by twelve to arrive at a correct monthly amount. If the court or master deems appropriate, such information may be presented in such other forms as the court or master directs.

PART 3. BASIC CHILD SUPPORT ORDER.

§48-13-301. Determining the basic child support obligation.

The basic child support obligation is determined from the following table of monthly basic child support obligations:

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<tr>
<th>West Virginia Monthly Basic Child Support Obligations</th>
<th>(Adjusted for West Virginia’s Income Relative to U.S. Averages)</th>
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§48-13-302. Incomes below the table for determining basic child support obligations.

If combined adjusted gross income is below five hundred fifty dollars per month, which is the lowest amount of income considered in the table of monthly basic child support obligations set forth in subsection (a) of this section, the basic child support obligation shall be set at fifty dollars per month or a discretionary amount determined by the court based on the resources and living expenses of the parents and the number of children due support.

§48-13-303. Incomes above the table for determining basic child support obligations.

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

1. One child — $1,338 + 0.088 \times \text{combined adjusted gross income above fifteen thousand dollars per month};
2. Two children — $1,934 + 0.129 \times \text{combined adjusted gross income above fifteen thousand dollars per month};
3. Three children — $2,276 + 0.153 \times \text{combined adjusted gross income above fifteen thousand dollars per month};
4. Four children — $2,515 + 0.169 \times \text{combined adjusted gross income above fifteen thousand dollars per month};
5. Five children — $2,726 + 0.183 \times \text{combined adjusted gross income above fifteen thousand dollars per month}; and
6. Six children — $2,917 + 0.196 \times \text{combined adjusted gross income above fifteen thousand dollars per month}.

PART 4. SUPPORT IN SOLE CUSTODY CASES.

§48-13-401. Basic child support obligation in sole custody cases.

For sole custody cases, the total child support obligation consists of the basic child support obligation plus the child’s share of any unreimbursed health care expenses, work-related child care expenses and any other extraordinary expenses agreed to by the parents or ordered by the court less any extraordinary credits agreed to by the parents or ordered by the court.

§48-13-402. Division of basic child support obligation in sole custody cases.

In a sole custody case, the total basic child support obligation is divided between the parents in proportion to their income. From this amount is subtracted the obligor’s direct expenditures of any items which were added to the basic child support obligation to arrive at the total child support obligation.
§48-13-403. Worksheet for calculating basic child support obligation in sole custody cases.

1. Child support for sole custody cases shall be calculated 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

<table>
<thead>
<tr>
<th>Children</th>
<th>SSN</th>
<th>Date of Birth</th>
<th>Children</th>
<th>SSN</th>
<th>Date of Birth</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

PART I. CHILD SUPPORT ORDER

<table>
<thead>
<tr>
<th></th>
<th>Mother</th>
<th>Father</th>
<th>Combined</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. MONTHLY GROSS INCOME</td>
<td>$</td>
<td>$</td>
<td></td>
</tr>
<tr>
<td>(Exclusive of overtime compensation)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>a. Minus preexisting child support payment</td>
<td>-</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>b. Minus maintenance paid</td>
<td>-</td>
<td>-</td>
<td></td>
</tr>
<tr>
<td>c. Plus overtime compensation, if not excluded, and not to exceed 50%, pursuant to W. Va. Code §48-1-228(b)(6)</td>
<td>0</td>
<td>+</td>
<td></td>
</tr>
<tr>
<td>2. MONTHLY ADJUSTED GROSS INCOME</td>
<td>$</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>3. PERCENTAGE SHARE OF INCOME (Each parent’s income from line 2 divided by Combined Income)</td>
<td>%</td>
<td>%</td>
<td>100%</td>
</tr>
<tr>
<td>4. BASIC OBLIGATION (Use Line 2 combined to find amount from schedule.)</td>
<td></td>
<td></td>
<td>$</td>
</tr>
</tbody>
</table>
### ADJUSTMENTS
(Expenses paid directly by each parent)

<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>a. Work-Related Child Care Costs Adjusted for Federal Tax Credit (0.75 x actual work-related child care costs.)</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>b. Extraordinary Medical Expenses (Uninsured only) and Children’s Portion of Health Insurance Premium Costs.</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>c. Extraordinary Expenses (Agreed to by parents or by order of the court.)</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>d. Minus Extraordinary Adjustments (Agreed to by parents or by order of court.)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>e. Total Adjustments (For each column, add 5a, 5b, and 5c. Subtract Line 5d. Add the parent’s totals together for Combined amount.)</td>
<td>$</td>
<td>$</td>
</tr>
</tbody>
</table>

### TOTAL SUPPORT OBLIGATION
(Add line 4 and line 5e Combined.)

### EACH PARENT’S SHARE OF THE TOTAL CHILD SUPPORT OBLIGATION
(Line 3 x line 6 for each parent.)

### NONCUSTODIAL PARENT ADJUSTMENT
(Enter noncustodial parent’s line 5e.)

### RECOMMENDED CHILD SUPPORT ORDER
(Subtract line 8 from line 7 for the noncustodial parent only. Leave custodial parent column blank.)

### PART II. ABILITY TO PAY CALCULATION
(Complete if the noncustodial parent’s adjusted monthly gross income is below $1,550.)

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>10. Spendable Income (0.80 x line 2 for noncustodial parent only.)</td>
<td></td>
</tr>
<tr>
<td>11. Self Support Reserve</td>
<td>$500</td>
</tr>
<tr>
<td>12. Income Available for Support (Line 10 - line 11. If less than $50, then $50)</td>
<td></td>
</tr>
<tr>
<td>13. Adjusted Child Support Order (Lessor of Line 9 and Line 12.)</td>
<td></td>
</tr>
</tbody>
</table>
§48-13-404. Additional calculation to be made in sole custody cases.

In cases where the noncustodial parent's adjusted gross income is below one thousand five hundred fifty dollars per month, an additional calculation in Worksheet A, Part II shall be made. This additional calculation sets the child support order at whichever is lower:

1. Child support at the amount determined in Part I; or
2. The difference between eighty percent of the noncustodial parent's adjusted gross income and five hundred dollars, or fifty dollars, whichever is more.

PART 5. SUPPORT IN SHARED PHYSICAL CUSTODY OR SPLIT PHYSICAL CUSTODY CASES.


Child support for cases with shared physical custody is calculated using Worksheet B. The following method is used only for shared physical custody: That is, in cases where each parent has the child for more than one hundred twenty-seven days per year (thirty-five percent).

1. The basic child support obligation is multiplied by 1.5 to arrive at a shared custody basic child support obligation. The shared custody basic child support obligation is apportioned to each parent according to his or her income. In turn, a child support obligation is computed for each parent by multiplying that parent's portion of the shared custody child support obligation by the percentage of time the child spends with the other parent. The respective basic child support obligations are then offset, with the parent owing more basic child support paying the difference between the two amounts. The transfer for
the basic obligation for the parent owing less basic child support shall be set at zero dollars.

(2) Adjustments for each parent's additional direct expenses on the child are made by apportioning the sum of the parent's direct expenditures on the child's share of any unreimbursed child health care expenses, work-related child care expenses and any other extraordinary expenses agreed to by the parents or ordered by the court or master less any extraordinary credits agreed to by the parents or ordered by the court or master to each parent according to their income share. In turn each parent's net share of additional direct expenses is determined by subtracting the parent's actual direct expenses on the child's share of any unreimbursed child health care expenses, work-related child care expenses and any other extraordinary expenses agreed to by the parents or by the court or master less any extraordinary credits agreed to by the parents or ordered by the court or master from their share. The parent with a positive net share of additional direct expenses owes the other parent the amount of his or her net share of additional direct expenses. The parent with zero or a negative net share of additional direct expenses owes zero dollars for additional direct expenses.

(3) The final amount of the child support order is determined by summing what each parent owes for the basic support obligation and additional direct expenses as defined in subdivisions (1) and (2) of this section. The respective sums are then offset, with the parent owing more paying the other parent the difference between the two amounts.


Child support for shared physical custody cases shall be 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

<table>
<thead>
<tr>
<th>Children</th>
<th>SSN</th>
<th>Date of Birth</th>
<th>Children</th>
<th>SSN</th>
<th>Date of Birth</th>
</tr>
</thead>
</table>

PART I. BASIC OBLIGATION

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 §48-1-228(b)(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)

8. Percentage with Each Parent
   (Line 7 divided by 365)
   % % 100%
<table>
<thead>
<tr>
<th></th>
<th>Amount Retained</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>9</td>
<td>(Line 6 x line 8 for each parent)</td>
<td></td>
</tr>
<tr>
<td>10</td>
<td>Each Parent’s Obligation</td>
<td>$</td>
</tr>
<tr>
<td></td>
<td>(Line 6 - line 9)</td>
<td>$</td>
</tr>
</tbody>
</table>

**PART III. ADJUSTMENTS FOR ADDITIONAL EXPENSES**
(Expenses paid directly by each parent.)

| 12a | Work-Related Child Care Costs Adjusted for Federal Tax Credit (0.75 x actual work-related child care costs.) | $ |
| 12b | Extraordinary Medical Expenses (Uninsured only) and Children’s Portion of Health Insurance Premium Costs. | $ |
| 12c | Extraordinary Additional Expenses (Agreed to by parents or by order of the court or master.) | $ |
| 12d | Minus Extraordinary Adjustments (Agreed to by parents or by order of the court or master.) | $ |
| 12e | Total Adjustments (For each column, add 11a, 11b, and 11c. Subtract line 11d. Add the parent’s totals together for Combined amount.) | $ |
| 13 | Each Parent’s Share of Additional Expenses (Line 3 x line 12e Combined.) | $ |
| 14 | Each Parent’s Net Share of Additional Direct Expenses (Each parent’s line 13 - line 12e. If negative number, enter $0) | $ |
| 15 | AMOUNT TRANSFERRED FOR ADDITIONAL EXPENSES (Subtract smaller amount on line 14 from larger amount on line 14. Parent with larger amount on line 14 owes the other parent the difference. Enter $0 for other parent. | $ |

**PART IV. RECOMMENDED CHILD SUPPORT ORDER**
§48-13-503. Split physical custody adjustment.

1 In cases with split physical custody, the court or master shall use Worksheet A (Sole-Parenting) as set forth in section 13-403 to calculate a separate child support order for each parent based on the number of children in that parent’s custody. Instead of transferring the calculated orders between parents, the two orders are offset. The difference of the two orders is the child support order to be paid by the parent with the higher sole-parenting order.

PART 6. ADJUSTMENT OF SHARES OF SUPPORT OBLIGATIONS.


1 (a) The amount of the federal tax credit for child care expenses that can be realized by the custodial parent shall be approximated by deducting twenty-five percent from work-related child care costs, except that no such deduction shall be made for custodial parents with monthly gross incomes below the following amounts:

7 (1) One child—$1,150;
8 (2) Two children—$1,550;
9 (3) Three children—$1,750;
(4) Four children—$1,950;
(5) Five children—$2,150; and
(6) Six or more children—$2,350.

(b) Work-related child care costs net of any adjustment for
the child care tax credit shall be added to the basic child support
obligation and shall be divided between the parents in propor-
tion to their adjusted gross income.


(a) A child support order shall provide for the child’s
current and future medical needs by providing relief in accor-
dance with the provisions of article 12-101, et seq., of this
chapter.

(b) The payment of a premium to provide health insurance
coverage on behalf of the children subject to the order is added
to the basic child support obligation and divided between the
parents in proportion to their adjusted gross income. The
amount added to the basic child support obligation is the actual
amount of the total insurance premium that is attributable to the
number of children due support. If this amount is not available
or cannot be verified, the total cost of the premium should be
divided by the total number of persons covered by the policy.
The cost per person derived from this calculation is multiplied
by the number of children who are the subject of the order and
who are covered under the policy.

(c) After the total child support obligation is calculated and
divided between the parents in proportion to their adjusted
gross income, the amount of the health insurance premium
added to the basic child support obligation is deducted from the
support obligor’s share of the total child support obligation if
the support obligor is actually paying the premium.
(d) Extraordinary medical expenses shall be added to the basic child support obligation and shall be divided between the parents in proportion to their adjusted gross income.

§48-13-603. Adjustment for obligor's social security benefits sent directly to the child; receipt by child of supplemental security income.

(a) If a proportion of the obligor's social security benefit is paid directly to the custodian of his or her dependents who are the subject of the child support order, the following adjustment shall be made. The total amount of the social security benefit which includes the amounts paid to the obligor and the obligee shall be counted as gross income to the obligor. In turn, the child support order will be calculated as described in sections 13-401 through 13-404. To arrive at the final child support amount, however, the amount of the social security benefits sent directly to the child's household will be subtracted from the child support order. If the child support order amount results in a negative amount it shall be set at zero.

(b) If a child is a recipient of disability payments as supplemental security income for aged, blind and disabled, under the provisions of 42 U.S.C. § 1382, et seq., and if support furnished by an obligor would be considered unearned income that renders the child ineligible for disability payments or medical benefits, no child support order shall be entered for that child. If a support order is entered for the child's siblings or other persons in the household, the child shall be excluded from the calculation of support, and the amount of support for the child shall be set at zero.

PART 7. APPLICATION OF CHILD SUPPORT GUIDELINES.

§48-13-701. Rebuttable presumption that child support award is correct.

The guidelines in child support awards apply as a rebuttable presumption to all child support orders established or modified
in West Virginia. The guidelines must be applied to all actions in which child support is being determined including temporary orders, interstate (URESA and UIFSA), domestic violence, foster care, divorce, nondissolution, public assistance, nonpublic assistance and support decrees arising despite nonmarriage of the parties. The guidelines must be used by the court or master as the basis for reviewing adequacy of child support levels in uncontested cases as well as contested hearings.


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

(b) These guidelines do not take into account the economic impact of the following factors that may be possible reasons for deviation:

1. Special needs of the child or support obligor, including, but not limited to, the special needs of a minor or adult child who is physically or mentally disabled;

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

3. Families with more than six children;

4. Long distance visitation costs;

5. The child resides with third party;
(6) The needs of another child or children to whom the obligor owes a duty of support;

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

(8) Whether the total of spousal support, child support and child care costs subtracted from an obligor’s income reduces that income to less than the federal poverty level and conversely, whether deviation from child support guidelines would reduce the income of the child’s household to less than the federal poverty level.

PART 8. MISCELLANEOUS PROVISIONS RELATING TO CHILD SUPPORT ORDERS.

§48-13-801. Tax exemption for child due support.

Unless otherwise agreed to by the parties, the court shall allocate the right to claim dependent children for income tax purposes to the custodial parent except in cases of shared custody. In shared custody cases, these rights shall be allocated between the parties in proportion to their adjusted gross incomes for child support calculations. In a situation where allocation would be of no tax benefit to a party, the court or master need make no allocation to that party. However, the tax exemptions for the minor child or children should be granted to the noncustodial parent only if the total of the custodial parent’s income and child support is greater when the exemption is awarded to the noncustodial parent.

§48-13-802. Investment of child support.

(a) A circuit judge has the discretion, in appropriate cases, to direct that a portion of child support be placed in trust and invested for future educational or other needs of the child. The family law master may recommend and the circuit judge may order such investment when all of the child’s day-to-day needs are being met such that, with due consideration of the age of the child, the child is living as well as his or her parents.
(b) If the amount of child support ordered per child exceeds the sum of two thousand dollars per month, the court is required to make a finding, in writing, as to whether investments shall be made as provided for in subsection (a) of this section.

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

ARTICLE 14. REMEDIES FOR THE ENFORCEMENT OF SUPPORT OBLIGATIONS.

PART 1. ACTION TO OBTAIN AN ORDER FOR SUPPORT OF MINOR CHILD.

§48-14-101. When action may be brought for child support order.

An action may be brought in circuit court to obtain an order for the support of a minor child when:

(1) The child has a parent and child relationship with an obligor;

(2) The obligor is not meeting an obligation to support the child;

(3) An enforceable order for the support of the child by the obligor has not been entered by a court of competent jurisdiction; and
There is no pending action for divorce, separate maintenance or annulment in which the obligation of support owing from the obligor to the child is at issue.

§48-14-102. Who may bring action for child support order.

An action may be brought under the provisions of section 14-101 by:

1. A custodial parent of a child, when the divorce order or other order which granted custody did not make provision for the support of the child by the obligor;
2. A primary caretaker of a child;
3. A guardian of the property of a child or the committee for a child; or
4. The bureau for child support enforcement, on behalf of the state, when the department of health and human resources is providing assistance on behalf of the child in the form of temporary assistance to needy families, and any right to support has been assigned to the department or in any other case wherein a party has applied for child support enforcement services from the bureau for child support enforcement.

§48-14-103. Venue for action for child support order.

An action under the provisions of this section may be brought in the county where the obligee, the obligor or the child resides.

§48-14-104. Oblige may seek spousal support in addition to child support.

When an action for child support is brought under the provisions of this section by an obligee against his or her spouse, such obligee may also seek spousal support from the obligor, unless such support has been previously waived by agreement or otherwise.
§48-14-105. Mandatory provision for wage withholding.

Every order of support heretofore or hereafter entered or modified under the provisions of this section shall include a provision for the income withholding in accordance with the provisions of 12-101, et seq., and 14-401, et seq.

PART 2. LIENS AGAINST PERSONAL PROPERTY FOR OVERDUE SUPPORT.

§48-14-201. Arrearages stand by operation of law as judgment against support obligor.

When an obligor is in arrears in the payment of support which is required to be paid by the terms of an order for support of a child, an obligee or the bureau for child support enforcement may file an abstract of the order giving rise to the support obligation and an “affidavit of accrued support,” setting forth the particulars of such arrearage and requesting a writ of execution, suggestion or suggestee execution. The filing of the abstract and affidavit shall give rise, by operation of law, to a lien against personal property of an obligor who resides within this state or who owns property within this state for overdue support.

§48-14-202. Registration of foreign order.

If the duty of support is based upon an order from another jurisdiction, the obligee shall first register the order in accordance with the provisions of part 16-601, et seq., of this chapter: Provided, That nothing in this subsection shall prevent the bureau for child support enforcement from enforcing foreign orders for support without registration of the order in accordance with the provisions of part 16-501, et seq., of this chapter.

§48-14-203. Affidavit of accrued support.

(a) The affidavit of accrued support may be filed with the clerk of the circuit court in the county in which the obligee or
the obligor resides, or where the obligor’s source of income is located.

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

(c) The affidavit shall:

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

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

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

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

(5) State the name and address of the obligor’s source of income, if known.

§48-14-204. Execution and notice.

(a) Upon receipt of the affidavit, the clerk shall issue a writ of execution, suggestion or suggestee execution, and shall mail a copy of the affidavit and a notice of the filing of the affidavit to the obligor, at his last known address. If the bureau for child support enforcement is not acting on behalf of the obligee in filing the affidavit, the clerk shall forward a copy of the affidavit and the notice of the filing to the bureau for child support enforcement.

(b) The notice provided for in subsection (a) of this section must inform the obligor that if he or she desires to contest the affidavit on the grounds that the amount claimed to be in arrears is incorrect or that a writ of execution, suggestion or suggestee
execution is not proper because of mistakes of fact, he or she
must, within fourteen days of the date of the notice: (1) Inform
the bureau for child support enforcement in writing of the
reasons why the affidavit is contested and request a meeting
with the bureau for child support enforcement; or (2) where a
court of this state has jurisdiction over the parties, obtain a date
for a hearing before the circuit court or the family law master
and mail written notice of such hearing to the obligee and to the
bureau for child support enforcement on a form prescribed by
the administrative office of the supreme court of appeals and
made available through the office of the clerk of the circuit
court.

(c) Upon being informed by an obligor that he or she
desires to contest the affidavit, the bureau for child support
enforcement shall inform the circuit court of such fact, and the
circuit court shall require the obligor to give security, post a
bond, or give some other guarantee to secure payment of
overdue support.

§48-14-205. Circuit clerk to provide form affidavits.

The clerk of the circuit court shall make available form
affidavits for use under the provisions of this article. Such form
affidavits shall be provided to the clerk by the bureau for child
support enforcement. The notice of the filing of an affidavit
shall be in a form prescribed by the bureau for child support
enforcement.

§48-14-206. Priority over other legal process.

Writs of execution, suggestions or suggestee executions
issued pursuant to the provisions of this article shall have
priority over any other legal process under the laws of this state
gainst the same income, except for withholding from income
of amounts payable as support in accordance with the provi-
sions of section 14-401 of this chapter, and shall be effective
notwithstanding any exemption that might otherwise be
applicable to the same income.
§48-14-207. Amount to be withheld from income.
1 Notwithstanding any other provision of this code to the
2 contrary, the amount to be withheld from the disposable
3 earnings of an obligor pursuant to a suggestee execution in
4 accordance with the provisions of this article shall be the same
5 amount which could properly be withheld in the case of a
6 withholding order under the provisions of 74-401, et seq.

§48-14-208. Filing of false affidavit constitutes false swearing.
1 A person who files a false affidavit is guilty of false
2 swearing and, upon conviction thereof, shall be punished as
3 provided by law for such offense.

§48-14-209. Application to support orders of another state.
1 The provisions of this article apply to support orders issued
2 by a court of competent jurisdiction of any other state.

§48-14-210. Application to income withholding.
1 The provisions of this article do not apply to income
2 withholding, as provided in section 14-401 of this chapter.

§48-14-211. Release of lien.
1 Upon satisfaction of the overdue support obligation, the
2 obligee shall issue a release to the obligor and file a copy
3 thereof with the clerk of the county commission in the county
4 in which the lien arose pursuant to this section. The bureau for
5 child support enforcement shall issue a release in the same
6 manner and with the same effect as liens taken by the tax
7 commissioner pursuant to section twelve, article ten, chapter
8 eleven of this code.

PART 3. LIENS AGAINST REAL PROPERTY
FOR OVERDUE SUPPORT.

§48-14-301. Liens against real property by operation of law.
An order for support entered by a court of competent jurisdiction will give rise, by operation of law, to a lien against real property of an obligor who resides or owns property within this state for overdue support upon the filing by the obligee, or, when appropriate, the bureau for child support enforcement, an abstract of the order giving rise to the support obligation and an “Affidavit of Accrued Support” setting forth the particulars of the arrearage.

§48-14-302. Affidavit of accrued support.

The affidavit and abstract shall be filed with the clerk of the county commission in which the real property is located. The affidavit shall:

1. Identify the obligee and obligor by name and address, and shall list the obligor’s social security number or numbers, if known;
2. Name the court which entered the support order and set forth the date of such entry;
3. Allege that the support obligor is at least thirty days in arrears in the payment of child support;
4. State the total amount of accrued support which has not been paid by the obligor; and
5. List the date or dates when support payments should have been paid but were not, and the amount of each such delinquent payment.

§48-14-303. Registration of foreign order.

If the duty of support is based upon a foreign order the obligee shall first register the order in accordance with the provisions of article 16 of this chapter: Provided, That nothing in this subsection shall prevent the bureau for child support enforcement from enforcing foreign orders for support without
§48-14-304. Full faith and credit to liens arising in another state.

This state will accord full faith and credit to liens described in section 301 of this article arising in another state, when the out-of-state agency, party, or other entity seeking to enforce such a lien complies with the procedural rules relating to recording or serving liens that arise within the other state.

§48-14-305. Release of lien.

Upon satisfaction of the overdue support obligation, the obligee shall issue a release to the obligor and file a copy thereof with the clerk of the county commission in the county in which the lien arose pursuant to this section. The bureau for child support enforcement shall issue a release in the same manner and with the same effect as liens taken by the tax commissioner pursuant to section twelve, article ten, chapter eleven of this code.

§48-14-306. Filing of false affidavit constitutes false swearing.

Any person who files a false affidavit shall be guilty of false swearing and, upon conviction thereof, shall be punished as provided by law for such offense.

§48-14-307. Application to support orders of another state.

The provisions of this part 14-301, et seq., shall apply to support orders issued by a court of competent jurisdiction of any other state.

§48-14-308. Enforcement by the bureau for child support enforcement of lien on real property.

The bureau for child support enforcement may enforce a lien upon real property pursuant to the provisions of article three, chapter thirty-eight of this code.
PART 4. WITHHOLDING FROM INCOME OF AMOUNTS PAYABLE AS SUPPORT.

§48-14-401. Support orders to provide for withholding from income.

(a) Every order entered or modified under the provisions of this article that requires the payment of child support or spousal support must include a provision for automatic withholding from income of the obligor, in order to facilitate income withholding as a means of collecting support.

(b) Every support order heretofore or hereafter entered by a court of competent jurisdiction is considered to provide for an order of income withholding, notwithstanding the fact that the support order does not in fact provide for an order of withholding. Income withholding may be instituted under this part 4 for any arrearage without the necessity of additional judicial or legal action.

§48-14-402. Commencement of withholding from income without further court action.

(a) Except as otherwise provided in section 14-403, a support order as described in section 14-401 must contain or must be deemed to contain language requiring automatic income withholding for both current support and for any arrearages to commence without further court action on the date the support order is entered.

(b) The supreme court of appeals shall make available to the circuit courts standard language to be included in all such orders, so as to conform such orders to the applicable requirements of state and federal law regarding the withholding from income of amounts payable as support.

§48-14-403. Exception to requirement for automatic withholding from income.

If one of the parties demonstrates, and the court finds, that there is good cause not to require immediate income withhold-
ing, or in any case where there is filed with the court a written
agreement between the parties which provides for an alternative
arrangement, the support order may not provide for income
withholding to begin immediately.

(1) The order must provide that income withholding will
begin immediately upon the occurrence of any of the following:

(A) When the payments which the obligor has failed to
make under the order are at least equal to the support payable
for one month, if the order requires support to be paid in
monthly installments;

(B) When the payments which the obligor has failed to
make under the order are at least equal to the support payable
for four weeks, if the order requires support to be paid in
weekly or bi-weekly installments;

(C) When the obligor requests the bureau for child support
enforcement to commence income withholding; or

(D) When the obligee requests that such withholding begin,
if the request is approved by the court in accordance with
procedures and standards established by rules promulgated by
the commission pursuant to this section and to chapter
twenty-nine-a of this code.

(2) The court shall consider the best interests of the child in
determining whether "good cause" exists under this section.
The court may also consider the obligor's payment record in
determining whether "good cause" has been demonstrated.

(3) When immediate income withholding is not required
due to the findings required by this section, the bureau for child
support enforcement shall mail a notice to the obligor pursuant
to section 14-405 of this article upon the occurrence of any of
the conditions provided for in subdivision (1) of this section.
§48-14-404. Enforcement of withholding by bureau for child support enforcement.

The withholding from an obligor’s income of amounts payable as spousal or child support shall be enforced by the bureau for child support enforcement in accordance with the provisions of this part 4.

§48-14-405. Information required in notice to obligor.

When income withholding is required, the bureau for child support enforcement shall send by first class mail or electronic means to the obligor notice that withholding has commenced. The notice shall inform the obligor of the following:

1. The amount owed;
2. That a withholding from the obligor’s income of amounts payable as support has commenced;
3. That the amount withheld will be equal to the amount required under the terms of the current support order, plus amounts for any outstanding arrearage;
4. The definition of “gross income” as defined in section 1-228 of this chapter;
5. That the withholding will apply to the obligor’s present source of income, and to any future source of income and, therefore, no other notice of withholding will be sent to the obligor. A copy of any new or modified withholding notice will be sent to the obligor at approximately the same time the original is sent to the source of income;
6. That any action by the obligor to purposefully minimize his or her income will result in the enforcement of support being based upon potential and not just actual earnings;
22 (7) That payment of the arrearage after the date of the
23 notice is not a bar to such withholding;

24 (8) That the obligor may request a review of the withhold-
25 ing by written request to the bureau for child support enforce-
26 ment when the obligor has information showing an error in the
27 current or overdue support amount or a mistake as to the
28 identity of the obligor;

29 (9) That a mistake of fact exists only when there is an error
30 in the amount of current or overdue support claimed in the
31 notice, or there is a mistake as to the identity of the obligor;

32 (10) That matters such as lack of visitation, inappropriateness
33 of the support award, or changed financial circumstances
34 of the obligee or the obligor will not be considered at any
35 hearing held pursuant to the withholding, but may be raised by
36 the filing of a separate petition in circuit court;

37 (11) That if the obligor desires to contest the withholding,
38 the obligor may petition the circuit court for a resolution; and

39 (12) That while the withholding is being contested through
40 the court, the income withholding may not be stayed, but may
41 be modified.

§48-14-406. Notice to source of income; withholding in compliance with order.

1 (a) Withholding shall occur and the notice to withhold shall
2 be sent to the source of income when the support order provides
3 for immediate income withholding, or if immediate income
4 withholding is not so provided, when the support payments are
5 in arrears in the amount specified in section 403 of this article.

6 (b) The source of income shall withhold so much of the
7 obligor's income as is necessary to comply with the order
8 authorizing such withholding, up to the maximum amount
permitted under applicable law for both current support and for any arrearages which are due. Such withholding, unless otherwise terminated under the provisions of this part 4 of this article, shall apply to any subsequent source of income or any subsequent period of time during which income is received by the obligor.

(c) In addition to any amounts payable as support withheld from the obligor's income, the source of income may deduct a fee, not to exceed one dollar, for administrative costs incurred by the source of income, for each withholding.

§48-14-407. Contents of notice to source of income.

(a) The source of income of any obligor who is subject to withholding, upon being given notice of withholding, shall withhold from such obligor's income the amount specified by the notice and pay such amount to the bureau for child support enforcement for distribution. The notice given to the source of income shall contain only such information as may be necessary for the source of income to comply with the withholding order and no source of income may require additional information or documentation. Such notice to the source of income shall include, at a minimum, the following:

(1) The amount to be withheld from the obligor's disposable earnings, and a statement that the amount to be withheld for support and other purposes, including the fee specified under subdivision (3) of this subsection, may not be in excess of the maximum amounts permitted under Section 303(b) of the federal Consumer Credit Protection Act or limitations imposed under the provisions of this code;

(2) That the source of income shall send the amount to be withheld from the obligor's income to the bureau for child support enforcement, along with such identifying information as may be required by the bureau, the same day that the obligor is paid;
(3) That, in addition to the amount withheld under the provisions of subdivision (1) of this subsection, the source of income may deduct a fee, not to exceed one dollar, for administrative costs incurred by the source of income, for each withholding;

(4) That withholding is binding on the source of income until further notice by the bureau for child support enforcement or until the source of income notifies the bureau for child support enforcement of a termination of the obligor’s employment in accordance with the provisions of subsection (l) of this section;

(5) That the source of income is subject to a fine for discharging an obligor from employment, refusing to employ, or taking disciplinary action against any obligor because of the withholding;

(6) That when the source of income fails to withhold income in accordance with the provisions of the notice, the source of income is liable for the accumulated amount the source of income should have withheld from the obligor’s income;

(7) That the withholding under the provisions of this part 4 shall have priority over any other legal process under the laws of this state against the same income, and shall be effective despite any exemption that might otherwise be applicable to the same income;

(8) That when an employer has more than one employee who is an obligor who is subject to wage withholding from income under the provisions of this code, the employer may combine all withheld payments to the bureau for child support enforcement when the employer properly identifies each payment with the information listed in this part 4. A source of income is liable to an obligee, including the state of West Virginia or the department of health and human resources where appropriate, for any amount which the source of income
§48-14-408. Determination of amounts to be withheld.

1 Notwithstanding any other provision of this code to the
2 contrary which provides for a limitation upon the amount which
3 may be withheld from earnings through legal process, the
4 amount of an obligor's aggregate disposable earnings for any
5 given workweek which may be withheld as support payments
6 is to be determined in accordance with the provisions of this
7 subsection, as follows:

8 (1) After ascertaining the status of the payment record of
9 the obligor under the terms of the support order, the payment
10 record shall be examined to determine whether any arrearage is
11 due for amounts which should have been paid prior to a
12 twelve-week period which ends with the workweek for which
13 withholding is sought to be enforced.

14 (2) Prior to the first day of January, two thousand one,
15 when none of the withholding is for amounts which came due
16 prior to such twelve-week period, then:
(A) When the obligor is supporting another spouse or dependent child other than the spouse or child for whom the proposed withholding is being sought, the amount withheld may not exceed fifty percent of the obligor’s disposable earnings for that week; and

(B) When the obligor is not supporting another spouse or dependent child as described in paragraph (A) of this subdivision, the amount withheld may not exceed sixty percent of the obligor’s disposable earnings for that week.

(3) Prior to the first day of January, two thousand one, when a part of the withholding is for amounts which came due prior to such twelve-week period, then:

(A) Where the obligor is supporting another spouse or dependent child other than the spouse or child for whom the proposed withholding is being sought, the amount withheld may not exceed fifty-five percent of the obligor’s disposable earnings for that week; and

(B) Where the obligor is not supporting another spouse or dependent child as described in paragraph (A) of this subdivision, the amount withheld may not exceed sixty-five percent of the obligor’s disposable earnings for that week.

(4) Beginning the first day of January, two thousand one, when none of the withholding is for amounts which came due prior to such twelve-week period, then:

(A) When the obligor is supporting another spouse or dependent child other than the spouse or child for whom the proposed withholding is being sought, the amount withheld may not exceed forty percent of the obligor’s disposable earnings for that week; and

(B) When the obligor is not supporting another spouse or dependent child as described in paragraph (A) of this subdivision, the amount withheld may not exceed fifty percent of the obligor’s disposable earnings for that week.
(5) Beginning the first day of January, two thousand one, when a part of the withholding is for amounts which came due prior to such twelve-week period, then:

(A) When the obligor is supporting another spouse or dependent child other than the spouse or child for whom the proposed withholding is being sought, the amount withheld may not exceed forty-five percent of the obligor’s disposable earnings for that week; and

(B) Where the obligor is not supporting another spouse or dependent child as described in paragraph (A) of this subdivision, the amount withheld may not exceed fifty-five percent of the obligor’s disposable earnings for that week.

(6) In addition to the percentage limitations set forth in subdivisions (2) and (3) of this subsection, it shall be a further limitation that when the current month’s obligation plus arrearages are being withheld from salaries or wages in no case shall the total amounts withheld for the current month’s obligation plus arrearage exceed the amounts withheld for the current obligation by an amount greater than twenty-five percent of the current monthly support obligation.

(7) The provisions of this subsection shall apply directly to the withholding of disposable earnings of an obligor regardless of whether the obligor is paid on a weekly, biweekly, monthly or other basis.

(8) The bureau for child support enforcement has the authority to prorate the current support obligation in accordance with the pay cycle of the source of income. This prorated current support obligation shall be known as the “adjusted support obligation.” The current support obligation or the adjusted support obligation is the amount, if unpaid, on which interest will be charged.

(9) When an obligor acts so as to purposefully minimize his or her income and to thereby circumvent the provisions of this part 4 which provide for withholding from income of amounts
payable as support, the amount to be withheld as support
payments may be based upon the obligor’s potential earnings
rather than his or her actual earnings, and such obligor may not
rely upon the percentage limitations set forth in this subsection
which limit the amount to be withheld from disposable earn-
ings.

§48-14-409. Time for implementing withholding.

Every source of income who receives a notice of withold-
ing under the provisions of this section shall implement
withholding no later than the first pay period or first date for the
payment of income which occurs after fourteen days following
the date the notice to the source of income was mailed.

§48-14-410. Sending amounts withheld to bureau; notice.

After implementation in accordance with the provisions of
section 14-409, a source of income shall send the amount to be
withheld from the obligor’s income to the bureau for child
support enforcement and shall notify the bureau for child
support enforcement of the date of withholding, the same date
that the obligor is paid.

§48-14-411. Time withholding is to stay in effect.

Withholding of amounts payable as support under the
provisions of this part 4 of this article is binding on the source
of income until further notice by the bureau for child support
enforcement or until the source of income notifies the bureau
for child support enforcement of a termination of the obligor’s
employment in accordance with the provisions of section 14-
412.

§48-14-412. Notice of termination of employment or receipt of
income.

A source of income who employs or otherwise pays income
to an obligor who is subject to withholding under the provisions
of this part 4 shall notify the bureau for child support enforce-
§48-14-413. Combining withheld amounts.

When an employer has more than one employee who is an obligor who is subject to wage withholding from income for amounts payable as support, the employer may combine all withheld payments to the bureau for child support enforcement when the employer properly identifies each payment with the information listed in this part 4. A source of income is liable to an obligee, including the state of West Virginia or the department of health and human resources where appropriate, for any amount which the source of income fails to identify in accordance with this part 4 and is therefore not received by the obligee.

§48-14-414. Sending amounts withheld to division; notice.

A source of income is liable to an obligee, including the state of West Virginia or the department of health and human resources where appropriate, for any amount which the source of income fails to withhold from income due an obligor following receipt by such source of income of proper notice under section 14-407: Provided, That a source of income shall not be required to vary the normal pay and disbursement cycles in order to comply with the provisions of this section.

§48-14-415. Misdemeanor offense of concealing payment of income to obligor; penalty.

Any source of income who knowingly and willfully conceals the fact that the source of income is paying income to an obligor, with the intent to avoid withholding from the obligor’s income of amounts payable as support, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one hundred dollars.
§48-14-416. Request to source of income for information regarding payment of income.

When the bureau for child support enforcement makes a written request to a source of income to provide information as to whether the source of income has paid income to a specific obligor, within the preceding sixty-day period, the source of income shall, within fourteen days thereafter, respond to such request, itemizing all such income, if any, paid to the obligor during such sixty-day period. A source of income shall not be liable, civilly or criminally, for providing such information in good faith.

§48-14-417. Priority of support collection over other legal process.

Support collection under the provisions of this section shall have priority over any other legal process under the laws of this state against the same income, and shall be effective despite any exemption that might otherwise be applicable to the same income.

§48-14-418. Misdemeanor offense for source of income’s action against an obligor; penalty.

Any source of income who discharges from employment, refuses to employ, or takes disciplinary action against any obligor subject to income withholding required by this part because of the existence of such withholding and the obligations or additional obligations which it imposes on the source of income, shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than five hundred dollars nor more than one thousand dollars.

§48-14-419. Proposal of legislative rules by bureau for child support enforcement.

The West Virginia support enforcement commission shall promulgate legislative rules pursuant to chapter twenty-nine-a
of this code further defining the duties of the bureau for child
support enforcement and the employer in wage withholding.

PART 5. ENFORCEMENT OF SUPPORT ORDERS
BY CONTEMPT PROCEEDINGS.


In addition to or in lieu of the other remedies provided by
this article for the enforcement of support orders, the bureau for
child support enforcement may commence a civil or criminal
contempt proceeding in accordance with the provisions of
section 1-305 against an obligor who is alleged to have willfully
failed or refused to comply with the order of a court of compe-
tent jurisdiction requiring the payment of support. Such
proceeding shall be instituted by filing with the circuit court a
petition for an order to show cause why the obligor should not
be held in contempt.

§48-14-502. Willful failure or refusal to comply with order to pay
support.

If the court finds that the obligor willfully failed or refused
to comply with an order requiring the payment of support, the
court shall find the obligor in contempt and may do one or more
of the following:

(1) Require additional terms and conditions consistent with
the court's support order.

(2) After notice to both parties and a hearing, if requested
by a party, on any proposed modification of the order, modify
the order in the same manner and under the same requirements
as an order requiring the payment of support may be modified
under the provisions of part 5-701, et seq. A modification
sought by an obligor, if otherwise justified, shall not be denied
solely because the obligor is found to be in contempt.

(3) Order that all accrued support and interest thereon be
paid under such terms and conditions as the court, in its
discretion, may deem proper.
(4) Order the contemnor to pay support in accordance with a plan approved by the bureau for child support enforcement or to participate in such work activities as the court deems appropriate.

(5) If appropriate under the provisions of section 1-305:

(A) Commit the contemnor to the county or regional jail; or

(B) Commit the contemnor to the county or regional jail with the privilege of leaving the jail, during such hours as the court determines and under such supervision as the court considers necessary, for the purpose of allowing the contemnor to go to and return from his or her place of employment.

§48-14-503. Limitation on length of commitment.

(a) A commitment under subdivision (5) of section 14-502 shall not exceed forty-five days for the first adjudication of contempt or ninety days for any subsequent adjudication of contempt.

(b) An obligor committed under subdivision (5), of section 14-502 shall be released if the court has reasonable cause to believe that the obligor will comply with the court's orders.

§48-14-504. Violation of work release conditions.

If an obligor is committed to jail under the provisions of paragraph (B), subdivision (5), of section 14-502 and violates the conditions of the court, the court may commit the person to the county or regional jail without the privilege provided under said paragraph (B) for the balance of the period of commitment imposed by the court.

§48-14-505. Misdemeanor offense of escape from custody; penalty.

If a person is committed to jail under the provisions of paragraph (B), subdivision (5), of section 14-502 and willfully fails to return to the place of confinement within the time
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prescribed, such person shall be considered to have escaped
from custody and shall be guilty of a misdemeanor, punishable
by imprisonment for not more than one year.

PART 6. HIGH-VOLUME AUTOMATED
ADMINISTRATIVE ENFORCEMENT
OF CHILD SUPPORT IN INTERSTATE CASES.

§48-14-601. Definitions.

As used in this chapter:

(1) “High-volume automated administrative enforcement”
in interstate cases means at the request of another state, the
identification by a state, through automated data matches with
financial institutions and other entities where assets may be
found, of assets owned by persons who owe child support in
other states, and the seizure of such assets by the state, through
 levy or other appropriate processes.

(2) “Assisting state” means a state which matches the
requesting state’s delinquent obligors against the databases of
financial institutions and other entities within its own state
boundaries where assets may be found, and, if appropriate,
seizes assets on behalf of the requesting state.

(3) “Requesting state” means a state transmitting a request
for administrative enforcement to another state.

(4) “State” means a state of the United States, or the
District of Columbia, Puerto Rico, the United States Virgin
Islands, or any territory or insular possession subject to the
jurisdiction of the United States. The term “state” shall also
include Indian tribes and a foreign jurisdiction that has enacted
a law or established procedures for issuance and enforcement
of support which are substantially similar to the procedures
under this chapter or under the uniform reciprocal enforcement
of support act, the revised uniform reciprocal enforcement of
support act, or the uniform interstate family support act.
§48-14-602. Use of automated administrative enforcement.

The bureau for child support enforcement shall use automated administrative enforcement to the same extent as used for intrastate cases in response to a request made by another state to enforce support orders, and shall promptly report the results of such enforcement procedures to the requesting state.

§48-14-603. Enforcing support orders through automated administrative enforcement.

(a) The bureau for child support enforcement may, by electronic or other means, transmit to, or receive from, another state a request for assistance in enforcing support orders through automated administrative enforcement. Such request shall include:

(1) Information as will enable the assisting state to compare the information about the cases to the information in the databases of the state;

(2) All supporting documentation necessary under the laws of this state to support an attachment of the asset or assets, should such assets be located; and

(3) Said transmittal shall constitute a certification by the requesting state:

(A) Of the amount of past-due support owed; and
(B) That the requesting state has complied with all procedural due process requirements applicable to each case.

(b) A requesting state may transmit to an assisting state either:

(1) A request to locate and seize assets; or

(2) A request to seize an asset already identified by the requesting state.
PART 7. BONDS OR SECURITY TO SECURE PAYMENT OF OVERDUE SUPPORT.

§48-14-701. Posting of bonds or giving security to guarantee payment of overdue support.

(a) An obligor with a pattern of overdue support may be required by order of the family law master or the court to post bond, give security or some other guarantee to secure payment of overdue support. The guarantee may include an order requiring that stocks, bonds or other assets of the obligor be held in escrow by the court until the obligor pays the support.

(b) No less than fifteen days before such an order may be entered the childrens' advocate shall cause the mailing of a notice by first class mail to the obligor informing the obligor of the impending action, his or her right to contest it, and setting forth a date, time and place for a meeting with the childrens' advocate and the date, time and place of a hearing before the family law master if the impending action is contested.

PART 8. INCREASE IN PAYMENTS TO SATISFY ARREARAGE.

§48-14-801. When monthly payments may be increased to satisfy overdue support.

(a) For the purpose of securing overdue support, the bureau for child support enforcement has the authority to increase the monthly support payments by as much as one hundred dollars per month to satisfy the arrearage where the obligor:

(1) Owes an arrearage of not less than eight thousand dollars; or

(2) Has not paid support for twelve consecutive months.

(b) An increase in monthly support under this section will be in addition to any amounts withheld from income pursuant to part 4 of this article.

(c) This increase in monthly support may be enforced through the withholding process.
§48-14-802. Notice of increase in monthly payments to satisfy overdue support.

1 Notice of the increase shall be sent to the obligor at the time such increase is implemented. If the obligor disagrees with the increase in payments, he or she may file, within thirty days of the date of the notice, a motion with the circuit court in which the case is situated for a determination of whether there should be an increase in monthly payments and the amount of that increase, if any.

§48-14-803. Application to support orders of courts of competent jurisdiction.

1 The provisions of sections 14-801 and 14-802 apply to support orders issued by a court of competent jurisdiction of this or any other state.

PART 9. PROCEDURES BEFORE THE BUREAU FOR CHILD SUPPORT ENFORCEMENT.

§48-14-901. Procedure when person contests action proposed to be taken against him.

(a) In any case arising under the provisions of this article wherein a notice is served upon a person requiring him or her to notify the bureau for child support enforcement if the person is contesting action proposed to be taken against him:

(1) If the person so notified does not submit written reasons for contesting the action within the time set to contest the proposed action, and does not request a meeting with the bureau for child support enforcement, then the bureau for child support enforcement shall proceed with the proposed action; or

(2) If the person so notified does submit written reasons for contesting the action within the time set to contest the proposed action, and requests a meeting with the bureau for child support enforcement, then the bureau for child support enforcement
shall schedule a meeting at the earliest practicable time with the person and attempt to resolve the matter informally.

(b) If the matter cannot be resolved informally, the bureau for child support enforcement shall make a determination as to whether the proposed action is proper and should actually occur.

(c) The determination of the bureau for child support enforcement shall be made within forty-five days from the date of the notice which first apprised the person of the proposed action. Upon making the determination, the bureau for child support enforcement shall inform the parties as to whether or not the proposed action will occur, and, if it is to occur, of the date on which it is to begin, and in the case of withholding from income, shall furnish the obligor with the information contained in any notice given to an employer under the provisions of section 14-407 with respect to such withholding.

PART 10. OFFENSES.

§48-14-1001. Misrepresentation of delinquent support payments; penalty.

If any person knowingly and willfully makes any false, fictitious or fraudulent statement or representation, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, thus misrepresenting the amount of child support actually due and owing, and if such statement, representation, writing or document causes bureau for support enforcement attorney in reliance thereon to institute an action or proceeding or otherwise commence to enforce a support obligation under this article or under section 1-305, such person is guilty of false swearing and, upon conviction thereof, shall be punished as provided by law for such offense.
ARTICLE 15. ENFORCEMENT OF SUPPORT ORDER THROUGH ACTION AGAINST LICENSE.

PART 1. DEFINITIONS.


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


"Action against a license" means action taken by the bureau for child support enforcement to cause the denial, nonrenewal, suspension or restriction of a license applied for or held by: (A) A support obligor owing overdue support; or (B) a person who has failed to comply with subpoenas or warrants relating to paternity or child support proceedings.


"Application" means a request to have a license issued, a request for a renewal of an existing license or a request to change the status of an existing license.

§48-15-104. License defined.

"License" means a license, permit, certificate of registration, registration, credential, stamp or other indicia that evidences a personal privilege entitling a person to do an act that he or she would otherwise not be entitled to do, or evidences a special privilege to pursue a profession, trade, occupation, business or vocation.

PART 2. ACTION AGAINST LICENSE.

§48-15-201. Licenses subject to action.
The following licenses are subject to an action against a license as provided for in this article:

1. A permit or license issued under chapter seventeen-b of this code, authorizing a person to drive a motor vehicle;

2. A commercial driver's license, issued under chapter seventeen-e of this code, authorizing a person to drive a class of commercial vehicle;

3. A permit, license or stamp issued under article two or two-b, chapter twenty of this code, regulating a person's activities for wildlife management purposes, authorizing a person to serve as an outfitter or guide, or authorizing a person to hunt or fish;

4. A license or registration issued under chapter thirty of this code, authorizing a person to practice or engage in a profession or occupation;

5. A license issued under article twelve, chapter forty-seven of this code, authorizing a person to transact business as a real estate broker or real estate salesperson;

6. A license or certification issued under article fourteen, chapter thirty-seven of this code, authorizing a person to transact business as a real estate appraiser;

7. A license issued under article twelve, chapter thirty-three of this code, authorizing a person to transact insurance business as an agent, broker or solicitor;

8. A registration made under article two, chapter thirty-two of this code, authorizing a person to transact securities business as a broker-dealer, agent or investment advisor;

9. A license issued under article twenty-two, chapter twenty-nine of this code, authorizing a person to transact business as a lottery sales agent;
(10) A license issued under articles thirty-two or thirty-four, chapter sixteen of this code, authorizing persons to pursue a trade or vocation in asbestos abatement or radon mitigation;

(11) A license issued under article eleven, chapter twenty-one of this code, authorizing a person to act as a contractor;

(12) A license issued under article two-c, chapter nineteen of this code, authorizing a person to act as an auctioneer; and

(13) A license, permit or certificate issued under chapter nineteen of this code, authorizing a person to sell, market or distribute agricultural products or livestock.


The bureau for child support enforcement shall send a written notice of an action against a license to a person who:

(1) Owes overdue child support, if the child support arrearage equals or exceeds the amount of child support payable for six months;

(2) Has failed for a period of six months to pay medical support ordered under article 12-101, et seq., of this code; or

(3) Has failed, after appropriate notice, to comply with subpoenas or warrants relating to paternity or child support proceedings.

§48-15-203. Exhaustion of other statutory enforcement methods.

In the case of overdue child support or noncompliance with a medical support order, notice of an action against a license shall be served only if other statutory enforcement methods to collect the support arrearage have been exhausted or are not available.

§48-15-204. Service of notice of action against a license.

The bureau shall send a notice of action against a license by regular mail and by certified mail, return receipt requested,
to the person’s last-known address or place of business or employment. Simultaneous certified and regular mailing of the written notice shall constitute effective service unless the United States Postal Service returns the mail to the bureau for child support enforcement within the thirty-day response period marked "moved, unable to forward," "addressee not known," "no such number/street," "insufficient address," or "forwarding order expired." If the certified mail is returned for any other reason without the return of the regular mail, the regular mail service shall constitute effective service. If the mail is addressed to the person at his or her place of business or employment, with postal instructions to deliver to addressee only, service will be deemed effective only if the signature on the return receipt appears to be that of the person. Acceptance of the certified mail notice signed by the person, the person’s attorney, or a competent member of the person’s household above the age of sixteen shall be deemed effective service.

§48-15-205. Form of notice of action against a license.

The notice shall be substantially in the following form:
**NOTICE OF ACTION AGAINST LICENSE**

<table>
<thead>
<tr>
<th>Name and address:</th>
<th>Date:</th>
<th>Case No:</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Social Security No:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Circuit Court of County, West Virginia</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Section 1.**

- The Bureau for Child Support Enforcement has determined that you have failed to comply with an order to pay child support, and that the amount you owe equals six months' child support or more. The amount you owe is calculated to be $___________ as of the _____ day of ________, ________.

- The Bureau for Child Support Enforcement has determined that you have failed to comply with a medical support order for a period of six months. The amount you owe is calculated to be $___________ as of the _____ day of ________, ________.

- The Bureau for Child Support Enforcement has determined that you have failed to comply with a medical support order requiring you to obtain health insurance for your child or children.

- The Bureau for Child Support Enforcement has determined that you have failed to comply with a subpoena or warrant relating to a paternity or child support proceeding.
Section 2.

Under West Virginia law, your failure to comply as described in Section 1 may result in an action against certain licenses issued to you by the State of West Virginia. Action may be taken against a driver's license, a recreational license such as a hunting and fishing license, and a professional or occupational license necessary for you to work. An application for a license may be denied. A renewal of a license may be refused. A license which you currently hold may be suspended or restricted in its use.

The Bureau for Child Support Enforcement has determined that you are a current license holder, have applied for, or are likely to apply for the following license or licenses:

To avoid an action against your licenses, check which of the following actions you will take:

☐ I want to pay in full the overdue amount I owe as child support. I am enclosing a check or money order in the amount of $.

☐ I want to pay in full the amount I owe as medical support. I am enclosing a check or money order in the amount of $.

☐ I am requesting a meeting with a representative of the Bureau for Child Support Enforcement to arrange a payment plan that will allow me to make my current payments as they become due and to pay on the arrearage I owe or to otherwise bring me into compliance with current support orders.

☐ I am requesting a hearing before the family law master or circuit judge to contest an action against my licenses. Please serve me with any petition filed, and provide me with notice of the time and place of the hearing.

Signed ✖ Date: __________
Section 3.

You must check the appropriate box or boxes in Section 2, sign your name and mail this form to the Bureau for Child Support Enforcement before the ___ day of ___, ___. Otherwise, the Bureau for Child Support Enforcement may begin an action against your licenses in the Circuit Court without further notice to you. Mail this form to the following address:


The notice shall advise the person that further failure to comply may result in an action against licenses held by the person, and that any pending application for a license may be denied, renewal of a license may be refused, or an existing license may be suspended or restricted unless, within thirty days of the date of the notice, the person pays the full amount of the child support arrearage or the medical support arrearage, makes a request for a meeting with a representative of the bureau for child support enforcement to arrange a payment plan or to otherwise arrange compliance with existing support orders, or makes a request for a court hearing to the bureau for child support enforcement. An action against a license shall be terminated if the person pays the full amount of the child support arrearage or medical support arrearage, or provides proof that health insurance for the child has been obtained as required by a medical support order or enters into a written plan with the bureau for child support enforcement for the payment of current payments and payment on the arrearage.

§48-15-207. Failure to act in response to notice; entry of order.

If the person fails to take one of the actions described in section 15-206 of this section within thirty days of the date of
the notice and there is proof that service on the person was
effective, the bureau for child support enforcement shall file a
certification with the circuit court setting forth the person’s
noncompliance with the support order or failure to comply with
a subpoena or warrant and the person’s failure to respond to the
written notice of the potential action against his or her license.
If the circuit court is satisfied that service of the notice on the
person was effective as set forth in this section, it shall without
need for further due process or hearing, enter an order suspend-
ing or restricting any licenses held by the person. Upon the
entry of the order, the bureau for child support enforcement
shall forward a copy to the person and to any appropriate
agencies responsible for the issuance of a license.


If the person requests a hearing, the bureau for child
support enforcement shall file a petition for a judicial hearing
before the family law master. The hearing shall occur within
forty-two days of the receipt of the person’s request. If, prior to
the hearing, the person pays the full amount of the child support
arrearage or medical support arrearage or provides health
insurance as ordered, the action against a license shall be
terminated. No action against a license shall be initiated if the
bureau for child support enforcement has received notice that
the person has pending a motion to modify the child support
order, if that motion was filed prior to the date that the notice of
the action against the license was sent by the bureau for child
support enforcement. The court shall consider the bureau for
child support enforcement’s petition to deny, refuse to renew,
suspend or restrict a license in accordance with section 15-209.

§48-15-209. Hearing on denial, nonrenewal, suspension or restric-
tion of license.

(a) The court shall order a licensing authority to deny,
refuse to renew, suspend or restrict a license if it finds that:

(1) All appropriate enforcement methods have been
exhausted or are not available;
(2) The person is the holder of a license or has an applica-
tion pending for a license;

(3) The requisite amount of child support or medical
support arrearage exists or health insurance for the child has not
been provided as ordered, or the person has failed to comply
with a subpoena or warrant relating to a paternity or child
support proceeding;

(4) No motion to modify the child support order, filed prior
to the date that the notice was sent by the bureau for child
support enforcement, is pending before the court; and

(5) There is no equitable reason, such as involuntary
unemployment, disability, or compliance with a court-ordered
plan for the periodic payment of the child support arrearage
amount, for the person’s noncompliance with the child support
order.

(b) If the court is satisfied that the conditions described in
subsection (a) of this section exist, it shall first consider
suspending or restricting a driver’s license prior to professional
license. If the person fails to appear at the hearing after being
properly served with notice, the court shall order the suspension
of all licenses held by the person.

(c) If the court finds that a license suspension will result in
a significant hardship to the person, to the person’s legal
dependents under eighteen years of age living in the person’s
household, to the person’s employees, or to persons, businesses
or entities to whom the person provides goods or services, the
court may allow the person to pay a percentage of the past-due
child support amount as an initial payment, and establish a
payment schedule to satisfy the remainder of the arrearage
within one year, and require that the person comply with any
current child support obligation. If the person agrees to this
arrangement, no suspension or restriction of any licenses shall
be ordered. Compliance with the payment agreement shall be
monitored by the bureau for child support enforcement.

(d) If a person has good cause for not complying with the
payment agreement within the time permitted, the person shall
immediately file a motion with the court and the bureau for child support enforcement requesting an extension of the payment plan. The court may extend the payment plan if it is satisfied that the person has made a good faith effort to comply with the plan and is unable to satisfy the full amount of past-due support within the time permitted due to circumstances beyond the person’s control. If the person fails to comply with the court-ordered payment schedule, the court shall, upon receipt of a certification of non-compliance from the bureau for child support enforcement, and without further hearing, order the immediate suspension or restriction of all licenses held by the person.

PART 3. ENFORCEMENT OF ORDER BY LICENSING AUTHORITY.

§48-15-301. Copy of order provided to licensing authority.

(a) The bureau for child support enforcement shall provide the licensing authority with a copy of the order requiring the denial, nonrenewal, suspension or restriction of a license.

(b) Upon receipt of an order requiring the suspension or restriction of a license for nonpayment of child support, the licensing authority shall immediately notify the applicant or licensee of the effective date of the denial, nonrenewal, suspension or limitation, which shall be twenty days after the date of the notice, direct any licensee to refrain from engaging in the activity associated with the license, surrender any license as required by law, and inform the applicant or licensee that the license shall not be approved, renewed or reinstated until the court or bureau for child support enforcement certifies compliance with court orders for the payment of current child support and arrearage.

(c) The bureau for child support enforcement, in association with the affected licensing authorities, may develop electronic or magnetic tape data transfers to notify licensing authorities of denials, nonrenewals, suspensions and reinstatements.

(d) No liability shall be imposed on a licensing authority for suspending or restricting a license if the action is in response to a court order issued in accordance with this article.
(e) Licensing authorities shall not have jurisdiction to modify, remand, reverse, vacate or stay a court order to deny, not renew, suspend or restrict a license for nonpayment of child support.

§48-15-302. Denial, nonrenewal, suspension or restriction continues until further order or issuance of certificate of compliance.

The denial, nonrenewal, suspension or restriction of a license ordered by the court shall continue until the bureau for child support enforcement files with the licensing authority either a court order restoring the license or a bureau for child support enforcement certification attesting to compliance with court orders for the payment of current child support and arrearage.

§48-15-303. License applicant to certify information regarding child support obligation.

(a) Each licensing authority shall require license applicants to certify on the license application form, under penalty of false swearing, that the applicant does not have a child support obligation, the applicant does have such an obligation but any arrearage amount does not equal or exceed the amount of child support payable for six months, or the applicant is not the subject of a child-support related subpoena or warrant. The application form shall state that making a false statement may subject the license holder to disciplinary action including, but not limited to, immediate revocation or suspension of the license.

(b) A license shall not be granted to any person who applies for a license if there is an arrearage equal to or exceeding the amount of child support payable for six months or if it is determined that the applicant has failed to comply with a warrant or subpoena in a paternity or child support proceeding.

§48-15-304. Procedure where license to practice law may be subject to denial, suspension or restriction.
If a person who has been admitted to the practice of law in this state by order of the supreme court of appeals is determined to be in default under a support order or has failed to comply with a subpoena or warrant in a paternity or child support proceeding, such that his or her other licenses are subject to suspension or restriction under this article, the bureau for child support enforcement may send a notice listing the name and social security number or other identification number to the lawyer disciplinary board established by the supreme court of appeals. The Legislature hereby requests the supreme court of appeals to promptly adopt rules pursuant to its constitutional authority to govern the practice of law that would include as attorney misconduct for which an attorney may be disciplined, situations in which a person licensed to practice law in West Virginia has been determined to be in default under a support order or has failed to comply with a subpoena or warrant in a paternity or child support proceeding.

PART 4. MISCELLANEOUS PROVISIONS.


The provisions of this article apply to all orders issued before or after the enactment of this article. All child support, medical support and health insurance provisions in existence on or before the effective date of this article shall be included in determining whether a case is eligible for enforcement. This article applies to all child support obligations ordered by any state, territory or district of the United States that are being enforced by the bureau for child support enforcement, that are payable directly to the obligee, or have been registered in this state in accordance with the uniform interstate family support act.

§48-15-402. Effect of determination as to authority of federal government to require denials, suspensions or restrictions of licenses.

The provisions of this article have been enacted to conform to the mandates of the federal “Personal Responsibility and Work Opportunity Reconciliation Act of 1996”. If a court of
competent jurisdiction should determine, or if it is otherwise determined that the federal government lacked authority to mandate the license denials, nonrenewals, suspensions or restrictions contemplated by this article, then the provisions of this article shall be null and void and of no force and effect.

ARTICLE 16. UNIFORM INTERSTATE FAMILY SUPPORT ACT.

PART 1. GENERAL PROVISIONS.


As used in this article:

(1) "Child" means an individual, whether over or under the age of majority, who is or is alleged to be owed a duty of support by the individual's parent or who is or is alleged to be the beneficiary of a support order directed to the parent.

(2) "Child support order" means a support order for a child, including a child who has attained the age of majority under the law of the issuing state.

(3) "Duty of support" means an obligation imposed or imposable by law to provide support for a child, spouse, or former spouse, including an unsatisfied obligation to provide support.

(4) "Home state" means the state in which a child lived with a parent or a person acting as parent for at least six consecutive months immediately preceding the time of filing of a petition or comparable pleading for support and, if a child is less than six months old, the state in which the child lived from birth with any of them. A period of temporary absence of any of them is counted as part of the six-month or other period.

(5) "Income" includes earnings or other periodic entitlements to money from any source and any other property subject to withholding for support under the law of this state.

(6) "Income-withholding order" means an order or other legal process directed to an obligor's source of income as
defined by section 1-240 of this chapter to withhold support from the income of the obligor.

(7) "Initiating state" means a state from which a proceeding is forwarded or in which a proceeding is filed for forwarding to a responding state under this article or a law or procedure substantially similar to this article, the uniform reciprocal enforcement of support act, or the revised uniform reciprocal enforcement of support act.

(8) "Initiating tribunal" means the authorized tribunal in an initiating state.

(9) "Issuing state" means the state in which a tribunal issues a support order or renders a judgment determining parentage.

(10) "Issuing tribunal" means the tribunal that issues a support order or renders a judgment determining parentage.

(11) “Law” includes decisional and statutory law and rules having the force of law.

(12) “Obligee” means: (i) An individual to whom a duty of support is or is alleged to be owed or in whose favor a support order has been issued or a judgment determining parentage has been rendered; (ii) a state or political subdivision to which the rights under a duty of support or support order have been assigned or which has independent claims based on financial assistance provided to an individual obligee; or (iii) an individual seeking a judgment determining parentage of the individual’s child.

(13) “Obligor” means an individual, or the estate of a decedent: (i) Who owes or is alleged to owe a duty of support; (ii) who is alleged but has not been adjudicated to be a parent of a child; or (iii) who is liable under a support order.

(14) “Register” means to record a support order or judgment determining parentage in the registry of foreign support orders.

(15) “Registering tribunal” means a tribunal in which a support order is registered.
(16) "Responding state" means a state in which a proceeding is filed or to which a proceeding is forwarded for filing from an initiating state under this article or a law or procedure substantially similar to this article, the uniform reciprocal enforcement of support act, or the revised uniform reciprocal enforcement of support act.

(17) "Responding tribunal" means the authorized tribunal in a responding state.

(18) "Spousal-support order" means a support order for a spouse or former spouse of the obligor.

(19) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States. The term includes: (i) An Indian tribe; (ii) a foreign jurisdiction that has enacted a law or established procedures for issuance and enforcement of support orders which are substantially similar to the procedures under this article, the uniform reciprocal enforcement of support act, or the revised uniform reciprocal of enforcement of support act.

(20) "Support enforcement agency" means a public official or agency authorized to seek: (i) Enforcement of support orders or laws relating to the duty of support; (ii) establishment or modification of child support; (iii) determination of parentage; or (iv) to locate obligors or their assets.

(21) "Support order" means a judgment, decree or order, whether temporary, final or subject to modification, for the benefit of a child, a spouse or a former spouse, which provides for monetary support, health care, arrearages, or reimbursement and may include related costs and fees, interest, income withholding, attorney's fees and other relief.

(22) "Tribunal" means a court, administrative agency, family law master or quasi-judicial entity authorized to establish, enforce or modify support orders or to determine parentage.
§48-16-102. Tribunals of state.

1 The circuit court and the family law masters are the tribunals of this state.

§48-16-103. Remedies cumulative.

1 Remedies provided by this article are cumulative and do not affect the availability of remedies under other law.

PART 2. JURISDICTION.

§48-16-201. Bases for jurisdiction over nonresident.

1 In a proceeding to establish, enforce, or modify a support order or to determine parentage, a tribunal of this state may exercise personal jurisdiction over a nonresident individual or the individual's guardian or conservator if: (1) The individual is personally served with notice within this state; (2) the individual submits to the jurisdiction of this state by consent, by entering a general appearance, or by filing a responsive document having the effect of waiving any contest to personal jurisdiction; (3) the individual resided with the child in this state; (4) the individual resided in this state and provided prenatal expenses or support for the child; (5) the child resides in this state as a result of the acts or directives of the individual; (6) the individual engaged in sexual intercourse in this state and the child may have been conceived by that act of intercourse; (7) the individual has committed a tortious act by failing to support a child resident in this state; or (8) there is any other basis consistent with the constitutions of this state and the United States for the exercise of personal jurisdiction.


1 A tribunal of this state exercising personal jurisdiction over a nonresident under section 16-201 may apply section 16-316 (Special Rules of Evidence and Procedure) to receive evidence from another state, and section 16-318 (Assistance with Discovery) to obtain discovery through a tribunal of another state. In all other respects, parts 3 through 7 do not apply and
the tribunal shall apply the procedural and substantive law of this state, including the rules on choice of law other than those established by this article.

§48-16-203. Initiating and responding tribunal of state.

Under this article, a tribunal of this state may serve as an initiating tribunal to forward proceedings to another state and as a responding tribunal for proceedings initiated in another state.

§48-16-204. Simultaneous proceedings in another state.

(a) A tribunal of this state may exercise jurisdiction to establish a support order if the petition or comparable pleading is filed after a petition or comparable pleading is filed in another state only if: (1) The petition or comparable pleading in this state is filed before the expiration of the time allowed in the other state for filing a responsive pleading challenging the exercise of jurisdiction by the other state; (2) the contesting party timely challenges the exercise of jurisdiction in the other state; and (3) if relevant, this state is the home state of the child.

(b) A tribunal of this state may not exercise jurisdiction to establish a support order if the petition or comparable pleading is filed before a petition or comparable pleading is filed in another state if: (1) The petition or comparable pleading in the other state is filed before the expiration of the time allowed in this state for filing a responsive pleading challenging the exercise of jurisdiction by this state; (2) the contesting party timely challenges the exercise of jurisdiction in this state; and (3) if relevant, the other state is the home state of the child.

§48-16-205. Continuing, exclusive jurisdiction.

(a) A tribunal of this state issuing a support order consistent with the law of this state has continuing, exclusive jurisdiction over a child support order: (1) As long as this state remains the residence of the obligor, the individual obligee, or the child for whose benefit the support order is issued; or (2) until all of the parties who are individuals have filed written consents with the
tribunal of this state for a tribunal of another state to modify the
order and assume continuing, exclusive jurisdiction.

(b) A tribunal of this state issuing a child support order
consistent with the law of this state may not exercise its
continuing jurisdiction to modify the order if the order has been
modified by a tribunal of another state pursuant to this article
or a law substantially similar to this article.

(c) If a child support order of this state is modified by a
tribunal of another state pursuant to this article or a law
substantially similar to this article, a tribunal of this state loses
its continuing, exclusive jurisdiction with regard to prospective
enforcement of the order issued in this state, and may only: (1)
Enforce the order that was modified as to amounts accruing
before the modification; (2) enforce nonmodifiable aspects of
that order; and (3) provide other appropriate relief for violations
of that order which occurred before the effective date of the
modification.

(d) A tribunal of this state shall recognize the continuing,
exclusive jurisdiction of a tribunal of another state which has
issued a child support order pursuant to a law substantially
similar to this article.

(e) A temporary support order issued ex parte or pending
resolution of a jurisdictional conflict does not create continuing,
exclusive jurisdiction in the issuing tribunal.

(f) A tribunal of this state issuing a support order consistent
with the law of this state has continuing, exclusive jurisdiction
over a spousal support order throughout the existence of the
support obligation. A tribunal of this state may not modify a
spousal support order issued by a tribunal of another state
having continuing, exclusive jurisdiction over that order under
the law of that state.

§48-16-206. Enforcement and modification of support order by
tribunal having continuing jurisdiction.

(a) A tribunal of this state may serve as an initiating
tribunal to request a tribunal of another state to enforce or
modify a support order issued in that state.
(b) A tribunal of this state having continuing, exclusive jurisdiction over a support order may act as a responding tribunal to enforce or modify the order. If a party subject to the continuing, exclusive jurisdiction of the tribunal no longer resides in the issuing state, in subsequent proceedings the tribunal may apply section 16-316 (Special Rules of Evidence and Procedure) to receive evidence from another state and section 16-318 (Assistance with Discovery) to obtain discovery through a tribunal of another state.

(c) A tribunal of this state which lacks continuing, exclusive jurisdiction over a spousal support order may not serve as a responding tribunal to modify a spousal support order of another state.

§48-16-207. Recognition of controlling child support order.

(a) If a proceeding is brought under this article and only one tribunal has issued a child support order, the order of that tribunal is controlling and must be recognized.

(b) If a proceeding is brought under this article, and two or more child support orders have been issued by tribunals of this state or another state with regard to the same obligor and child, a tribunal of this state shall apply the following rules in determining which order to recognize for purposes of continuing, exclusive jurisdiction:

(1) If only one of the tribunals would have continuing, exclusive jurisdiction under this article, the order of that tribunal is controlling and must be recognized.

(2) If more than one of the tribunals would have continuing, exclusive jurisdiction under this article, an order issued by a tribunal in the current home state of the child must be recognized, but if an order has not been issued in the current home state of the child, the order most recently issued is controlling and must be recognized.

(3) If none of the tribunals would have continuing, exclusive jurisdiction under this article, the tribunal of this state
having jurisdiction over the parties must issue a child support order, which is controlling and must be recognized.

(c) If two or more child support orders have been issued for the same obligor and child and if the obligor or the individual obligee resides in this state, a party may request a tribunal of this state to determine which order controls and must be recognized under subsection (b). The request must be accompanied by a certified copy of every support order in effect. Every party whose rights may be affected by a determination of the controlling order must be given notice of the request for that determination.

(d) The tribunal that issued the order that must be recognized as controlling under subsection (a), (b) or (c) is the tribunal that has continuing, exclusive jurisdiction in accordance with section 16-205.

(e) A tribunal of this state which determines by order the identity of the controlling child support order under subsection (b) (1) or (b) (2) or which issued a new controlling child support order under subsection (b) (3) shall include in that order the basis upon which the tribunal made its determination.

(f) Within thirty days after issuance of the order determining the identity of the controlling order, the party obtaining that order shall file a certified copy of it with each tribunal that had issued or registered an earlier order of child support. Failure of the party obtaining the order to file a certified copy as required subjects that party to appropriate sanctions by a tribunal in which the issue of failure to file arises, but that failure has no effect on the validity or enforceability of the controlling order.

§48-16-208. Multiple child support orders for two or more obligees.

In responding to multiple registrations or petitions for enforcement of two or more child support orders in effect at the same time with regard to the same obligor and different individual obligees, at least one of which was issued by a tribunal of another state, a tribunal of this state shall enforce
those orders in the same manner as if the multiple orders had
been issued by a tribunal of this state.

§48-16-209. Credit for payments.

Amounts collected and credited for a particular period
pursuant to a support order issued by a tribunal of another state
must be credited against the amounts accruing or accrued for
the same period under a support order issued by the tribunal of
this state.

PART 3. CIVIL PROCEDURES OF GENERAL APPLICATION.

§48-16-301. Proceedings under article.

(a) Except as otherwise provided in this article, this part 3
applies to all proceedings under this article.

(b) This article provides for the following proceedings: (1)
Establishment of an order for spousal support or child support;
(2) enforcement of a support order and income-withholding
order of another state without registration; (3) registration of an
order for spousal support or child support of another state for
enforcement; (4) modification of an order for child support or
spousal support issued by a tribunal of this state; (5) registration
of an order for child support of another state for modification;
(6) determination of parentage; and (7) assertion of jurisdiction
over nonresidents.

(c) An individual petitioner or a support enforcement
agency may commence a proceeding authorized under this
article by filing a petition in an initiating tribunal for forward-
ing to a responding tribunal or by filing a petition or a compara-
ble pleading directly in a tribunal of another state which has or
can obtain personal jurisdiction over the respondent.


A minor parent, or a guardian or other legal representative
of a minor parent, may maintain a proceeding on behalf of or
for the benefit of the minor's child.
§48-16-303. Application of law of state.

1 Except as otherwise provided by this article, a responding tribunal of this state: (1) Shall apply the procedural and substantive law, including the rules on choice of law, generally applicable to similar proceedings originating in this state and may exercise all powers and provide all remedies available in those proceedings; and (2) shall determine the duty of support and the amount payable in accordance with the law and support guidelines of this state.

§48-16-304. Duties of initiating tribunal.

(a) Upon the filing of a petition authorized by this article, an initiating tribunal of this state shall forward three copies of the petition and its accompanying documents: (1) To the responding tribunal or appropriate support enforcement agency in the responding state; or (2) if the identity of the responding tribunal is unknown, to the state information agency of the responding state with a request that they be forwarded to the appropriate tribunal and that receipt be acknowledged.

(b) If a responding state has not enacted this article or a law or procedure substantially similar to this article, a tribunal of this state may issue a certificate or other document and make findings required by the law of the responding state. If the responding state is a foreign jurisdiction, the tribunal may specify the amount of support sought and provide other documents necessary to satisfy the requirements of the responding state.

§48-16-305. Duties and powers of responding tribunal.

(a) When a responding tribunal of this state receives a petition or comparable pleading from an initiating tribunal or directly pursuant to subsection (c), section 16-301 (proceedings under this article), the clerk of the court shall cause the petition or pleading to be filed and notify the petitioner where and when it was filed.

(b) A responding tribunal of this state, to the extent otherwise authorized by law, may do one or more of the
following: (1) Issue or enforce a support order, modify a child support order or render a judgment to determine parentage; (2) order an obligor to comply with a support order, specifying the amount and the manner of compliance; (3) order income withholding; (4) determine the amount of any arrearages and specify a method of payment; (5) enforce orders by civil or criminal contempt, or both; (6) set aside property for satisfaction of the support order; (7) place liens and order execution on the obligor's property; (8) order an obligor to keep the tribunal informed of the obligor's current residential address, telephone number, employer, address of employment and telephone number at the place of employment; (9) issue a capias for an obligor who has failed after proper notice to appear at a hearing ordered by the tribunal and enter the capias in any local and state computer systems for criminal warrants; (10) order the obligor to seek appropriate employment by specified methods; (11) award reasonable attorney's fees and other fees and costs; and (12) grant any other available remedy.

(c) A responding tribunal of this state shall include in a support order issued under this article, or in the documents accompanying the order, the calculations on which the support order is based.

(d) A responding tribunal of this state may not condition the payment of a support order issued under this article upon compliance by a party with provisions for visitation.

(e) If a responding tribunal of this state issues an order under this article, the tribunal shall send a copy of the order to the petitioner and the respondent and to the initiating tribunal, if any.

§48-16-306. Inappropriate tribunal.

If a petition or comparable pleading is received by an inappropriate tribunal of this state, the clerk of the court shall forward the pleading and accompanying documents to an appropriate tribunal in this state or another state and notify the petitioner where and when the pleading was sent.
§48-16-307. Duties of support enforcement agency.

(a) A support enforcement agency of this state, upon request, shall provide services to a petitioner in a proceeding under this article.

(b) A support enforcement agency that is providing services to the petitioner as appropriate shall:

1. Take all steps necessary to enable an appropriate tribunal in this state or another state to obtain jurisdiction over the respondent;
2. Request an appropriate tribunal to set a date, time, and place for a hearing;
3. Make a reasonable effort to obtain all relevant information, including information as to income and property of the parties;
4. Within two days, exclusive of Saturdays, Sundays and legal holidays, after receipt of a written notice from an initiating, responding, or registering tribunal, send a copy of the notice to the petitioner;
5. Within two days, exclusive of Saturdays, Sundays and legal holidays, after receipt of a written communication from the respondent or the respondent’s attorney, send a copy of the communication to the petitioner; and
6. Notify the petitioner if jurisdiction over the respondent cannot be obtained.

(c) This article does not create or negate a relationship of attorney and client or other fiduciary relationship between a support enforcement agency or the attorney for the agency and the individual being assisted by the agency.

§48-16-308. Duty of West Virginia support enforcement commission.

If the West Virginia support enforcement commission determines that the support enforcement agency is neglecting or refusing to provide services to an individual, the commission may order the agency to perform its duties under this article or may provide those services directly to the individual.

§48-16-309. Private counsel.

An individual may employ private counsel to represent the individual in proceedings authorized by this article.
§48-16-310. Duties of state information agency.

(a) The bureau for child support enforcement is the state information agency under this article.

(b) The state information agency shall: (1) Compile and maintain a current list, including addresses, of the tribunals in this state which have jurisdiction under this article and any support enforcement agencies in this state and transmit a copy to the state information agency of every other state; (2) maintain a register of tribunals and support enforcement agencies received from other states; (3) forward to the appropriate tribunal in the place in which the individual obligee or the obligor resides, or in which the obligor’s property is believed to be located, all documents concerning a proceeding under this article received from an initiating tribunal or the state information agency of the initiating state; and (4) obtain information concerning the location of the obligor and the obligor’s property within this state not exempt from execution, by such means as postal verification and federal or state locator services, examination of telephone directories, requests for the obligor’s address from employers, and examination of governmental records, including, to the extent not prohibited by other law, those relating to real property, vital statistics, law enforcement, taxation, motor vehicles, driver’s licenses and social security.

§48-16-311. Pleadings and accompanying documents.

(a) A petitioner seeking to establish or modify a support order or to determine parentage in a proceeding under this article must verify the petition. Unless otherwise ordered under section 16-312 (Nondisclosure of Information in Exceptional Circumstances), the petition or accompanying documents must provide, so far as known, the name, residential address and social security numbers of the obligor and the obligee, and the name, sex, residential address, social security number and date of birth of each child for whom support is sought. The petition must be accompanied by a certified copy of any support order in effect. The petition may include any other information that may assist in locating or identifying the respondent.
The petition must specify the relief sought. The petition and accompanying documents must conform substantially with the requirements imposed by the forms mandated by federal law for use in cases filed by a support enforcement agency.

§48-16-312. Nondisclosure of information in exceptional circumstances.

Upon a finding, which may be made ex parte, that the health, safety or liberty of a party or child would be unreasonably put at risk by the disclosure of identifying information, or if an existing order so provides, a tribunal shall order that the address of the child or party or other identifying information not be disclosed in a pleading or other document filed in a proceeding under this article.

§48-16-313. Costs and fees.

(a) The petitioner may not be required to pay a filing fee or other costs.

(b) If an obligee prevails, a responding tribunal may assess against an obligor filing fees, reasonable attorney’s fees, other costs and necessary travel and other reasonable expenses incurred by the obligee and the obligee’s witnesses. The tribunal may not assess fees, costs or expenses against the obligee or the support enforcement agency of either the initiating or the responding state, except as provided by other law. Attorney’s fees may be taxed as costs, and may be ordered paid directly to the attorney, who may enforce the order in the attorney’s own name. Payment of support owed to the obligee has priority over fees, costs and expenses.

(c) The tribunal shall order the payment of costs and reasonable attorney’s fees if it determines that a hearing was requested primarily for delay. In a proceeding under part 16-601, et seq., (Enforcement and Modification of Support Order After Registration), a hearing is presumed to have been requested primarily for delay if a registered support order is confirmed or enforced without change.
§48-16-314. Limited immunity of petitioner.

(a) Participation by a petitioner in a proceeding before a responding tribunal, whether in person, by private attorney, or through services provided by the support enforcement agency, does not confer personal jurisdiction over the petitioner in another proceeding.

(b) A petitioner is not amenable to service of civil process while physically present in this state to participate in a proceeding under this article.

(c) The immunity granted by this section does not extend to civil litigation based on acts unrelated to a proceeding under this article committed by a party while present in this state to participate in the proceeding.

§48-16-315. Nonparentage as defense.

A party whose parentage of a child has been previously determined by or pursuant to law may not plead nonparentage as a defense to a proceeding under this article.

§48-16-316. Special rules of evidence and procedure.

(a) The physical presence of the petitioner in a responding tribunal of this state is not required for the establishment, enforcement or modification of a support order or the rendition of a judgment determining parentage.

(b) A verified petition, affidavit, document substantially complying with federally mandated forms and a document incorporated by reference in any of them, not excluded under the hearsay rule if given in person, is admissible in evidence if given under oath by a party or witness residing in another state.

(c) A copy of the record of child support payments certified as a true copy of the original by the custodian of the record may be forwarded to a responding tribunal. The copy is evidence of facts asserted in it, and is admissible to show whether payments were made.
(d) Copies of bills for testing for parentage, and for prenatal
and postnatal health care of the mother and child, furnished to
the adverse party at least ten days before trial, are admissible in
evidence to prove the amount of the charges billed and that the
charges were reasonable, necessary and customary.

(e) Documentary evidence transmitted from another state
to a tribunal of this state by telephone, telex or other
means that do not provide an original writing may not be
excluded from evidence on an objection based on the means of
transmission.

(f) In a proceeding under this article, a tribunal of this state
may permit a party or witness residing in another state to be
deposed or to testify by telephone, audiovisual means or other
electronic means at a designated tribunal or other location in
that state. A tribunal of this state shall cooperate with tribunals
of other states in designating an appropriate location for the
deposition or testimony. The supreme court of appeals shall
promulgate new rules or amend the rules of practice and
procedure for family law to establish procedures pertaining to
the exercise of cross examination in those instances involving
the receipt of testimony by means other than direct or personal
testimony.

(g) If a party called to testify at a civil hearing refuses to
answer on the ground that the testimony may be self-incriminat-
ing, the trier of fact may draw an adverse inference from the
refusal.

(h) A privilege against disclosure of communications
between spouses does not apply in a proceeding under this
article.

(i) The defense of immunity based on the relationship of
husband and wife or parent and child does not apply in a
proceeding under this article.

§48-16-317. Communications between tribunals.

A tribunal of this state may communicate with a tribunal of
another state in writing, or by telephone or other means, to
obtain information concerning the laws of that state, the legal
effect of a judgment, decree, or order of that tribunal and the
status of a proceeding in the other state. A tribunal of this state
may furnish similar information by similar means to a tribunal
of another state.

§48-16-318. Assistance with discovery.

A tribunal of this state may: (1) Request a tribunal of
another state to assist in obtaining discovery; and (2) upon
request, compel a person over whom it has jurisdiction to
respond to a discovery order issued by a tribunal of another
state.

§48-16-319. Receipt and disbursement of payments.

A support enforcement agency or tribunal of this state shall
disburse promptly any amounts received pursuant to a support
order, as directed by the order. The agency or tribunal shall
furnish to a requesting party or tribunal of another state a
certified statement by the custodian of the record of the
amounts and dates of all payments received.

PART 4. ESTABLISHMENT OF SUPPORT ORDER.

§48-16-401. Petition to establish support order.

(a) If a support order entitled to recognition under this
article has not been issued, a responding tribunal of this state
may issue a support order if: (1) The individual seeking the
order resides in another state; or (2) the support enforcement
agency seeking the order is located in another state.

(b) The tribunal may issue a temporary child support order
if: (1) The respondent has signed a verified statement acknowledg-
ing parentage; (2) the respondent has been determined by or
pursuant to law to be the parent; or (3) there is other clear and
convincing evidence that the respondent is the child’s parent.

(c) Upon finding, after notice and opportunity to be heard,
that an obligor owes a duty of support, the tribunal shall issue
a support order directed to the obligor and may issue other
orders pursuant to section 16-305 (Duties and Powers of Responding Tribunal).

PART 5. DIRECT ENFORCEMENT OF ORDER OF ANOTHER STATE WITHOUT REGISTRATION.

§48-16-501. Employer's receipt of income-withholding order of another state.

An income-withholding order issued in another state may be sent to the person or entity defined as the obligor's source of income under section 1-241 of this chapter without first filing a petition or comparable pleading or registering the order with a tribunal of this state.

§48-16-502. Employer's compliance with income-withholding order of another state.

(a) Upon receipt of the order, the obligor's employer shall immediately provide a copy of the order to the obligor.

(b) The employer shall treat an income-withholding order issued in another state which appears regular on its face as if it had been issued by a tribunal of this state.

(c) Except as provided by subsection (d) and section 16-503, the employer shall withhold and distribute the funds as directed in the withholding order by complying with the terms of the order, as applicable, that specify:

(1) The duration and the amount of periodic payments of current child support, stated as a sum certain;

(2) The person or agency designated to receive payments and the address to which the payments are to be forwarded;

(3) Medical support, whether in the form of periodic cash payment, stated as a sum certain, or ordering the obligor to provide health insurance coverage for the child under a policy available through the obligor's employment;
(4) The amount of periodic payments of fees and costs for a support enforcement agency, the issuing tribunal, and the obligee's attorney, stated as sums certain; and

(5) The amount of periodic payments of arrears and interest on arrears, stated as sums certain.

(d) The employer shall comply with the law of the state of the obligor's principal place of employment for withholding from income with respect to:

(1) The employer's fee for processing an income withholding order;

(2) The maximum amount permitted to be withheld from the obligor's income;

(3) The time periods within which the employer must implement the withholding order and forward the child support payment.

§48-16-503. Compliance with multiple income withholding orders.

If the obligor's employer receives multiple orders to withhold support from the earnings of the same obligor, the employer shall be deemed to have satisfied the terms of the multiple orders if the law of the state of the obligor's principal place of employment to establish the priorities for withholding and allocating income withheld for multiple child support obligees is complied with.

§48-16-504. Immunity from civil liability.

An employer who complies with an income-withholding order issued in another state in accordance with this article is not subject to civil liability to any individual or agency with regard to the employer's withholding child support from the obligor's income.
§48-16-505. Penalties for noncompliance.

1 An employer who willfully fails to comply with an income- withholding order issued by another state and received for enforcement is subject to the same penalties that may be imposed for noncompliance with an order issued by a tribunal of this state.

§48-16-506. Contest by obligor.

1 (a) An obligor may contest the validity or enforcement of an income-withholding order issued in another state and received directly by an employer in this state in the same manner as if the order had been issued by a tribunal of this state. Section 604 (Choice of Law) applies to the contest.

6 (b) The obligor shall give notice of the contest to:

7 (i) A support enforcement agency providing services to the obligee;

9 (2) Each employer which has directly received an income-withholding order; and

11 (3) The person or agency designated to receive payments in the income-withholding order; or if no person or agency is designated, to the obligee.

§48-16-507. Administrative enforcement of orders.

1 (a) A party seeking to enforce a support order or an income- withholding order, or both, issued by a tribunal of another state may send the documents required for registering the order to a support enforcement agency of this state.

5 (b) Upon receipt of the documents, the support enforcement agency, without initially seeking to register the order, shall consider and, if appropriate, use any administrative procedure authorized by the law of this state to enforce a support order or an income-withholding order, or both. If the obligor does not contest administrative enforcement, the order need not be registered. If the obligor contests the validity or administrative
PART 6. ENFORCEMENT AND MODIFICATION OF SUPPORT ORDER AFTER REGISTRATION.

§48-16-601. Registration of order for enforcement.

A support order or an income-withholding order issued by a tribunal of another state may be registered in this state for enforcement.

§48-16-602. Procedure to register order for enforcement.

(a) A support order or income-withholding order of another state may be registered in this state by sending the following documents and information to the state information agency who shall forward the order to the appropriate tribunal: (1) A letter of transmittal to the tribunal requesting registration and enforcement; (2) two copies, including one certified copy, of all orders to be registered, including any modification of an order; (3) a sworn statement by the party seeking registration or a certified statement by the custodian of the records showing the amount of any arrearage; (4) the name of the obligor and, if known: (i) The obligor’s address and social security number; (ii) the name and address of the obligor’s employer and any other source of income of the obligor; and (iii) a description and the location of property of the obligor in this state not exempt from execution; and (5) the name and address of the obligee and, if applicable, the agency or person to whom support payments are to be remitted.

(b) On receipt of a request for registration, the clerk of the court shall cause the order to be filed as a foreign judgment, together with one copy of the documents and information, regardless of their form.

(c) A petition or comparable pleading seeking a remedy that must be affirmatively sought under other law of this state may be filed at the same time as the request for registration or later. The pleading must specify the grounds for the remedy sought.
§48-16-603. Effect of registration for enforcement.

(a) A support order or income-withholding order issued in another state is registered when the order is filed in the registering tribunal of this state.

(b) A registered order issued in another state is enforceable in the same manner and is subject to the same procedures as an order issued by a tribunal of this state.

(c) Except as otherwise provided in this article, a tribunal of this state shall recognize and enforce, but may not modify, a registered order if the issuing tribunal had jurisdiction.

§48-16-604. Choice of law.

(a) The law of the issuing state governs the nature, extent, amount, and duration of current payments and other obligations of support and the payment of arrearages under the order.

(b) In a proceeding for arrearages, the statute of limitation under the laws of this state or of the issuing state, whichever is longer, applies.

§48-16-605. Notice of registration of order.

(a) When a support order or income-withholding order issued in another state is registered, the clerk of the court shall notify the nonregistering party. The notice must be accompanied by a copy of the registered order and the documents and relevant information accompanying the order.

(b) The notice must inform the nonregistering party: (1) That a registered order is enforceable as of the date of registration in the same manner as an order issued by a tribunal of this state; (2) that a hearing to contest the validity or enforcement of the registered order must be requested within twenty days after notice; (3) that failure to contest the validity or enforcement of the registered order in a timely manner will result in confirmation of the order and enforcement of the order and the alleged arrearages and precludes further contest of that order with respect to any matter that could have been asserted; and (4) of the amount of any alleged arrearages.
Upon registration of an income-withholding order for enforcement, the registering tribunal shall notify the obligor's source of income pursuant to part 14-401 et seq. of this chapter.

§48-16-606. Procedure to contest validity or enforcement of registered order.

(a) A nonregistering party seeking to contest the validity or enforcement of a registered order in this state shall request a hearing within twenty days after the date of mailing or personal service of notice of the registration. The nonregistering party may seek to vacate the registration, to assert any defense to an allegation of noncompliance with the registered order, or to contest the remedies being sought or the amount of any alleged arrearages pursuant to section 16-607 (Contest of Registration or Enforcement).

(b) If the nonregistering party fails to contest the validity or enforcement of the registered order in a timely manner, the order is confirmed by operation of law.

(c) If a nonregistering party requests a hearing to contest the validity or enforcement of the registered order, the registering tribunal shall schedule the matter for hearing and give notice to the parties of the date, time and place of the hearing.

§48-16-607. Contest of registration or enforcement.

(a) A party contesting the validity or enforcement of a registered order or seeking to vacate the registration has the burden of proving one or more of the following defenses: (1) The issuing tribunal lacked personal jurisdiction over the contesting party; (2) the order was obtained by fraud; (3) the order has been vacated, suspended or modified by a later order; (4) the issuing tribunal has stayed the order pending appeal; (5) there is a defense under the law of this state to the remedy sought; (6) full or partial payment has been made; or (7) the statute of limitation under section 16-604 (Choice of Law) precludes enforcement of some or all of the arrearages.

(b) If a party presents evidence establishing a full or partial defense under subsection (a), a tribunal may stay enforcement
of the registered order, continue the proceeding to permit
production of additional relevant evidence, and issue other
appropriate orders. An uncontested portion of the registered
order may be enforced by all remedies available under the law
of this state.

(c) If the contesting party does not establish a defense under
subsection (a) to the validity or enforcement of the order, the
registering tribunal shall issue an order confirming the order.

§48-16-608. Confirmed order.

Confirmation of a registered order, whether by operation of
law or after notice and hearing, precludes further contest of the
order with respect to any matter that could have been asserted
at the time of registration.

§48-16-609. Procedure to register child support order of another
state for modification.

A party or support enforcement agency seeking to modify,
or to modify and enforce, a child support order issued in
another state shall register that order in this state in the same
manner provided in Part 1 if the order has not been registered.
A petition for modification may be filed at the same time as a
request for registration, or later. The pleading must specify the
grounds for modification.

§48-16-610. Effect of registration for modification.

A tribunal of this state may enforce a child support order of
another state registered for purposes of modification, in the
same manner as if the order had been issued by a tribunal of
this state, but the registered order may be modified only if the
requirements of section 16-611 (Modification of Child Support
Order of Another State) have been met.

§48-16-611. Modification of child support order of another state.

(a) After a child support order issued in another state has
been registered in this state, the responding tribunal of this state
may modify that order only if section 16-613 does not apply
and after notice and hearing it finds that: (1) The following requirements are met: (i) The child, the individual obligee, and the obligor do not reside in the issuing state; (ii) a petitioner who is a nonresident of this state seeks modification; and (iii) the respondent is subject to the personal jurisdiction of the tribunal of this state; or (2) the child or a party who is an individual, is subject to the personal jurisdiction of the tribunal of this state and all of the parties who are individuals have filed written consents in the issuing tribunal for a tribunal of this state to modify the support order and assume continuing, exclusive jurisdiction over the order. However, if the issuing state is a foreign jurisdiction that has not enacted a law or established procedures substantially similar to the procedures under this article, the consent otherwise required of an individual residing in this state is not required for the tribunal to assume jurisdiction to modify the child support order.

(b) Modification of a registered child support order is subject to the same requirements, procedures, and defenses that apply to the modification of an order issued by a tribunal of this state and the order may be enforced and satisfied in the same manner.

(c) A tribunal of this state may not modify any aspect of a child support order that may not be modified under the law of the issuing state. If two or more tribunals have issued child support orders for the same obligor and child, the order that controls and must be so recognized under section 16-207 establishes the aspects of the support order which are nonmodifiable.

(d) On issuance of an order modifying a child support order issued in another state, a tribunal of this state becomes the tribunal of continuing, exclusive jurisdiction.

§48-16-612. Recognition of order modified in another state.

A tribunal of this state shall recognize a modification of its earlier child support order by a tribunal of another state which assumed jurisdiction pursuant to this article or a law substantially similar to this article and, upon request, except as otherwise provided in this article, shall: (1) Enforce the order
§48-16-613. Jurisdiction to modify support order of another state when individual parties reside in this state.

(a) If all of the individual parties reside in this state and the child does not reside in the issuing state, a tribunal of this state has jurisdiction to enforce and to modify the issuing state's child support order in a proceeding to register that order.

(b) A tribunal of this state exercising jurisdiction as provided in this section shall apply the provisions of parts 1 and 2 and this part 6 to the enforcement or modification proceeding. Parts 3 through 5, and Parts 7 and 8 do not apply and the tribunal shall apply the procedural and substantive law of this state.

§48-16-614. Notice to issuing tribunal of modification.

Within thirty days after issuance of a modified child support order, the party obtaining the modification shall file a certified copy of the order with the issuing tribunal which had continuing, exclusive jurisdiction over the earlier order, and in each tribunal in which the party knows that earlier order has been registered. Failure of the party obtaining the order to file a certified copy as required subjects that party to appropriate sanctions by a tribunal in which the issue of failure to file arises, but that failure has no effect on the validity or enforceability of the modified order of the new tribunal of continuing, exclusive jurisdiction.

PART 7. DETERMINATION OF PARENTAGE.

§48-16-701. Proceeding to determine parentage.

(a) A tribunal of this state may serve as an initiating or responding tribunal in a proceeding brought under this article.
or a law substantially similar to this article, the uniform reciprocal enforcement of support act, or the revised uniform reciprocal enforcement of support act to determine that the petitioner is a parent of a particular child or to determine that a respondent is a parent of that child.

(b) In a proceeding to determine parentage, a responding tribunal of this state shall apply article 24-101, et seq., of this chapter and the rules of this state on choice of law.

**PART 8. INTERSTATE RENDITION.**

§48-16-801. **Grounds for rendition.**

(a) For purposes of this article, “governor” includes an individual performing the functions of governor or the executive authority of a state covered by this article.

(b) The governor of this state may: (1) Demand that the governor of another state surrender an individual found in the other state who is charged criminally in this state with having failed to provide for the support of an obligee; or (2) on the demand by the governor of another state, surrender an individual found in this state who is charged criminally in the other state with having failed to provide for the support of an obligee.

(c) A provision for extradition of individuals not inconsistent with this article applies to the demand even if the individual whose surrender is demanded was not in the demanding state when the crime was allegedly committed and has not fled therefrom.

§48-16-802. **Conditions of rendition.**

(a) Before making demand that the governor of another state surrender an individual charged criminally in this state with having failed to provide for the support of an obligee, the governor of this state may require a prosecutor of this state to demonstrate that at least sixty days previously the obligee had
initiated proceedings for support pursuant to this article or that
the proceeding would be of no avail.

(b) If, under this article or a law substantially similar to this
article, the uniform reciprocal enforcement of support act, or
the revised uniform reciprocal enforcement of support act, the
governor of another state makes a demand that the governor of
this state surrender an individual charged criminally in that state
with having failed to provide for the support of a child or other
individual to whom a duty of support is owed, the governor
may require a prosecutor to investigate the demand and report
whether a proceeding for support has been initiated or would be
effective. If it appears that a proceeding would be effective but
has not been initiated, the governor may delay honoring the
demand for a reasonable time to permit the initiation of a
proceeding.

(c) If a proceeding for support has been initiated and the
individual whose rendition is demanded prevails, the governor
may decline to honor the demand. If the petitioner prevails and
the individual whose rendition is demanded is subject to a
support order, the governor may decline to honor the demand
if the individual is complying with the support order.

PART 9. MISCELLANEOUS PROVISIONS.

§48-16-901. Uniformity of application and construction.

This article shall be applied and construed to effectuate its
general purpose to make uniform the law with respect to the
subject of this article among states enacting it.

§48-16-902. Short title.

This article may be cited as the “Uniform Interstate Family
Support Act.”

§48-16-903. Effective date.

The provisions of this article take effect on the first day of
January, one thousand nine hundred ninety-eight.
ARTICLE 17. WEST VIRGINIA SUPPORT ENFORCEMENT COMMISSION.

§48-17-101. Creation of support enforcement commission; number of members.

The West Virginia support enforcement commission, consisting of nine members, is hereby created in the department of health and human resources and may use the administrative support and services of that department. The commission is not subject to control, supervision or direction by the department of health and human resources, but is an independent, self-sustaining commission that shall have the powers and duties specified in this chapter and all other powers necessary and proper to establish policies and procedures for fully and effectively carrying out the purposes of administering, regulating, overseeing and enforcing the provisions of this chapter which relate to the establishment and enforcement of support obligations.

The commission is a part-time commission whose members make policy and have such other powers and perform such other duties as specified in this chapter or set forth in legislative rules promulgated by the commission. The ministerial duties of the commission shall be administered and carried out by the commissioner of the bureau for child support enforcement, with the assistance of such staff of the department of health and human resources as the secretary may assign.

Each member of the commission shall devote the time necessary to carry out the duties and obligations of the office and the six members appointed by the governor may pursue and engage in another business, occupation or gainful employment that is not in conflict with the duties of the commission.

While the commission is self-sustaining and independent, it, its members, its employees and the commissioner are subject to article nine-a of chapter six, chapter six-b, chapter twenty-nine-a and chapter twenty-nine-b of this code.
§48-17-102. Appointment of members of support enforcement commission; qualifications and eligibility.

(a) Of the nine members of the commission, three shall be members by virtue of the public offices which they hold, and the remaining six members are to be appointed by the governor. No more than five members of the commission may belong to the same political party:

(1) One member is to be the secretary of the department of health and human resources;

(2) One member is to be the secretary of the department of tax and revenue;

(3) One member is to be the secretary of the department of administration;

(4) One member is to be a lawyer licensed by, and in good standing with, the West Virginia state bar, with at least five years of professional experience in domestic relations law and the establishment and enforcement of support obligations;

(5) One member is to be a person experienced as a public administrator in the supervision and regulation of a governmental agency;

(6) One member is to be an employer experienced in withholding support payments from the earnings of obligors;

(7) One member is to be a person selected from a list of nominees submitted by the West Virginia judicial association. Provided, That the list of nominees shall not include any person currently exercising the powers of the judicial department; and

(8) Two members are to be representatives of the public at large.

(b) Each member of the commission is to be a citizen of the United States, a resident of the state of West Virginia and at least twenty-one years of age.
§48-17-103. Terms of commission members; conditions of membership.

(a) The term of office for each member of the commission who serves as a member by virtue of the public office held is for a period concurrent with that person’s tenure in the office. The term of office for each member of the commission appointed by the governor is four years, except that for an initial period, the terms of office of the initial six commission members appointed by the governor commence from an initial date of appointment not later than the first day of July, one thousand nine hundred ninety-five, and run as follows:

1. Two members shall be appointed for a term ending on the thirtieth day of June, one thousand nine hundred ninety-seven;
2. Two members shall be appointed for terms ending on the thirtieth day of June, one thousand nine hundred ninety-eight; and
3. Two members shall be appointed for terms ending on the thirtieth day of June, one thousand nine hundred ninety-nine.

(b) After the initial appointments made pursuant to the provisions of subdivisions (1), (2) and (3), subsection (a) of this section, members appointed by the governor shall thereafter be appointed or reappointed for terms of office which end on the thirtieth day of June in the fourth year following the expiration date of the previous term or terms.

(c) Appointments to fill vacancies on the commission are for the unexpired term of the member replaced.

(d) At the expiration of a member’s term, the member shall continue to serve until a successor is appointed and qualified.

§48-17-104. Oath.

Before entering upon the discharge of the duties as commissioner, each commissioner shall take and subscribe to the oath
of office prescribed in section five, article IV of the constitution of West Virginia.

§48-17-105. Commission chairman.

In making the initial appointments to the commission, the governor shall designate a member to serve as chairman for a term ending on the thirtieth day of June, one thousand nine hundred ninety-six. The member so designated shall serve in such capacity until his or her successor as chairman is elected by the commission as hereinafter provided.

Following the term of the initial chairman, thereafter the chairman shall be elected by the commission from among its members, and the member so elected shall: (1) Serve as chairman for a term of two years and until his or her successor shall have been elected; or (2) shall serve in such capacity throughout his or her service as a member of the commission, whichever period is shorter. In the event that a successor chairman is not elected by the commission members within ninety calendar days after the expiration of a chairman’s term, a vacancy shall be deemed to exist, and the governor shall designate a chairman from among the members of the commission. A member may not serve more than two consecutive terms as chairman.

§48-17-106. Compensation of members; reimbursement for expenses.

(a) Each member of the commission shall receive one hundred dollars for each day or portion thereof spent in the discharge of his or her official duties.

(b) Each member of the commission shall be reimbursed for all actual and necessary expenses and disbursements involved in the execution of official duties.

§48-17-107. Meeting requirements.

(a) The commission shall meet within the state at least once per calendar quarter and at such other times as the chairman
may decide. The commission shall also meet upon a call of five
or more members upon seventy-two hours written notice to
each member.

(b) Five members of the commission are a quorum for the
transaction of any business and for the performance of any
duty.

(c) A majority vote of the members present is required for
any final determination by the commission.

(d) The commission may elect to meet in executive session
after an affirmative vote of a majority of its members present
according to section four, article nine-a, chapter six of this
code.

(e) The commission shall keep a complete and accurate
record of all its meetings according to section five, article nine-
a, chapter six of this code.

§48-17-108. Removal of commission members.

Notwithstanding the provisions of section four, article six,
chapter six of this code, the governor may remove any commis-
sion member for incompetence, misconduct, gross immorality,
misfeasance, malfeasance or nonfeasance in office.

§48-17-109. General duties of support enforcement commission.

The support enforcement commission shall have general
responsibility for establishing policies and procedures for
obtaining and enforcing support orders and establishing
paternity according to this chapter, as hereinafter provided,
including, without limitation, the responsibility for the follow-
ing:

(a) To propose for promulgation, according to the provi-
sions of chapter twenty-nine-a of this code, such legislative
rules as in its judgment may be necessary to fulfill the policies
of this chapter;
(b) To undertake directly, or by contract, legal or policy research related to obtaining and enforcing support orders and establishing paternity;

c) To serve as a clearinghouse for information;

d) To keep a record of all commission proceedings available for public inspection;

e) To file a written annual report to the governor, the president of the Senate and the speaker of the House of Delegates on or before the thirtieth day of January of each year, and such additional reports as the governor or Legislature may request.

§48-17-110. General powers of support enforcement commission.

In establishing policies and procedures for enforcing the provisions of this chapter, the commission shall have the following power and authority:

(1) To establish and maintain procedures under which expedited processes, administrative or judicial, are in effect for obtaining and enforcing support orders and establishing paternity according to this chapter;

(2) To monitor the child support enforcement system of this state and from time to time to advise the bureau for child support enforcement and other agencies of the state of West Virginia regarding the establishment and enforcement of child support orders;

(3) To promulgate all emergency and legislative rules pursuant to chapter twenty-nine-a of this code as are required by this chapter: Provided, That all rules which are in effect at the time of the implementation of this section shall continue in full force and effect until the commission promulgates a rule or rules regarding the same subject matter;

(4) To promulgate legislative rules pursuant to chapter twenty-nine-a of this code relating to the structure of the bureau for child support enforcement, including, but not limited to, the designation of administrative and legal tasks and the location of
(5) To adopt standards for staffing, recordkeeping, reporting, intergovernmental cooperation, training, physical structures and time frames for case processing;

(6) To review the state plan for child and spousal support to determine its conformance or nonconformance with the provisions of 42 U.S.C. §654, and make recommendations or to promulgate legislative rules based upon such review;

(7) To cooperate with judicial organizations and the private bar to provide training to persons involved in the establishment and enforcement of child support orders;

(8) To study the issues involving retroactive and reimbursement child support payments which are ordered following the establishment of paternity and to make a recommendation to the Legislature on or before the first day of December, one thousand nine hundred ninety-five, regarding any statutory or regulatory action which should be implemented to ensure that fathers are not ordered to pay retroactive or reimbursement child support or medical expenses when such payments would be unconscionable or inequitable given the totality of the circumstances arising from the facts of a given case; and

(9) To promulgate such further legislative rules pursuant to chapter twenty-nine-a of this code which may aid the bureau for child support enforcement in the establishment and enforcement of child support orders. In addition to the specific designation of such rules that constitute emergency rules within the meaning of section fifteen, article three, chapter twenty-nine-a of this code, the commission may promulgate other rules as emergency rules when such rule is necessary to ensure that the state is awarded federal funds for the actions described in the rule or when the promulgation of such rule is necessary to prevent substantial harm to the public interest by ensuring that child support is timely collected and disbursed.
§48-17-111. Required rule making.

The commission shall, without limitation on the powers conferred in section 17-110 of this article, include within its legislative rules the following specific provisions according to the provisions of this chapter:

1. Prescribing the methods and forms of proposal that a prospective contractor shall follow and complete before consideration of a proposal by the commission, which rules shall require such plans as shall assure the commission that the proposal conforms with the requirements of this chapter and all applicable federal statutes and regulations;

2. Prescribing standards and guidelines for contractors providing professional services to ensure the maintenance of the highest quality of service and professional standards; the preservation of the attorney-client relationship, and the protection of the integrity of the adversarial process from any impairment in furnishing legal representation;

3. Requiring the bureau, and any contractors providing professional services or collection services to the bureau, to adopt procedures for the provision of such services which will best advance the needs and interests of the obligees and dependents who seek assistance in obtaining and enforcing support orders and establishing paternity according to this chapter, without regard to whether such procedures optimize or maximize the profits derived by the contractor or result in the payment of reimbursements or financial incentives to the bureau;

4. Prescribing standards and guidelines for contractors providing professional services to ensure that appropriate training and support services are provided to employees of the contractor who are engaged in activities to obtain and enforce support orders and establish paternity according to this chapter;

5. Prescribing minimum procedures for the exercise of effective control over the internal fiscal affairs of a contractor providing collection services, including provisions for the safeguarding of support payments, the recording of receipts and
evidence of nonpayment by obligors, and the maintenance of reliable records, accounts and reports of transactions, operations and events, including reports to the commission;

(6) Providing for a minimum uniform standard of accounting methods, procedures and forms; a uniform code of accounts and accounting classifications; and other standard operating procedures, as may be necessary to assure consistency, comparability and effective disclosure of all financial information by a contractor providing collection services; and

(7) Requiring periodic financial reports and the form thereof, including an annual audit prepared by a certified public accountant licensed to do business in this state, attesting to the financial condition of a contractor providing collection services and disclosing whether the accounts, records and control procedures examined are maintained by the contractor as required by this chapter.

ARTICLE 18. BUREAU FOR CHILD SUPPORT ENFORCEMENT.

§48-18-101. Establishment of the bureau for child support enforcement; cooperation with the division of human services; continuation.

(a) Effective the first day of July, one thousand nine hundred ninety-five, there is hereby established in the department of health and human resources the bureau for child support enforcement. The bureau is under the immediate supervision of the commissioner, who is responsible for the exercise of the duties and powers assigned to the bureau under the provisions of this chapter. The bureau is designated as the single and separate organizational unit within this state to administer the state plan for child and spousal support according to 42 U.S.C. §654(3).

(b) The division of human services shall cooperate with the bureau for child support enforcement. At a minimum, such cooperation shall require that the division of human services:
(1) Notify the bureau for child support enforcement when the division of human services proposes to terminate or provide public assistance payable to any obligee;

(2) Receive support payments made on behalf of a former or current recipient to the extent permitted by Title IV-D, Part D of the Social Security Act; and

(3) Accept the assignment of the right, title or interest in support payments and forward a copy of the assignment to the bureau for child support enforcement.

(c) Pursuant to the provisions of article ten, chapter four of this code, the bureau for child support enforcement shall continue to exist until the first day of July, two thousand two, unless sooner terminated, continued or reestablished by act of the Legislature.

§48-18-102. Appointment of commissioner; duties; compensation.

(a) There is hereby created the position of commissioner whose duties include the ministerial management and administration of the office of the support enforcement commission. The commissioner shall:

(1) Be appointed by the secretary;

(2) Serve at the will and pleasure of the secretary;

(3) Serve on a full-time basis and shall not engage in any other profession or occupation, including the holding of a political office in the state either by election or appointment while serving as commissioner;

(4) Be a lawyer licensed by, and in good standing with, the West Virginia state bar; and

(5) Have responsible administrative experience, possess management skills, and have knowledge of the law as it relates to domestic relations and the establishment and enforcement of support obligations.
Before entering upon the discharge of the duties as commissioner, the commissioner shall take and subscribe to the oath of office prescribed in section five, article IV of the constitution of West Virginia.

(b) The duties of the commissioner shall include the following:

(1) To direct and administer the daily operations of the commission;

(2) To administer the child support enforcement fund created pursuant to section 18-107 of this article;

(3) To keep the records and papers of the commission, including a record of each proceeding;

(4) To prepare, issue and submit reports of the commission; and

(5) To perform any other duty that the commission directs.

(c) All payments to the commissioner as compensation shall be made from the child support enforcement fund. The commissioner is entitled to:

(1) A reasonable and competitive compensation package to be established by the secretary; and

(2) Reimbursement for expenses under the standard state travel regulations.

§48-18-103. Organization and employees.

(a) The commissioner shall organize the work of the bureau in such offices or other organizational units as he or she may determine to be necessary for effective and efficient operation.

(b) The secretary may transfer employees and resources of the department to the bureau for child support enforcement as may be necessary to fulfill the duties and responsibilities of the
bureau under this chapter: Provided, That the secretary may not transfer employees of other divisions and agencies within the department to the bureau for child support enforcement without a prior finding that the office or position held by the employee may be eliminated and until the office or position is, in fact, eliminated.

(c) The commissioner, if he or she deems such action necessary, may hire legal counsel for the division, notwithstanding the provisions of 5-3-2 of this code or any other code provision to the contrary, or may request the attorney general to appoint assistant attorneys general who shall perform such duties as may be required by the bureau. The attorney general, in pursuance of such request, may select and appoint assistant attorneys general, to serve during the will and pleasure of the attorney general, and such assistants shall be paid out of any funds allocated and appropriated to the child support enforcement fund.

(d) The commissioner may employ such staff or employees as may be necessary to administer and enforce this chapter.

§48-18-104. Supervisory responsibilities within the bureau for child support enforcement.

The commissioner shall have control and supervision of the bureau for child support enforcement and shall be responsible for the work of each of its organizational units. Each organizational unit shall be headed by an employee of the bureau appointed by the commissioner who shall be responsible to the commissioner for the work of his or her organizational unit.

§48-18-105. General duties and powers of the bureau for child support enforcement.

In carrying out the policies and procedures for enforcing the provisions of this chapter, the bureau shall have the following power and authority:

(i) To undertake directly, or by contract, activities to obtain and enforce support orders and establish paternity;
(2) To undertake directly, or by contract, activities to establish paternity for minors for whom paternity has not been acknowledged by the father or otherwise established by law;

(3) To undertake directly, or by contract, activities to collect and disburse support payments;

(4) To contract for professional services with any person, firm, partnership, professional corporation, association or other legal entity to provide representation for the bureau and the state in administrative or judicial proceedings brought to obtain and enforce support orders and establish paternity;

(5) To ensure that activities of a contractor under a contract for professional services are carried out in a manner consistent with attorneys' professional responsibilities as established in the rules of professional conduct as promulgated by the supreme court of appeals;

(6) To contract for collection services with any person, firm, partnership, corporation, association or other legal entity to collect and disburse amounts payable as support;

(7) To ensure the compliance of contractors and their employees with the provisions of this chapter and legislative rules promulgated pursuant to this chapter, and to terminate, after notice and hearing, the contractual relationship between the bureau and a contractor who fails to comply;

(8) To require a contractor to take appropriate remedial or disciplinary action against any employee who has violated or caused the contractor to violate the provisions of this chapter, in accordance with procedures prescribed in legislative rules promulgated by the commission;

(9) To locate parents who owe a duty to pay child support;

(10) To cooperate with other agencies of this state and other states to search their records to help locate absent parents;

(11) To cooperate with other states in establishing and enforcing support obligations;
(12) To exercise such other powers as may be necessary to effectuate the provisions of this chapter.

§48-18-106. Notice to unemployed obligor.

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

§48-18-107. Creation of child support enforcement fund; purpose; funding; disbursements.

(a) There is hereby created in the state treasury a separate special revenue account, which shall be an interest bearing account, to be known as the “child support enforcement fund”. The special revenue account shall consist of all incentive payments paid by the federal government pursuant to 42 U.S.C §658 as a percentage of the total amount of support collected directly or by contract by the bureau for child support enforcement, all amounts appropriated by the Legislature to maintain and operate the bureau for child support enforcement according to this chapter, and all interest or other earnings from moneys in the fund. Any agency or entity receiving federal matching funds for services of the bureau for child support enforcement shall enter into an agreement with the secretary whereby all federal matching funds paid to and received by that agency or entity for the activities of the bureau for child support enforcement shall be paid into the child support enforcement fund. Said agreement shall provide for advance payments into the fund by such agencies, from available federal funds, pursuant to Title IV-D of the Social Security Act and in accordance with federal

20 regulations. No expenses incurred under this section shall be a
21 charge against the general funds of the state.

22 (b) Moneys in the special revenue account shall be appro-
23 priated to the department and used exclusively, in accordance
24 with appropriations by the Legislature, to pay costs, fees and
25 expenses incurred, or to be incurred for the following purpose:
26 The provision of child support services authorized pursuant to
27 Title VI, Part D of the Social Security Act and any further duty
28 as set forth in this chapter, including, but not limited to, the
29 duties assigned to the bureau by virtue of its being designated
30 as the single and separate organizational unit within this state
31 to administer the state plan for child and spousal support.

32 (c) Any balance remaining in the special revenue account
33 at the end of any state fiscal year shall not revert to the general
34 revenue fund but shall remain in the special revenue account
35 and shall be used solely in a manner consistent with this
36 section: Provided, That for the three succeeding fiscal years
37 after the effective date of this section, any appropriation made
38 to the special revenue account from general revenue shall be
39 repaid to the general revenue fund from moneys available in the
40 special revenue account.

41 (d) Disbursements from the special revenue account shall
42 be authorized by the commissioner.


1 (a) When the bureau for child support enforcement provides
2 child support collection services either to a public assistance
3 recipient or to a party who does not receive public assistance,
4 the bureau for child support enforcement shall, upon written
5 notice to the obligor, charge a monthly collection fee equivalent
6 to the full monthly cost of the services, in addition to the
7 amount of child support which was ordered by the court. The
8 fee shall be deposited in the child support enforcement fund.
9 The service fee assessed may not exceed ten percent of the
10 monthly court ordered child support and may not be assessed
11 against any obligor who is current in payment of the monthly
court ordered child support payments: Provided, That this fee may not be assessed when the obligor is also a recipient of public assistance.

(b) Except for those persons applying for services provided by the bureau for child support enforcement who are applying for or receiving public assistance from the division of human services or persons for whom fees are waived pursuant to a legislative rule promulgated pursuant to this section, all applicants shall pay an application fee of twenty-five dollars.

(c) Fees imposed by state and federal tax agencies for collection of overdue support shall be imposed on the person for whom these services are provided. Upon written notice to the obligee the bureau for child support enforcement shall assess a fee of twenty-five dollars to any person not receiving public assistance for each successful federal tax interception. The fee shall be withheld prior to the assistance for each successful federal tax interception. The fee shall be withheld prior to the release of the funds received from each interception and deposited in the child support enforcement fund established pursuant to section 18-107.

(d) In any action brought by the bureau for child support enforcement, the family law master shall order that the obligor shall pay attorney fees for the services of the attorney representing the bureau for child support enforcement in an amount calculated at a rate similar to the rate paid to court appointed attorneys paid pursuant to section thirteen-a, article twenty-one, chapter twenty-nine of this code, and all court costs associated with the action: Provided, That no such award shall be made when the family law master or circuit judge finds that the award of attorney’s fees would create a substantial financial hardship on the obligor or when the obligor is a recipient of public assistance. Further, the bureau for child support enforcement may not collect such fees until the obligor is current in the payment of child support. No court may order the bureau for child support enforcement to pay attorney’s fees to any party in any action brought pursuant to this chapter.
(e) This section shall not apply to the extent it is inconsistent with the requirements of federal law for receiving funds for the program under Title IV-A and Title IV-D of the Social Security Act, United States Code, article three, Title 42, Sections 601 to 613 and United States Code, Title 42, Sections 651 to 662.

(f) The commission shall, by legislative rule promulgated pursuant to chapter twenty-nine-a of this code, describe the circumstances under which fees charged by the bureau for child support enforcement may be modified or waived, and such rule shall provide for the waiver of any fee, in whole or in part, when such fee would otherwise be required to be paid under the provisions of this chapter. Further, such rule shall initially be promulgated as an emergency rule pursuant to section fifteen, article three, chapter twenty-nine-a of this code.


(a) Contracts with persons, firms, partnerships, corporations, associations or other legal entities to provide services to the bureau for child support enforcement shall, at a minimum:

1. Provide for the employment and training of personnel necessary to perform the services;

2. Provide that any federal incentive payment that is payable shall be payable to the fund established pursuant to section 18-107;

3. Delegate responsibility that is consistent with the rules promulgated pursuant to this article;

4. Include any and all provisions required by state or federal law and specifically include terms regarding cancellation and renewal of the contract;

5. Provide for the assessment of penalties for the failure to fully or timely provide services included in the agreement;
(6) Prohibit the assignment of the contract or the subcontracting of services to be provided under the contract without first obtaining the express written approval of the commissioner;

(7) Provide that the contractor consents to performance audits of its operations by the performance evaluation and research division, legislative auditor's office of the West Virginia Legislature; and

(8) Establish reasonable administrative and fiscal requirements for providing and continuing services and reimbursement.

(b) Prior to entering into such agreement, the commissioner shall provide all proposals to the members of the commission who may review and comment on those proposals.

(c) The commissioner shall enter into such agreement only when the commissioner finds that based upon the information provided to the commissioner and upon the comments made by members of the commission, that the provider of services is capable of carrying out the responsibilities of the agreement.

(d) All contracts entered into pursuant to this section shall meet all requirements for such agreements as detailed in article three, chapter five-a of this code: Provided, That when the commission, after reviewing any contract, finds that the contract meets all requirements as set forth in this section and further that the bureau for child support enforcement should enter into such contract, the contract shall not be subject to the requirements as detailed in article three, chapter five-a of this code.

(e) Any agreement entered into pursuant to this section may include a provision relating to the loan of equipment in the possession of the bureau for child support enforcement.


(a) Attorneys employed by the bureau for child support enforcement may represent this state or another state in an action brought under the authority of federal law of this chapter.
(b) An attorney employed by the bureau for child support enforcement or employed by a person or agency or entity pursuant to a contract with the bureau for child support enforcement represents the interest of the state or the bureau and not the interest of any other party. The bureau for child support enforcement shall, at the time an application for child support services is made, inform the applicant that any attorney who provides services for the bureau for child support enforcement is the attorney for the state of West Virginia and that the attorney providing those services does not provide legal representation to the applicant.

(c) An attorney employed by the bureau for child support enforcement or pursuant to a contract with the bureau for child support enforcement may not be appointed or act as a guardian ad litem or attorney ad litem for a child or another party.

§48-18-111. Establishment of parent locator service.

(a) The bureau for child support enforcement shall establish a parent locator service to locate individuals for the purposes of establishing parentage and of establishing, modifying or enforcing child support obligations, utilizing all sources of information and available records and the parent locator service in the federal department of health and human services. For purposes of obtaining information from the parent locator service, any person, agency or entity providing services to the bureau for child support enforcement pursuant to a contract that includes a provision to ensure that the confidentiality of information is maintained shall be deemed to be an agent of the bureau for child support enforcement.

(b) Upon entering into an agreement with the secretary of the federal department of health and human services for the use of that department's parent locator service, the bureau for child support enforcement shall accept and transmit to the secretary of the federal department of health and human services requests from authorized persons for information with regard to the whereabouts of a noncustodial obligor to be furnished by such federal parent locator service. For purposes of this subsection,
“authorized persons” means: (1) An attorney or agent of the bureau for child support enforcement; (2) a family law master or circuit judge or any agent thereof; or (3) a resident parent, legal guardian, attorney or agent for a child. The bureau for child support enforcement shall charge a reasonable fee sufficient to cover the costs to the state and to the federal department of health and human services incurred by reason of such requests, and shall transfer to that department from time to time, so much of the fees collected as are attributable to the costs incurred by that department.

(c) The information obtained by the bureau for child support enforcement from the federal parent locator service shall be used for, but not limited to, the following purposes:

(1) Establishing parentage and establishing, setting the amount of, modifying or enforcing child support obligations;

(2) Obtaining and transmitting information to any family law master or circuit court or agent thereof or to an attorney or employee of the United States or of any state responsible for enforcing any federal or state law with respect to the unlawful taking or restraint of a child or making or enforcing a child custody or visitation determination.

(d) The bureau for child support enforcement may request from the federal parent locator service information:

(1) About, or which will facilitate the discovery of information about, the location of any individual: (A) Who is under an obligation to pay child support; (B) against whom such an obligation is sought; or (C) to whom such an obligation is owed, including the individual's social security number, or numbers, most recent address, and the name, address and employer identification number of the individual's employer;

(2) Concerning the individual's wages or other income from, and benefits of, employment, including rights to or enrollment in group health care coverage; and
(3) Concerning the type, status, location and amount of any assets of, or debts owed by or to, any such individual.

(e) A circuit court shall have jurisdiction to hear and determine, upon a petition by an authorized person, as defined in subsection (b) of this section, whether the release of information from the federal parent locator service to that person could be harmful to the custodial parent or the child.

§48-18-112. Cooperation with other states in the enforcement of child support.

(a) The bureau for child support enforcement shall cooperate with any other state in the following:

(1) In establishing paternity;

(2) In locating an obligor residing temporarily or permanently in this state, against whom any action is being taken for the establishment of paternity or the enforcement of child and spousal support;

(3) In securing compliance by an obligor residing temporarily or permanently in this state, with an order issued by a court of competent jurisdiction against such obligor for the support and maintenance of a child or children or the parent of such child or children; and

(4) In carrying out other functions necessary to a program of child and spousal support enforcement.

(b) The commission shall, by legislative rule, establish procedures necessary to extend the bureau for child support enforcements' system of withholding under part 14-401, et seq., so that such system may include withholding from income derived within this state in cases where the applicable support orders were issued in other states, in order to assure that child support owed by obligors in this state or any other state will be collected without regard to the residence of the child for whom the support is payable or the residence of such child's custodial parent.
§48-18-113. Disbursements of amounts collected as support.

(a) Amounts collected as child or spousal support by the bureau for child support enforcement shall be distributed within two business days after receipt from the employer or other source of periodic income. The amounts collected as child support shall be distributed by the bureau for child support enforcement in accordance with the provisions for distribution set forth in 42 U.S.C. §657. The commission shall promulgate a legislative rule to establish the appropriate distribution as may be required by the federal law.

(b) Any payment required to be made under the provisions of this section to a family shall be made to the resident parent, legal guardian or caretaker relative having custody of or responsibility for the child or children.

(c) The commission shall establish bonding requirements for employees of the bureau for child support enforcement who receive, disburse, handle or have access to cash.

(d) The commissioner shall maintain methods of administration which are designed to assure that employees of the bureau for child support enforcement or any persons employed pursuant to a contract who are responsible for handling cash receipts do not participate in accounting or operating functions which would permit them to conceal in the accounting records the misuse of cash receipts: Provided, That the commissioner may provide for exceptions to this requirement in the case of sparsely populated areas in this state where the hiring of unreasonable additional staff in the local office would otherwise be necessary.

(e) No penalty or fee may be collected by or distributed to a recipient of bureau for child support enforcement services from the state treasury or from the child support enforcement fund when child support is not distributed to the recipient in accordance with the time frames established herein.
(f) For purposes of this section, "business day" means a day on which state offices are open for regular business.

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

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

   1. Where the noncustodial parent has physical custody of the child, excluding visitation, upon filing with the bureau for child support enforcement:

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

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

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

   (A) An affidavit attesting that the person has obtained physical custody of the child, describing the circumstances under which the transfer of physical custody took place, and stating that he or she anticipates that his or her physical custody of the child will continue for the foreseeable future; and
(B) Documentary proof that the person claiming physical custody is currently the person responsible for the child by producing at least one of the following:

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

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

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

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

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

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

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

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

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

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

§48-18-115. Payment of support to the bureau for child support
enforcement.

All support payments owed to an obligee who is an
applicant for or recipient of the services of the bureau for child
support enforcement shall be paid to the bureau for child
support enforcement. Any other obligee owed a duty of support
under the terms of a support order entered by a court of
competent jurisdiction may request that the support payments
be made to the bureau for child support enforcement. In such
case, the bureau for child support enforcement shall proceed to
receive and disburse such support payments to or on behalf of
the obligee as provided by law.

In accordance with an initial and annually updated advance data processing planning document approved by the secretary of the federal department of health and human services, the bureau for child support enforcement may establish an automatic data processing and retrieval system designed effectively and efficiently to assist the commissioner in carrying out the provisions of this chapter.

§48-18-117. Obtaining support from federal tax refunds.

The commission shall, by legislative rule promulgated pursuant to chapter twenty-nine-a of this code, place in effect procedures necessary for the bureau for child support enforcement to obtain payment of past due support from federal tax refunds from overpayments made to the secretary of the treasury of the United States. The bureau for child support enforcement shall take all steps necessary to implement and utilize such procedures.

§48-18-118. Obtaining support from state income tax refunds.

(a) The tax commissioner shall establish procedures necessary for the bureau for child support enforcement to obtain payment of past due support from state income tax refunds from overpayment made to the tax commissioner pursuant to the provisions of article twenty-one, chapter eleven of this code.

(b) The commission shall, by legislative rule promulgated pursuant to chapter twenty-nine-a of this code, establish procedures necessary for the bureau for child support enforcement to enforce a support order through a notice to the tax commissioner which will cause any refund of state income tax which would otherwise be payable to an obligor to be reduced by the amount of overdue support owed by such obligor.

(1) Such legislative rule shall, at a minimum, prescribe:
(A) The time or times at which the bureau for child support enforcement shall serve on the obligor or submit to the tax commissioner notices of past due support;

(B) The manner in which such notices shall be served on the obligor or submitted to the tax commissioner;

(C) The necessary information which shall be contained in or accompany the notices;

(D) The amount of the fee to be paid to the tax commissioner for the full cost of applying the procedure whereby past due support is obtained from state income tax refunds; and

(E) Circumstances when the bureau for child support enforcement may deduct a twenty-five dollar fee from the obligor’s state income tax refund. Such rule may not require a deduction from the state income tax refund of an applicant who is a recipient of assistance from the bureau for children and families in the form of temporary assistance for needy families.

(2) Withholding from state income tax refunds may not be pursued unless the bureau for child support enforcement has examined the obligor’s pattern of payment of support and the obligee’s likelihood of successfully pursuing other enforcement actions, and has determined that the amount of past due support which will be owed, at the time the withholding is to be made, will be one hundred dollars or more. In determining whether the amount of past due support will be one hundred dollars or more, the bureau for child support enforcement shall consider the amount of all unpaid past due support, including that which may have accrued prior to the time that the bureau for child support enforcement first agreed to enforce the support order.

(c) The commissioner of the bureau for child support enforcement shall enter into agreements with the secretary of the treasury and the tax commissioner, and other appropriate governmental agencies, to secure information relating to the social security number or numbers and the address or addresses of any obligor, in order to provide notice between such agencies to aid the bureau for child support enforcement in requesting
state income tax deductions and to aid the tax commissioner in
enforcing such deductions. In each such case, the tax commis-
sioner, in processing the state income tax deduction, shall notify
the bureau for child support enforcement of the obligor's home
address and social security number or numbers. The bureau for
child support enforcement shall provide this information to any
other state involved in processing the support order.

(d) For the purposes of this section, "past due support" means the amount of unpaid past due support owed under the
terms of a support order to or on behalf of a child, or to or on behalf of a minor child and the parent with whom the child is living, regardless of whether the amount has been reduced to a judgment or not.

(e) The bureau for child support enforcement may, under the provisions of this section, enforce the collection of past due support on behalf of a child who has reached the age of majority.

(f) The legislative rule promulgated by the commission pursuant to the provisions of this section and pursuant to chapter twenty-nine-a of this code, shall, at a minimum, provide that prior to notifying the tax commissioner of past due support, a notice to the obligor as prescribed under subsection (a) of this section shall:

(1) Notify the obligor that a withholding will be made from any refund otherwise payable to such obligor;

(2) Instruct the obligor of the steps which may be taken to contest the determination of the bureau for child support enforcement that past due support is owed or the amount of the past due support; and

(3) Provide information with respect to the procedures to be followed, in the case of a joint return, to protect the share of the refund which may be payable to another person.

(g) If the bureau for child support enforcement is notified by the tax commissioner that the refund from which withhold-
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83 ing is proposed to be made is based upon a joint return, and if
84 the past due support which is involved has not been assigned to
85 the department of health and human resources, the bureau for
86 child support enforcement may delay distribution of the amount
87 withheld until such time as the tax commissioner notifies the
88 bureau for child support enforcement that the other person
89 filing the joint return has received his or her proper share of the
90 refund, but such delay shall not exceed six months.

(h) In any case in which an amount is withheld by the tax
91 commissioner under the provisions of this section and paid to
92 the bureau for child support enforcement, if the bureau for child
93 support enforcement subsequently determines that the amount
94 certified as past due was in excess of the amount actually owed
95 at the time the amount withheld is to be distributed, the agency
96 shall pay the excess amount withheld to the obligor thought to
97 have owed the past due support or, in the case of amounts
98 withheld on the basis of a joint return, jointly to the parties
99 filing such return.

(i) The amounts received by the bureau for child support
100 enforcement shall be distributed in accordance with the
101 provisions for distribution set forth in 42 U.S.C. §657. The
102 commission shall promulgate a legislative rule to establish the
103 appropriate distribution as may be required by the federal law.

§48-18-119. Obtaining support from unemployment compensation benefits.

(a) The commissioner shall determine on a periodic basis
1 whether individuals receiving unemployment compensation
2 owe child support obligations which are being enforced or have
3 been requested to be enforced by the bureau for child support
4 enforcement. If an individual is receiving such compensation
5 and owes any such child support obligation which is not being
6 met, the bureau for child support enforcement shall enter into
7 an agreement with such individual to have specified amounts
8 withheld otherwise payable to such individual, and shall submit
9 a copy of such agreement to the bureau of employment pro-
10 grams. In the absence of such agreement, the bureau for child
support enforcement shall bring legal process to require the
withholding of amounts from such compensation.

(b) The secretary shall enter into a written agreement with
the bureau of employment programs for the purpose of with-
holding unemployment compensation from individuals with
unmet support obligations being enforced by the bureau for
child support enforcement. The bureau for child support
enforcement shall agree only to a withholding program that it
expects to be cost effective, and, as to reimbursement, shall
agree only to reimburse the bureau of employment programs for
its actual, incremental costs of providing services to the bureau
for child support enforcement.

c) The commission shall promulgate a procedural rule for
selecting cases to pursue through the withholding of unemploy-
ment compensation for support purposes. This rule shall be
designed to ensure maximum case selection and minimal
discretion in the selection process.

d) The commissioner shall, not less than annually, provide
a receipt to an individual who requests a receipt for the support
paid through the withholding of unemployment compensation,
if receipts are not provided through other means.

e) The commissioner shall, through direct contact with the
bureau of employment programs, process cases through the
bureau of employment programs in this state, and shall process
cases through support enforcement agencies in other states. The
commissioner shall receive all amounts withheld by the bureau
of employment programs in this state, forwarding any amounts
withheld on behalf of support enforcement agencies in other
states to those agencies.

(f) At least one time per year, the commission shall review
and document program operations, including case selection
criteria established under subsection (c) of this section, and the
costs of the withholding process versus the amounts collected
and, as necessary, modify procedures and renegotiate the
services provided by the bureau of employment programs to
improve program and cost effectiveness.

48 (g) For the purposes of this section:

49 (1) "Legal process" means a writ, order, summons or other
similar process in the nature of garnishment which is issued by
a court of competent jurisdiction or by an authorized official
pursuant to an order to such court or pursuant to state or local
law.

54 (2) "Unemployment compensation" means any compensa-
tion under state unemployment compensation law (including
amounts payable in accordance with agreements under any
federal unemployment compensation law). It includes extended
benefits, unemployment compensation for federal employees,
unemployment compensation for ex-servicemen, trade readjust-
ment allowances, disaster unemployment assistance, and
payments under the Federal Redwood National Park Expansion
Act.

§48-18-120. Statements of account.

1 The bureau for child support enforcement shall provide
2 annual statements of their account to each obligor and obligee
3 without charge. Additional statements of account shall be
4 provided at a fee of five dollars, unless such fee is waived
5 pursuant to a rule promulgated by the commission. Statements
6 provided under this subsection are in addition to statements
7 provided for judicial hearings. The commissioner shall establish
8 procedures whereby an obligor or obligee can contest or correct
9 a statement of account.

§48-18-121. Providing information to consumer reporting agen-
cies; requesting consumer credit reports for child
support purposes.

1 (a) For purposes of this section, the term “consumer
2 reporting agency” means any person who, for monetary fees,
3 dues, or on a cooperative nonprofit basis, regularly engages, in
4 whole or in part, in the practice of assembling or evaluating
5 consumer credit information or other information on consumers
6 for the purpose of furnishing consumer reports to third parties.
(b) The commission shall propose and adopt a procedural rule in accordance with the provisions of sections four and eight, article three, chapter twenty-nine-a of this code, establishing procedures whereby information regarding the amount of overdue support owed by an obligor will be reported periodically by the bureau for child support enforcement to any consumer reporting agency, after a request by the consumer reporting agency that it be provided with the periodic reports.

(1) The procedural rule adopted by the commission shall provide that any information with respect to an obligor shall be made available only after notice has been sent to the obligor of the proposed action, and such obligor has been given a reasonable opportunity to contest the accuracy of the information.

(2) The procedural rule adopted shall afford the obligor with procedural due process prior to making information available with respect to the obligor.

(c) The information made available to a consumer reporting agency regarding overdue support may only be made available to an entity that has furnished evidence satisfactory to the bureau that the entity is a consumer reporting agency as defined in subsection (a) of this section.

(d) The bureau for child support enforcement may impose a fee for furnishing such information, not to exceed the actual cost thereof.

(e) The commissioner of the bureau for child support enforcement, or her or his designee, may request a consumer reporting agency to prepare and furnish to the bureau for child support enforcement a consumer report for purposes relating to child support, by certifying to the consumer reporting agency that:

(1) The consumer report is needed for the purpose of establishing an individual's capacity to make child support payments or determining the appropriate level of such payments in order to set an initial or modified child support award;
(2) The paternity of the child of the individual has been established or acknowledged by the individual in accordance with state law;

(3) The individual whose report is being requested has been given at least ten days' prior notice of such request by certified mail to his or her last known address that such report is being requested; and

(4) The consumer report will be kept confidential, will be used solely for a purpose described in subdivision (1) of this subsection and will not be used in connection with any other civil, administrative or criminal proceeding or for any other purpose.

§48-18-122. Central state case registry.

(a) The bureau for child support enforcement shall establish and maintain a central state case registry of child support orders. All orders in cases when any party receives any service provided by the bureau for child support enforcement shall be included in the registry. Any other support order entered or modified in this state on or after the first day of October, one thousand nine hundred ninety-eight, shall be included in the registry. The bureau for child support enforcement, upon receipt of any information regarding a new hire provided pursuant to section 18-125 of this article shall compare information received to determine if the new hire's income is subject to wage withholding and notify the employer pursuant to that section.

(b) Each party to a child support proceeding shall, upon entry of an order awarding or modifying child support, complete and file with the clerk of the circuit court issuing the order a form, to be promulgated by the administrative office of the supreme court of appeals, listing information concerning the location and identity of a party including, but not limited to: The party’s social security number, residential and mailing address, telephone number and driver’s license number; the child’s name, birth date and social security number; and the party’s employer’s name, address and telephone number. The
clerk shall promptly forward all such information to the state case registry. The parties are required to notify the state case registry of any change in the information contained on the form, and every order for support shall so state. All information provided to the state case registry shall be subject to the privacy and confidentiality safeguards contained in section 18-131.

(c) In any subsequent child support enforcement action between the parties, there shall be a presumption that the requirements for notice and service of process have been met upon a showing that the bureau for child support enforcement has made a diligent effort to ascertain the location of a party by delivery of written notice by certified mail, return receipt requested, to the most recent employer or residential mailing address filed with the state case registry pursuant to subsection (b) of this section.

§48-18-123. Subpoenas.

In order to obtain financial and medical insurance or other information pursuant to the establishment, enforcement and modification provisions set forth in this chapter, the bureau for child support enforcement or any out-of-state agency administering a program under Title IV-D of the Social Security Act may serve, by certified mail or personal service, an administrative subpoena on any person, corporation, partnership, financial institution, labor organization or state agency, for an appearance or for production of financial or medical insurance or other information. In case of disobedience to the subpoena, the bureau for child support enforcement may invoke the aid of any circuit court in requiring the appearance or production of records and financial documents. The bureau for child support enforcement may assess a civil penalty of no more than one hundred dollars for the failure of any person, corporation, financial institution, labor organization or state agency to comply with requirements of this section.

§48-18-124. Liability for financial institutions providing financial records to the bureau for child support enforce-
ment; agreements for data match system; encumbrance or surrender of assets.

(a) Notwithstanding any other provision of this code, a financial institution shall not be liable under the law of this state to any person for:

1. Disclosing any financial record of an individual to the bureau for child support enforcement in response to a subpoena issued by the bureau pursuant to section 18-123 of this article;

2. Disclosing any financial record of an individual to the bureau for child support enforcement pursuant to the terms of an agreement with such financial institution pursuant to subsection (f) of this section;

3. Encumbering or surrendering assets held by such financial institution in response to a notice of lien or levy issued by the bureau for child support enforcement as provided in subsection (g) of this section; or

4. For any other action taken in good faith to comply with the requirements of this section.

(b) The bureau for child support enforcement, after obtaining a financial record of an individual from a financial institution, may disclose such financial record only for the purpose of, and to the extent necessary in, establishing, modifying or enforcing a child support obligation of such individual.

(c) The civil liability of a person who knowingly, or by reason of negligence, discloses a financial record of an individual in violation of subsection (b) of this section is governed by the provisions of federal law as set forth in 42 U.S.C. §669A.

(d) For purposes of this section, the term "financial institution" means:

1. Any bank or savings association;
(2) A person who is an institution-affiliated party, as that term is defined in the Federal Deposit Insurance Act, 12 U.S.C. §1813(u);

(3) Any federal credit union or state-chartered credit union, including an institution-affiliated party of a credit union; and

(4) Any benefit association, insurance company, safe deposit company, money-market mutual fund, or similar entity authorized to do business in this state.

(e) For purposes of this section, the term "financial record" means an original of, a copy of, or information known to have been derived from, any record held by a financial institution pertaining to a customer's relationship with the financial institution.

(f) Notwithstanding any provision of this code to the contrary, the bureau for child support enforcement shall enter into agreements with financial institutions doing business in the state to develop and operate, in coordination with such financial institutions, a data match system, using automated data exchanges, to the maximum extent feasible, in which each financial institution is required to provide for each calendar quarter the name, record address, social security number or other taxpayer identification number, and other identifying information for each obligor, as defined in section 1-235 of this chapter, who maintains an account at such institution and who owes past due support. The bureau for child support enforcement will identify to the financial institution an obligor who owes past due support by his or her name and social security number or other taxpayer identification number. The bureau for child support enforcement, upon written request and proof of actual costs incurred, shall pay a reasonable fee to a financial institution for conducting the data matching services not to exceed the actual costs incurred by such financial institution or one hundred dollars per institution per quarter, whichever is less.
(g) The financial institution, in response to a notice of a lien or levy, shall encumber or surrender, as the case may be, assets held by such institution on behalf of any noncustodial parent who is subject to a lien for child support.

§48-18-125. Employment and income reporting.

(a) For purposes of this section:

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

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

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

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

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

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

(c) Employers are not required to report the hiring, rehiring or return to work of any person who is an employee of a federal or state agency performing intelligence or counterintelligence functions if the head of such agency has determined that reporting could endanger the safety of the employee or compromise an ongoing investigation or intelligence mission.
(d) An employer that has employees in states other than this state and that transmits reports magnetically or electronically is not required to report to the bureau for child support enforcement the hiring, rehiring or return to work of any employee if the employer has filed with the secretary of the federal department of health and human services, as required by 42 U.S.C. §653A, a written designation of another state in which it has employees as the reporting state.

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

(f) Employers shall submit a report within fourteen days of the date of the hiring, rehiring or return to work of the employee. However, if the employer transmits the reports magnetically or electronically by two monthly submissions, the reports shall be submitted not less than twelve days nor more than sixteen days apart.

(g) An employer shall provide to the bureau for child support enforcement, upon its written request, information regarding an obligor's employment, wages or salary, medical insurance, and location of employment.

(h) Any employer who fails to report in accordance with the provisions of this section shall be assessed a civil penalty of no more than twenty-five dollars per failure. If the failure to report is the result of a conspiracy between the employer and the employee not to supply the required report or to supply a false or incomplete report, the employer shall be assessed a civil penalty of no more than five hundred dollars.
(i) Employers required to report under this section may assess each employee so reported one dollar for the administrative costs of reporting.

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

1. The state directory of new hires shall furnish the information to the national directory of new hires;
2. The bureau for child support enforcement shall use information received pursuant to this section to locate individuals for purposes of establishing paternity and of establishing, modifying and enforcing child support obligations, and may disclose such information to any agent of the agency that is under contract with the bureau to carry out such purposes;
3. State agencies responsible for administering a program specified in 42 U.S.C. §1320b-7(b) shall have access to information reported by employers for purposes of verifying eligibility for the program; and
4. The bureau of employment programs shall have access to information reported by employers for purposes of administering employment security and workers' compensation programs.

§48-18-126. Review and adjustment of child support orders.

(a) Either parent or, if there has been an assignment of support to the department of health and human resources, the bureau for child support enforcement shall have the right to request an administrative review of the child support award in the following circumstances:

1. Where the request for review is received thirty-six months or more after the date of the entry of the order or from the completion of the previous administrative review, whichever is later, the bureau for child support enforcement shall conduct a review to determine whether the amount of the child support award in such order varies from the amount of child support that would be awarded at the time of the review pursuant to the guidelines for child support awards contained in
article 13-101, et seq. If the amount of the child support award under the existing order differs by ten percent or more from the amount that would be awarded in accordance with the child support guidelines, the bureau for child support enforcement shall file with the circuit court a motion for modification of the child support order. If the amount of the child support award under the existing order differs by less than ten percent from the amount that would be awarded in accordance with the child support guidelines, the bureau for child support enforcement may, if it determines that such action is in the best interest of the child or otherwise appropriate, file with the circuit court a motion for modification of the child support order.

(2) Where the request for review of a child support award is received less than thirty-six months after the date of the entry of the order or from the completion of the previous administrative review, the bureau for child support enforcement shall undertake a review of the case only where it is alleged that there has been a substantial change in circumstances. If the bureau for child support enforcement determines that there has been a substantial change in circumstances and if it is in the best interests of the child, the bureau shall file with the circuit court a motion for modification of the child support order in accordance with the guidelines for child support awards contained in article 13-101, et seq., of this chapter.

(b) The bureau for child support enforcement shall notify both parents at least once every three years of their right to request a review of a child support order. The notice may be included in any order granting or modifying a child support award. The bureau for child support enforcement shall give each parent at least thirty days' notice before commencing any review, and shall further notify each parent, upon completion of a review, of the results of the review, whether of a proposal to move for modification or of a proposal that there should be no change.

(c) When the result of the review is a proposal to move for modification of the child support order, each parent shall be given thirty days' notice of the hearing on the motion, the
notice to be directed to the last known address of each party by
first class mail. When the result of the review is a proposal that
there be no change, any parent disagreeing with that proposal
may, within thirty days of the notice of the results of the review,
file with the court a motion for modification setting forth in full
the grounds therefor.

(d) For the purposes of this section, a “substantial change
in circumstances” includes, but is not limited to, a changed
financial condition, a temporary or permanent change in
physical custody of the child which the court has not ordered,
increased need of the child, or other financial conditions.
“Changed financial conditions” means increases or decreases in
the resources available to either party from any source.
Changed financial conditions includes, but is not limited to, the
application for or receipt of any form of public assistance
payments, unemployment compensation and workers’ compen-
sation, or a fifteen percent or more variance from the amount of
the existing order and the amount of child support that would be
awarded according to the child support guidelines.

§48-18-127. Adoption of form to identify payments.

The commission shall recommend to the secretary a form
for the purpose of identification of child support payments
which shall include, at a minimum, any amount of child support
obligation paid under an income withholding order, the name
and address of the payee, and the availability of health insur-
ance. The form may include other information needed to ensure
the proper credit and distribution of such payments. The
secretary shall adopt any revised form no later than the first day
of July, one thousand nine hundred ninety-six, which shall
include all information listed herein. Following the adoption of
such form, the commission shall promulgate such legislative
rules pursuant to chapter twenty-nine-a as may be necessary to
ensure that all information provided on the form is correct. This
rule shall constitute an emergency rule within the meaning of
section fifteen, article three, chapter twenty-nine-a of this code.

(a) When any filing, copying or other service is provided to the bureau for child support enforcement, the state or county official or the clerk of any court providing such fee for a charge, shall bill the bureau for child support enforcement monthly.

(b) When any filing, copying or other service is provided to a person, agency or entity who is providing services for the bureau for child support enforcement pursuant to a contract, the state or county official or the clerk of any court providing such fee for a charge, shall bill the entity, agency, person or bureau for child support enforcement monthly, in accord with the terms of the contract. The bureau for child support enforcement shall provide the relevant terms of such agreement to those officials upon implementation of any agreement.

(c) A state or county official and the clerk of any court who charges a deposit, library fee, filing fee for filing and copying documents or their service, if the filing, copying or services is for the bureau for child support enforcement or for a person, entity or agency providing services pursuant to a contract as described in this article, shall bill the bureau for child support enforcement monthly or the person, entity or agency providing such services monthly, in accord with the terms of any contract.

§48-18-129. Acceptance of federal purposes; compliance with federal requirements and standards.

(a) The state assents to the purposes of the federal laws regarding child support and establishment of paternity and agrees to accept federal appropriations and other forms of assistance made under or pursuant thereto, and authorizes the receipt of such appropriations into the state treasury and the receipt of other forms of assistance by the bureau for child support enforcement for expenditure, disbursement and distribution by the bureau in accordance with the provisions of this chapter and the conditions imposed by applicable federal laws, rules and regulations.

(b) Insofar as such actions are consistent with the laws of this state granting authority to the bureau and the commissioner, the bureau shall comply with such requirements and standards as the secretary of the federal department of health and human services may have determined, as of the effective date of this section, to be necessary for the establishment of an effective program for locating obligors, establishing paternity, obtaining support orders and collecting support payments.

(c) The commissioner shall propose for promulgation a legislative rule in accordance with the provisions of chapter twenty-nine-a of this code, to establish time-keeping requirements to assure the maximum funding of incentive payments, grants and other funding sources available to the state for the processing of cases filed for the location of absent parents, the establishment of paternity, and the establishment, modification or enforcement of orders of child support.

§48-18-130. Publicizing child support enforcement services.

The bureau for child support enforcement shall regularly and frequently publicize, through public service announcements, the availability of child support enforcement services under the provisions of this chapter and otherwise, including information as to any application fees for such services and a toll-free telephone number and a postal address at which further information may be obtained.


(a) All records in the possession of the bureau for child support enforcement, including records concerning an individual case of child or spousal support, shall be kept confidential and shall not be released except as provided below:

(1) Records shall be disclosed or withheld as required by federal law or regulations promulgated thereunder notwithstanding other provisions of this section.
(2) Information as to the whereabouts of a party or the child shall not be released to a person against whom a protective order has been entered with respect to such party or child or where the state has reason to believe that the release of the information to the person making the request may result in physical or emotional harm to the party or the child.

(3) The phone number, address, employer and other information regarding the location of the obligor, the obligee and the child shall only be disclosed: (A) Upon his or her written consent, to the person whom the consent designates; or (B) notwithstanding subdivision (4) of this subsection, to the obligee, the obligor, the child or the caretaker or representative of the child, upon order of a court if the court finds that the disclosure is for a bona fide purpose, is not contrary to the best interest of a child and does not compromise the safety of any party: Provided, That the identity and location of the employer may be disclosed on the letters, notices and pleadings of the bureau as necessary and convenient for the determination of support amounts and the establishment, investigation, modification, enforcement, collection and distribution of support.

(4) Information and records other than the phone number, address, employer and information regarding the location of the obligor, the obligee and the child shall be disclosed to the obligor, the obligee, the child or the caretaker of the child or his or her duly authorized representative, upon his or her written request: Provided, That when the obligor requests records other than collection and distribution records, financial records relevant to the determination of the amount of support pursuant to the guidelines, or records the obligor has supplied, the bureau shall mail a notice by first class mail to the last known address of the obligee notifying him or her of the request. The notice shall advise the obligee of his or her right to object to the release of records on the grounds that the records are not relevant to the determination of the amount of support, or the establishment, modification, enforcement, collection or distribution of support. The notice shall also advise the obligee of his or her right to disclosure of records provided in this
section in order to determine what records the bureau for child support enforcement may have. In the event of any objection, the bureau shall determine whether or not the information shall be released.

(5) Information in specific cases may be released as is necessary or to determine the identity, location, employment, income and assets of an obligor.

(6) Information and records may be disclosed to the bureau of vital statistics, bureau of employment programs, the workers’ compensation division, state tax department and the internal revenue service, or other state or federal agencies or departments as may be necessary or desirable in obtaining any address, employment, wage or benefit information for the purpose of determining the amount of support or establishing, enforcing, collecting and distributing support.

(b) Any person who willfully violates this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than one hundred nor more than one thousand dollars, or confined in the county or regional jail not more than six months, or both fined and imprisoned.


(a) All state, county and municipal agencies’ offices and employers, including profit, nonprofit and governmental employers, receiving a request for information and assistance from the bureau for child support enforcement or any out-of-state agency administering a program under Title IV-D of the Social Security Act, shall cooperate with the bureau or with the out-of-state agency in the location of parents who have abandoned and deserted children and shall provide the bureau or the out-of-state agency with all available pertinent information concerning the location, income and property of those parents.

(b) Notwithstanding any other provision of law to the contrary, any entity conducting business in this state or incorporated under the laws of this state shall, upon certification by the
bureau or any out-of-state agency administering a program
under Title IV-D of the Social Security Act that the information
is needed to locate a parent for the purpose of collecting or
distributing child support, provide the bureau or the out-of-state
agency with the following information about the parent: Full
name, social security number, date of birth, home address,
wages and number of dependents listed for income tax pur-
poses: Provided, That no entity may provide any information
obtained in the course of providing legal services, medical
treatment or medical services.

(c)(1) The bureau for child support enforcement shall have
access, subject to safeguards on privacy and information
security, and to the nonliability of entities that afford such
access under this subdivision, to information contained in the
following records, including automated access, in the case of
records maintained in automated data bases:

(A) Records of other state and local government agencies,
including, but not limited to:

(i) Vital statistics, including records of marriage, birth and
divorce;

(ii) State and local tax and revenue records, including
information on residence address, employer, income and assets;

(iii) Records concerning real and titled personal property;

(iv) Records of occupational and professional licenses, and
records concerning the ownership and control of corporations,
partnerships and other business entities;

(v) Employment security records;

(vi) Records of agencies administering public assistance
programs;

(vii) Records of the division of motor vehicles; and

(viii) Corrections records.
(B) Certain records held by private entities with respect to individuals who owe or are owed support or certain individuals against, or with respect to, whom a support obligation is sought, consisting of:

(i) The names and addresses of such individuals and the names and addresses of the employers of such individuals, as appearing in the customer records of public utilities and cable television companies, pursuant to an administrative subpoena authorized by section thirty-three, article two of this chapter; and

(ii) Information, including information on assets and liabilities, on such individuals held by financial institutions.

(2) Out-of-state agencies administering programs under Title IV-D of the Social Security Act shall, without the need for any court order, have the authority to access records in this state by making a request through the bureau for child support enforcement.

(d) All federal and state agencies conducting activities under Title IV-D of the Social Security Act shall have access to any system used by this state to locate an individual for purposes relating to motor vehicles or law enforcement.

(e) Out-of-state agencies administering programs under Title IV-D of the Social Security Act shall have the authority and right to access and use, for the purpose of establishing or enforcing a support order, the state law-enforcement and motor vehicle data bases.

(f) The bureau for child support enforcement and out-of-state agencies administering programs under Title IV-D of the Social Security Act shall have the authority and right to access and use, for the purpose of establishing or enforcing a support order, interstate networks that state law-enforcement agencies and motor vehicle agencies subscribe to or participate in, such as the national law-enforcement telecommunications system.
(NLETS) and the American association of motor vehicle administrators (AAMVA) networks.

(g) No state, county or municipal agency or licensing board required to release information pursuant to the provisions of this section to the bureau for child support enforcement or to any out-of-state agency administering programs under Title IV-D of the Social Security Act may require the bureau for child support enforcement or any out-of-state agency to obtain a court order prior to the release of the information.

(h) Any information received pursuant to the provisions of this section is subject to the confidentiality provisions set forth in section 18-131 of this chapter.

§48-18-133. Recording of social security numbers in certain family matters.

(a) The social security number, if any, of any applicant for a professional license, driver’s license, occupational license, recreational license, or marriage license must be recorded on the application for such license.

(b) The social security number of any individual who is subject to a divorce decree, support order, or paternity determination or acknowledgment must be placed in the records relating to the matter.

(c) For the purposes of subsection (a) of this section, if the licensing authority allows the use of a number other than the social security number on the face of the document while the social security number is kept on file at the agency, the applicant shall be so advised by such authority.

ARTICLE 19. BUREAU FOR CHILD SUPPORT ENFORCEMENT ATTORNEY.

§48-19-101. Purposes; how article to be construed.

(a) The purposes of this article are:
(1) To enumerate and describe the functions and duties of the bureau for child support enforcement attorney as an employee of the bureau for child support enforcement;

(2) To ensure that procedures followed by the bureau for child support enforcement attorney will protect the best interests of children in domestic relations matters; and

(3) To compel the enforcement of support orders, thereby ensuring that persons legally responsible for the care and support of children assume their legal obligations and reduce the financial cost to this state of providing public assistance funds for the care of children.

(b) This article shall be construed to facilitate the resolution of domestic relations matters.

§48-19-102. Placement of bureau for child support enforcement attorneys throughout the state; supervision; office procedures.

(a) The bureau for child support enforcement shall employ twenty-one employees in the position of bureau for child support enforcement attorney, and the offices of the bureau for child support enforcement attorneys shall be distributed geographically so as to provide an office for each of the following areas of the state:

(1) The counties of Brooke, Hancock and Ohio;

(2) The counties of Marshall, Tyler and Wetzel;

(3) The counties of Pleasants, Ritchie, Wirt and Wood;

(4) The counties of Calhoun, Jackson and Roane;

(5) The counties of Mason and Putnam;

(6) The county of Cabell;

(7) The counties of McDowell and Wyoming;
(8) The counties of Logan and Mingo;
(9) The county of Kanawha;
(10) The county of Raleigh;
(11) The counties of Mercer, Monroe and Summers;
(12) The counties of Fayette and Nicholas;
(13) The counties of Greenbrier and Pocahontas;
(14) The counties of Braxton, Clay, Gilmer and Webster;
(15) The counties of Doddridge, Harrison, Lewis and Upshur;
(16) The counties of Marion and Taylor;
(17) The counties of Monongalia and Preston;
(18) The counties of Barbour, Randolph and Tucker;
(19) The counties of Grant, Hampshire, Hardy, Mineral and Pendleton;
(20) The counties of Berkeley, Jefferson and Morgan; and
(21) The counties of Boone, Lincoln and Wayne.

(b) Each bureau for child support enforcement attorney shall be appointed by the commissioner of the bureau for child support enforcement. The bureau for child support enforcement attorneys shall be duly qualified attorneys licensed to practice in the courts of this state. Bureau for child support enforcement attorneys shall be exempted from the appointments in the indigent cases which would otherwise be required pursuant to article twenty-one, chapter twenty-nine of this code.

(c) Nothing contained herein shall prohibit the commissioner from temporarily assigning, from time to time as
caseload may dictate, a bureau for child support enforcement attorney from one geographical area to another geographical area.

(d) The bureau for child support enforcement attorney is an employee of the bureau for child support enforcement.

§48-19-103. Duties of the bureau for support enforcement attorneys.

Subject to the control and supervision of the commissioner:

(a) The bureau for child support enforcement attorney shall supervise and direct the secretarial, clerical and other employees in his or her office in the performance of their duties as such performance affects the delivery of legal services. The bureau for child support enforcement attorney will provide appropriate instruction and supervision to employees of his or her office who are nonlawyers, concerning matters of legal ethics and matters of law, in accordance with applicable state and federal statutes, rules and regulations.

(b) In accordance with the requirements of rule 5.4(c) of the rules of professional conduct as promulgated and adopted by the supreme court of appeals, the bureau for child support enforcement attorney shall not permit a nonlawyer who is employed by the department of health and human resources in a supervisory position over the bureau for child support enforcement attorney to direct or regulate the attorney’s professional judgment in rendering legal services to recipients of services in accordance with the provisions of this chapter; nor shall any nonlawyer employee of the department attempt to direct or regulate the attorney’s professional judgment.

(c) The bureau for child support enforcement attorney shall make available to the public an informational pamphlet, designed in consultation with the commissioner. The informational pamphlet shall explain the procedures of the court and the bureau for child support enforcement attorney; the duties of the bureau for child support enforcement attorney; the rights and
responsibilities of the parties; and the availability of human services in the community. The informational pamphlet shall be provided as soon as possible after the filing of a complaint or other initiating pleading. Upon request, a party to a domestic relations proceeding shall receive an oral explanation of the informational pamphlet from the office of the bureau for child support enforcement attorney.

(d) The bureau for child support enforcement shall act to establish the paternity of every child born out of wedlock for whom paternity has not been established, when the child's caretaker is an applicant for or recipient of temporary assistance for needy families, and when the caretaker has assigned to the division of human services any rights to support for the child which might be forthcoming from the putative father: Provided, That if the bureau for child support enforcement attorney is informed by the secretary of the department of health and human resources or his or her authorized employee that it has been determined that it is against the best interest of the child to establish paternity, the bureau for child support enforcement attorney shall decline to so act. The bureau for child support enforcement attorney, upon the request of the mother, alleged father or the caretaker of a child born out of wedlock, regardless of whether the mother, alleged father or the caretaker is an applicant or recipient of temporary assistance for needy families, shall undertake to establish the paternity of such child.

(e) The bureau for child support enforcement attorney shall undertake to secure support for any individual who is receiving temporary assistance for needy families when such individual has assigned to the division of human services any rights to support from any other person such individual may have: Provided, That if the bureau for child support enforcement attorney is informed by the secretary of the department of health and human resources or his or her authorized employee that it has been determined that it is against the best interests of a child to secure support on the child's behalf, the bureau for child support enforcement attorney shall decline to so act. The bureau for child support enforcement attorney, upon the request
of any individual, regardless of whether such individual is an 
applicant or recipient of temporary assistance for needy 
families, shall undertake to secure support for the individual. If 
circumstances require, the bureau for child support enforcement 
attorney shall utilize the provisions of article 16-101, et seq. of 
this code and any other reciprocal arrangements which may be 
adopted with other states for the establishment and enforcement 
of support obligations, and if such arrangements and other 
means have proven ineffective, the bureau for child support 
enforcement attorney may utilize the federal courts to obtain 
and enforce court orders for support.

(f) The bureau for child support enforcement attorney shall 
pursue the enforcement of support orders through the withhold-
ing from income of amounts payable as support:

(1) Without the necessity of an application from the obligee 
in the case of a support obligation owed to an obligee to whom 
services are already being provided under the provisions of this 
chapter; and

(2) On the basis of an application for services in the case of 
any other support obligation arising from a support order 
entered by a court of competent jurisdiction.

(g) The bureau for child support enforcement attorney may 
decide to commence an action to obtain an order of support 
under the provisions of article 14-101, et seq., if an action for 
divorce, annulment or separate maintenance is pending, or the 
filling of such action is imminent, and such action will deter-
mine the issue of support for the child: Provided, That such 
action shall be deemed to be imminent if it is proposed by the 
obligee to be commenced within the twenty-eight days next 
following a decision by the bureau for child support enforce-
ment attorney that an action should properly be brought to 
obtain an order for support.

(h) If the bureau for child support enforcement office, 
through the bureau for child support enforcement attorney, shall 
undertake paternity determination services, child support
collection or support collection services for a spouse or former spouse upon the written request of an individual who is not an applicant or recipient of assistance from the division of human services, the office may impose an application fee for furnishing such services. Such application fee shall be in a reasonable amount, not to exceed twenty-five dollars, as determined by the commissioner: Provided, That the commissioner may fix such amount at a higher or lower rate which is uniform for this state and all other states if the secretary of the federal department of health and human services determines that a uniform rate is appropriate for any fiscal year to reflect increases or decreases in administrative costs. Any cost in excess of the application fee so imposed may be collected from the obligor who owes the child or spousal support obligation involved.

§48-19-104. Vacancies; interim bureau for child support enforcement attorney.

(a) If the position of bureau for child support enforcement attorney becomes vacant for any reason, the commissioner shall appoint a person to the position of bureau for child support enforcement attorney not later than six months after the vacancy occurs.

(b) If necessary, the commissioner may appoint an interim bureau for child support enforcement attorney to serve for not longer than six months until a bureau for child support enforcement attorney is appointed pursuant to this section.


The salary of a bureau for child support enforcement attorney shall be not less than thirty-five thousand dollars per year, and shall be fixed by the commissioner, who shall take into consideration ability, performance of duty and experience. The compensation and expenses of the employees of the office and all operating expenses incurred by the office shall be fixed by the commissioner and paid by the bureau for child support enforcement.
ARTICLE 20. UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT.

PART I. GENERAL PROVISIONS.


This article may be cited as the "Uniform Child Custody Jurisdiction and Enforcement Act".


(a) “Abandoned” means left without provision for reasonable and necessary care or supervision.

(b) “Child” means an individual who has not attained eighteen years of age.

c) “Child custody determination” means a judgment, decree or other order of a court providing for the legal custody, physical custody or visitation with respect to a child. The term includes a permanent, temporary, initial and modification order. The term does not include an order relating to child support or other monetary obligation of an individual.

d) “Child custody proceeding” means a proceeding in which legal custody, physical custody or visitation with respect to a child is an issue. The term includes a proceeding for divorce, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights and protection from domestic violence, in which the issue may appear. The term does not include a proceeding involving juvenile delinquency, contractual emancipation or enforcement under part 20-301, et seq.

e) “Commencement” means the filing of the first pleading in a proceeding.

(f) “Court” means an entity authorized under the law of a state to establish, enforce or modify a child custody determina-
tion. Reference to a court of West Virginia means a court of record.

(g) "Home state" means the state in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately before the commencement of a child custody proceeding. In the case of a child less than six months of age, the term means the state in which the child lived from birth with any of the persons mentioned. A period of temporary absence of any of the mentioned persons is part of the period.

(h) "Initial determination" means the first child custody determination concerning a particular child.

(i) "Issuing court" means the court that makes a child custody determination for which enforcement is sought under this chapter.

(j) "Issuing state" means the state in which a child custody determination is made.

(k) "Modification" means a child custody determination that changes, replaces, supersedes or is otherwise made after a previous determination concerning the same child, whether or not it is made by the court that made the previous determination.

(l) "Person" means an individual; corporation; business trust; estate; trust; partnership; limited liability company; association; joint venture; government, governmental subdivision, agency or instrumentality; public corporation; or any other legal or commercial entity.

(m) "Person acting as a parent" means a person, other than a parent, who:

(1) Has physical custody of the child or has had physical custody for a period of six consecutive months, including any temporary absence, within one year immediately before the commencement of a child custody proceeding; and
§48-20-103. Proceedings governed by other law.

1 This chapter does not govern an adoption proceeding or a proceeding pertaining to the authorization of emergency medical care for a child.

§48-20-104. Application to Indian tribes.

1 (a) A child custody proceeding that pertains to an Indian child as defined in the Indian Child Welfare Act, 25 U.S.C. § 1901 et seq., is not subject to this chapter to the extent that it is governed by the Indian Child Welfare Act.

5 (b) A court of this state shall treat a tribe as if it were a state of the United States for purposes of applying parts 1 and 2.

7 (c) A child custody determination made by a tribe under factual circumstances in substantial conformity with the jurisdictional standards of this chapter must be recognized and enforced under part 3.

§48-20-105. International application of chapter.

1 (a) A court of this state shall treat a foreign country as if it were a state of the United States for purpose of applying parts 1 and 2.
(b) Except as otherwise provided in subsection (c) of this section, a child custody determination made in a foreign country under factual circumstances in substantial conformity with the jurisdictional standards of this chapter must be recognized and enforced under article three of this chapter.

(c) A court of this state need not apply this chapter if the child custody law of a foreign country violates fundamental principles of human rights.


A child custody determination made by a court of this state that had jurisdiction under this chapter binds all persons who have been served in accordance with the laws of this state or notified in accordance with section 20-108 or who have submitted to the jurisdiction of the court, and who have been given an opportunity to be heard. As to those persons the determination is conclusive as to all decided issues of law and fact except to the extent the determination is modified.


If a question of existence or exercise of jurisdiction under this chapter is raised in a child custody proceeding, the question, upon request of a party, must be given priority on the calendar and handled expeditiously.

§48-20-108. Notice to persons outside state.

(a) Notice required for the exercise of jurisdiction when a person is outside this state may be given in a manner prescribed by the law of this state for service of process or by the law of the state in which the service is made. Notice must be given in a manner reasonably calculated to give actual notice but may be by publication if other means are not effective.

(b) Proof of service may be made in the manner prescribed by the law of this state or by the law of the state in which the service is made.
§48-20-109. Appearance and limited immunity.

(a) A party to a child custody proceeding, including a modification proceeding, or a petitioner or respondent in a proceeding to enforce or register a child custody determination is not subject to personal jurisdiction in this state for another proceeding or purpose solely by reason of having participated, or having been physically present for the purpose of participating, in the proceeding.

(b) A person who is subject to personal jurisdiction in this state on a basis other than physical presence is not immune from service of process in this state. A party present in this state who is subject to the jurisdiction of another state is not immune from service of process allowable under the laws of that state.

(c) The immunity granted by subsection (a) of this section does not extend to civil litigation based on acts unrelated to the participation in a proceeding under this chapter committed by an individual while present in this state.

§48-20-110. Communication between courts.

(a) A court of this state may communicate with a court in another state concerning a proceeding arising under this chapter.

(b) The court may allow the parties to participate in the communication. If the parties are not able to participate in the communication, they must be given the opportunity to present facts and legal arguments before a decision on jurisdiction is made.

(c) Communication between courts on schedules, calendars, court records and similar matters may occur without informing the parties. A record need not be made of the communication.
(d) Except as otherwise provided in subsection (c) of this section, a record must be made of a communication under this section. The parties must be informed promptly of the communication and granted access to the record.

(e) For the purposes of this section, "record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

§48-20-111. Taking testimony in another state.

(a) In addition to other procedures available to a party, a party to a child custody proceeding may offer testimony of witnesses who are located in another state, including testimony of the parties and the child, by deposition or other means allowable in this state for testimony taken in another state. The court on its own motion may order that the testimony of a person be taken in another state and may prescribe the manner in which and the terms upon which the testimony is taken.

(b) A court of this state may permit an individual residing in another state to be deposed or to testify by telephone, audiovisual means, or other electronic means before a designated court or at another location in that state. A court of this state shall cooperate with courts of other states in designating an appropriate location for the deposition or testimony.

(c) Documentary evidence transmitted from another state to a court of this state by technological means that do not produce an original writing may not be excluded from evidence on an objection based on the means of transmission.

§48-20-112. Cooperation between courts; preservation of records.

(a) A court of this state may request the appropriate court of another state to:

(1) Hold an evidentiary hearing;
(2) Order a person to produce or give evidence pursuant to procedures of that state;

(3) Order that an evaluation be made with respect to the custody of a child involved in a pending proceeding;

(4) Forward to the court of this state a certified copy of the transcript of the record of the hearing, the evidence otherwise presented and any evaluation prepared in compliance with the request; and

(5) Order a party to a child custody proceeding or any person having physical custody of the child to appear in the proceeding with or without the child.

(b) Upon request of a court of another state, a court of this state may hold a hearing or enter an order described in subsection (a) of this section.

(c) Travel and other necessary and reasonable expenses incurred under subsections (a) and (b) of this section may be assessed against the parties according to the law of this state.

(d) A court of this state shall preserve the pleadings, orders, decrees, records of hearings, evaluations and other pertinent records with respect to a child custody proceeding until the child attains eighteen years of age. Upon appropriate request by a court or law-enforcement official of another state, the court shall forward a certified copy of those records.

PART 2. JURISDICTION.

§48-20-201. Initial child custody jurisdiction.

(a) Except as otherwise provided in section 20-204, a court of this state has jurisdiction to make an initial child custody determination only if:

(1) This state is the home state of the child on the date of the commencement of the proceeding, or was the home state of the child within six months before the commencement of the
proceeding, and the child is absent from this state but a parent or person acting as a parent continues to live in this state;

(2) A court of another state does not have jurisdiction under subdivision (1) of this subsection, or a court of the home state of the child has declined to exercise jurisdiction on the ground that this state is the more appropriate forum under section 20-207 or 20-208, and:

(A) The child and the child's parents, or the child and at least one parent or a person acting as a parent, have a significant connection with this state other than mere physical presence; and

(B) Substantial evidence is available in this state concerning the child's care, protection, training and personal relationships;

(3) All courts having jurisdiction under subdivision (1) or (2) of this subdivision have declined to exercise jurisdiction on the ground that a court of this state is the more appropriate forum to determine the custody of the child under section 20-207 or 20-208; or

(4) No court of any other state would have jurisdiction under the criteria specified in subdivision (1), (2) or (3) of this subsection.

(b) Subsection (a) of this section is the exclusive jurisdictional basis for making a child custody determination by a court of this state.

(c) Physical presence of, or personal jurisdiction over, a party or a child is not necessary or sufficient to make a child custody determination.


(a) Except as otherwise provided in section 20-204, a court of this state which has made a child custody determination
consistent with section 20-201 or 20-203 has exclusive, continuing jurisdiction over the determination until:

(1) A court of this state determines that neither the child, the child and one parent, nor the child and a person acting as a parent have a significant connection with this state and that substantial evidence is no longer available in this state concerning the child’s care, protection, training and personal relationships; or

(2) A court of this state or a court of another state determines that the child, the child’s parents and any person acting as a parent do not presently reside in this state.

(b) A court of this state which has made a child custody determination and does not have exclusive, continuing jurisdiction under this section may modify that determination only if it has jurisdiction to make an initial determination under section 20-201.

§48-20-203. Jurisdiction to modify determination.

Except as otherwise provided in section 20-204, a court of this state may not modify a child custody determination made by a court of another state unless a court of this state has jurisdiction to make an initial determination under subdivision (1) or (2), subsection (a), section 20-201 and:

(1) The court of the other state determines it no longer has exclusive, continuing jurisdiction under section 20-202 or that a court of this state would be a more convenient forum under section 20-207; or

(2) A court of this state or a court of the other state determines that the child, the child’s parents and any person acting as a parent do not presently reside in the other state.
§48-20-204. Temporary emergency jurisdiction.

(a) A court of this state has temporary emergency jurisdiction if the child is present in this state and the child has been abandoned or it is necessary in an emergency to protect the child because the child, or a sibling or parent of the child, is subjected to or threatened with mistreatment or abuse.

(b) If there is no previous child custody determination that is entitled to be enforced under this chapter and a child custody proceeding has not been commenced in a court of a state having jurisdiction under sections 20-201 through 20-203, inclusive, of this article, a child custody determination made under this section remains in effect until an order is obtained from a court of a state having jurisdiction under sections 20-201 through 20-203, inclusive, of this article. If a child custody proceeding has not been or is not commenced in a court of a state having jurisdiction under sections 20-201 through 20-203, inclusive, of this article, a child custody determination made under this section becomes a final determination, if it so provides and this state becomes the home state of the child.

(c) If there is a previous child custody determination that is entitled to be enforced under this chapter, or a child custody proceeding has been commenced in a court of a state having jurisdiction under sections 20-201 through 20-203, inclusive, of this article, any order issued by a court of this state under this section must specify in the order a period that the court considers adequate to allow the person seeking an order to obtain an order from the state having jurisdiction under sections 20-201 through 20-203, inclusive, of this article. The order issued in this state remains in effect until an order is obtained from the other state within the period specified or the period expires.

(d) A court of this state which has been asked to make a child custody determination under this section, upon being informed that a child custody proceeding has been commenced in, or a child custody determination has been made by, a court of a state having jurisdiction under sections 20-201 through 20-203, shall immediately communicate with the other court. A
§48-20-205. Notice; opportunity to be heard; joinder.

(a) Before a child custody determination is made under this chapter, notice and an opportunity to be heard in accordance with the standards of section 20-108, must be given to all persons entitled to notice under the law of this state as in child custody proceedings between residents of this state, any parent whose parental rights have not been previously terminated and any person having physical custody of the child.

(b) This chapter does not govern the enforceability of a child custody determination made without notice or an opportunity to be heard.

(c) The obligation to join a party and the right to intervene as a party in a child custody proceeding under this chapter are governed by the law of this state as in child custody proceedings between residents of this state.

§48-20-206. Simultaneous proceedings.

(a) Except as otherwise provided in section 20-204, a court of this state may not exercise its jurisdiction under this article if, at the time of the commencement of the proceeding, a proceeding concerning the custody of the child has been commenced in a court of another state having jurisdiction substantially in conformity with this chapter, unless the proceeding has been terminated or is stayed by the court of the other state because a court of this state is a more convenient forum under 20-207.
(b) Except as otherwise provided in section 20-204, a court of this state, before hearing a child custody proceeding, shall examine the court documents and other information supplied by the parties pursuant to section 20-209. If the court determines that a child custody proceeding has been commenced in a court in another state having jurisdiction substantially in accordance with this chapter, the court of this state shall stay its proceeding and communicate with the court of the other state. If the court of the state having jurisdiction substantially in accordance with this chapter does not determine that the court of this state is a more appropriate forum, the court of this state shall dismiss the proceeding.

(c) In a proceeding to modify a child custody determination, a court of this state shall determine whether a proceeding to enforce the determination has been commenced in another state. If a proceeding to enforce a child custody determination has been commenced in another state, the court may:

(1) Stay the proceeding for modification pending the entry of an order of a court of the other state enforcing, staying, denying, or dismissing the proceeding for enforcement;

(2) Enjoin the parties from continuing with the proceeding for enforcement; or

(3) Proceed with the modification under conditions it considers appropriate.

§48-20-207. Inconvenient forum.

(a) A court of this state which has jurisdiction under this chapter to make a child custody determination may decline to exercise its jurisdiction at any time if it determines that it is an inconvenient forum under the circumstances and that a court of another state is a more appropriate forum. The issue of inconvenient forum may be raised upon the motion of a party, the court's own motion or request of another court. 
(b) Before determining whether it is an inconvenient forum, a court of this state shall consider whether it is appropriate for a court of another state to exercise jurisdiction. For this purpose, the court shall allow the parties to submit information and shall consider all relevant factors, including:

(1) Whether domestic violence has occurred and is likely to continue in the future and which state could best protect the parties and the child;

(2) The length of time the child has resided outside this state;

(3) The distance between the court in this state and the court in the state that would assume jurisdiction;

(4) The relative financial circumstances of the parties;

(5) Any agreement of the parties as to which state should assume jurisdiction;

(6) The nature and location of the evidence required to resolve the pending litigation, including testimony of the child;

(7) The ability of the court of each state to decide the issue expeditiously and the procedures necessary to present the evidence; and

(8) The familiarity of the court of each state with the facts and issues in the pending litigation.

(c) If a court of this state determines that it is an inconvenient forum and that a court of another state is a more appropriate forum, it shall stay the proceedings upon condition that a child custody proceeding be promptly commenced in another designated state and may impose any other condition the court considers just and proper.

(d) A court of this state may decline to exercise its jurisdiction under this chapter if a child custody determination is
§48-20-208. Jurisdiction declined by reason of conduct.

(a) Except as otherwise provided in section 20-204 or by other law of this state, if a court of this state has jurisdiction under this chapter because a person seeking to invoke its jurisdiction has engaged in unjustifiable conduct, the court shall decline to exercise its jurisdiction unless:

1. The parents and all persons acting as parents have acquiesced in the exercise of jurisdiction;

2. A court of the state otherwise having jurisdiction under sections 20-201 through 20-203, inclusive, of this article determines that this state is a more appropriate forum under section 20-207; or

3. No court of any other state would have jurisdiction under the criteria specified in sections 20-201 through 20-203, inclusive, of this article.

(b) If a court of this state declines to exercise its jurisdiction pursuant to subsection (a) of this section, it may fashion an appropriate remedy to ensure the safety of the child and prevent a repetition of the unjustifiable conduct, including staying the proceeding until a child custody proceeding is commenced in a court having jurisdiction under sections 20-201 through 20-203, inclusive, of this article.

(c) If a court dismisses a petition or stays a proceeding because it declines to exercise its jurisdiction pursuant to subsection (a) of this section, it shall assess against the party seeking to invoke its jurisdiction necessary and reasonable expenses including costs, communication expenses, attorney’s fees, investigative fees, expenses for witnesses, travel expenses and child care during the course of the proceedings, unless the party from whom fees are sought establishes that the assessment would be clearly inappropriate. The court may not assess
§48-20-209. Information to be submitted to court.

(a) Subject to local law providing for the confidentiality of procedures, addresses and other identifying information in a child custody proceeding, each party, in its first pleading or in an attached affidavit, shall give information, if reasonably ascertainable, under oath as to the child's present address or whereabouts, the places where the child has lived during the last five years and the names and present addresses of the persons with whom the child has lived during that period. The pleading or affidavit must state whether the party:

(1) Has participated, as a party or witness or in any other capacity, in any other proceeding concerning the custody of or visitation with the child and, if so, identify the court, the case number and the date of the child custody determination, if any;

(2) Knows of any proceeding that could affect the current proceeding, including proceedings for enforcement and proceedings relating to domestic violence, protective orders, termination of parental rights and adoptions, and, if so, identify the court, the case number and the nature of the proceeding; and

(3) Knows the names and addresses of any person not a party to the proceeding who has physical custody of the child or claims rights of legal custody or physical custody of, or visitation with, the child and, if so, the names and addresses of those persons.

(b) If the information required by subsection (a) of this section is not furnished, the court, upon motion of a party or its own motion, may stay the proceeding until the information is furnished.

(c) If the declaration as to any of the items described in subdivision (1) through (3), inclusive, subsection (a) of this section is in the affirmative, the declarant shall give additional
information under oath as required by the court. The court may examine the parties under oath as to details of the information furnished and other matters pertinent to the court's jurisdiction and the disposition of the case.

(d) Each party has a continuing duty to inform the court of any proceeding in this or any other state that could affect the current proceeding.

(e) If a party alleges in an affidavit or a pleading under oath that the health, safety or liberty of a party or child would be jeopardized by disclosure of identifying information, the information must be sealed and may not be disclosed to the other party or the public unless the court orders the disclosure to be made after a hearing in which the court takes into consideration the health, safety or liberty of the party or child and determines that the disclosure is in the interest of justice.


(a) In a child custody proceeding in this state, the court may order a party to the proceeding who is in this state to appear before the court in person with or without the child. The court may order any person who is in this state and who has physical custody or control of the child to appear in person with the child.

(b) If a party to a child custody proceeding whose presence is desired by the court is outside this state, the court may order that a notice given pursuant to section 20-108 include a statement directing the party to appear in person with or without the child and informing the party that failure to appear may result in a decision adverse to the party.

(c) The court may enter any orders necessary to ensure the safety of the child and of any person ordered to appear under this section.

(d) If a party to a child custody proceeding who is outside this state is directed to appear under subsection (b) of this
section or desires to appear personally before the court with or
without the child, the court may require another party to pay
reasonable and necessary travel and other expenses of the party
so appearing and of the child.

PART 3. ENFORCEMENT.

§48-20-301. Definitions.

(a) "Petitioner" means a person who seeks enforcement of
an order for return of a child under the Hague Convention on
the Civil Aspects of International Child Abduction or enforce-
ment of a child custody determination.

(b) "Respondent" means a person against whom a proceed-
ing has been commenced for enforcement of an order for return
of a child under the Hague Convention on the Civil Aspects of
International Child Abduction or enforcement of a child
custody determination.


Under this article a court of this state may enforce an order
for the return of the child made under the Hague Convention on
the Civil Aspects of International Child Abduction as if it were
a child custody determination.

§48-20-303. Duty to enforce.

(a) A court of this state shall recognize and enforce a child
custody determination of a court of another state if the latter
court exercised jurisdiction in substantial conformity with this
chapter or the determination was made under factual circum-
stances meeting the jurisdictional standards of this article and
the determination has not been modified in accordance with this
article.

(b) A court of this state may utilize any remedy available
under other law of this state to enforce a child custody determi-
nation made by a court of another state. The remedies provided
in this article are cumulative and do not affect the availability of other remedies to enforce a child custody determination.

§48-20-304. Temporary visitation.

(a) A court of this state which does not have jurisdiction to modify a child custody determination may issue a temporary order enforcing:

(1) A visitation schedule made by a court of another state; or

(2) The visitation provisions of a child custody determination of another state that does not provide for a specific visitation schedule.

(b) If a court of this state makes an order under subdivision (2), subsection (a) of this section, it shall specify in the order a period that it considers adequate to allow the petitioner to obtain an order from a court having jurisdiction under the criteria specified in part 2 of this article. The order remains in effect until an order is obtained from the other court or the period expires.

§48-20-305. Registration of child custody determination.

(a) A child custody determination issued by a court of another state may be registered in this state, with or without a simultaneous request for enforcement, by sending to the appropriate court in this state:

(1) A letter or other document requesting registration;

(2) Two copies, including one certified copy, of the determination sought to be registered, and a statement under penalty of perjury that to the best of the knowledge and belief of the person seeking registration the order has not been modified; and

(3) Except as otherwise provided in section 20-209, the name and address of the person seeking registration and any
parent or person acting as a parent who has been awarded custody or visitation in the child custody determination sought to be registered.

(b) On receipt of the documents required by subsection (a) of this section, the registering court shall:

(1) Cause the determination to be filed as a foreign judgment, together with one copy of any accompanying documents and information, regardless of their form; and

(2) Serve notice upon the persons named pursuant to subdivision (3), subsection (a) of this section and provide them with an opportunity to contest the registration in accordance with this section.

(c) The notice required by subdivision two, subsection (b) of this section must state that:

(1) A registered determination is enforceable as of the date of the registration in the same manner as a determination issued by a court of this state;

(2) A hearing to contest the validity of the registered determination must be requested in writing to the court within twenty days after service of notice; and

(3) Failure to contest the registration will result in confirmation of the child custody determination and preclude further contest of that determination with respect to any matter that could have been asserted.

(d) A person seeking to contest the validity of a registered order must request a hearing within twenty days after service of the notice. At that hearing, the court shall confirm the registered order unless the person contesting registration establishes that:

(1) The issuing court did not have jurisdiction under part 2 of this article;
(2) The child custody determination sought to be registered has been vacated, stayed, or modified by a court having jurisdiction to do so under 20-201, et seq.; or

(3) The person contesting registration was entitled to notice, but notice was not given in accordance with the standards of section 20-108 in the proceedings before the court that issued the order for which registration is sought.

(e) If a timely request for a hearing to contest the validity of the registration is not made, the registration is confirmed as a matter of law and the person requesting registration and all persons served must be notified of the confirmation.

(f) Confirmation of a registered order, whether by operation of law or after notice and hearing, precludes further contest of the order with respect to any matter that could have been asserted at the time of registration.


(a) A court of this state may grant any relief normally available under the law of this state to enforce a registered child custody determination made by a court of another state.

(b) A court of this state shall recognize and enforce, but may not modify, except in accordance with article two of this chapter, a registered child custody determination of a court of another state.


If a proceeding for enforcement under this article is commenced in a court of this state and the court determines that a proceeding to modify the determination is pending in a court of another state having jurisdiction to modify the determination under part two of this article, the enforcing court shall immediately communicate with the modifying court. The proceeding for enforcement continues unless the enforcing court, after
§48-20-308. Expedited enforcement of child custody determination.

(a) A petition under this article must be verified. Certified copies of all orders sought to be enforced and of any order confirming registration must be attached to the petition. A copy of a certified copy of an order may be attached instead of the original.

(b) A petition for enforcement of a child custody determination must state:

(1) Whether the court that issued the determination identified the jurisdictional basis it relied upon in exercising jurisdiction and, if so, what the basis was;

(2) Whether the determination for which enforcement is sought has been vacated, stayed or modified by a court whose decision must be enforced under this chapter and, if so, identify the court, the case number and the nature of the proceeding;

(3) Whether any proceeding has been commenced that could affect the current proceeding, including proceedings relating to domestic violence, protective orders, termination of parental rights and adoptions and, if so, identify the court, the case number and the nature of the proceeding;

(4) The present physical address of the child and the respondent, if known;

(5) Whether relief in addition to the immediate physical custody of the child and attorney’s fees is sought, including a request for assistance from law-enforcement officials and, if so, the relief sought; and

(6) If the child custody determination has been registered and confirmed under section 20-305 of this article, the date and place of registration.
(c) Upon the filing of a petition, the court shall issue an order directing the respondent to appear in person with or without the child at a hearing and may enter any order necessary to ensure the safety of the parties and the child. The hearing must be held on the judicial day after service of the order unless that date is impossible. In that event, the court shall hold the hearing on the first judicial day possible. The court may extend the date of hearing at the request of the petitioner.

(d) An order issued under subsection (c) of this section must state the time and place of the hearing and advise the respondent that at the hearing the court will order that the petitioner may take immediate physical custody of the child and the payment of fees, costs and expenses under section 20-312, and may schedule a hearing to determine whether further relief is appropriate, unless the respondent appears and establishes that:

1. The child custody determination has not been registered and confirmed under section 20-305, and that:
   A. The issuing court did not have jurisdiction under part 20-201, et seq.;
   B. The child custody determination for which enforcement is sought has been vacated, stayed or modified by a court having jurisdiction to do so under part 20-201, et seq.;
   C. The respondent was entitled to notice, but notice was not given in accordance with the standards of section 20-108, in the proceedings before the court that issued the order for which enforcement is sought; or

2. The child custody determination for which enforcement is sought was registered and confirmed under section 20-305, but has been vacated, stayed or modified by a court of a state having jurisdiction to do so under article two of this chapter; or

3. There is credible evidence of abuse or neglect of the child or children who are the subject of the petition and the credible evidence has been reported to a child welfare agency,
Provided, That the court may continue the hearing to a day certain to monitor the investigation or proceedings or take any further action as the circumstances and the best interest of the child may warrant.

§48-20-309. Service of petition and order.

Except as otherwise provided in section 20-311, the petition and order must be served, by any method authorized by the law of this state, upon respondent and any person who has physical custody of the child.

§48-20-310. Hearing and order.

(a) Unless the court issues a temporary emergency order pursuant to section 20-204, upon a finding that a petitioner is entitled to immediate physical custody of the child, the court shall order that the petitioner may take immediate physical custody of the child unless the respondent establishes that:

(1) The child custody determination has not been registered and confirmed under section 20-305 and that:

(A) The issuing court did not have jurisdiction under part 20-201 et seq., of this chapter;

(B) The child custody determination for which enforcement is sought has been vacated, stayed or modified by a court of a state having jurisdiction to do so under part 20-201, et seq.; or

(C) The respondent was entitled to notice, but notice was not given in accordance with the standards of section 20-108, in the proceedings before the court that issued the order for which enforcement is sought; or

(2) The child custody determination for which enforcement is sought was registered and confirmed under section 20-305,
but has been vacated, stayed or modified by a court of a state having jurisdiction to do so under part 20-201, et seq.; or

(3) There is credible evidence of abuse or neglect of the child or children who are the subject of the petition and the credible evidence has been reported to a child welfare agency, a law-enforcement officer, a licensed physician, a licensed social worker, or a licensed mental health professional and an investigation or other proceeding has not been concluded: Provided, That the court may continue the hearing to a day certain to monitor the investigation or proceedings or take any further action as the circumstances and the best interest of the child may warrant.

(b) The court shall award the fees, costs and expenses authorized under section 20-312 and may grant additional relief, including a request for the assistance of law-enforcement officials, and set a further hearing to determine whether additional relief is appropriate.

(c) If a party called to testify refuses to answer on the ground that the testimony may be self-incriminating, the court may draw an adverse inference from the refusal.

(d) A privilege against disclosure of communications between spouses and a defense of immunity based on the relationship of husband and wife or parent and child may not be invoked in a proceeding under this article.

§48-20-311. Warrant to take physical custody of child.

(a) Upon the filing of a petition seeking enforcement of a child custody determination, the petitioner may file a verified application for the issuance of a warrant to take physical custody of the child if the child is imminently likely to suffer serious physical harm or be removed from this state.

(b) If the court, upon the testimony of the petitioner or other witness, finds that the child is imminently likely to suffer serious physical harm or be removed from this state, it may
issue a warrant to take physical custody of the child. The petition must be heard on the next judicial day after the warrant is executed unless that date is impossible. In that event, the court shall hold the hearing on the first judicial day possible. The application for the warrant must include the statements required by subsection 20-308(b).

(c) A warrant to take physical custody of a child must:

(1) Recite the facts upon which a conclusion of imminent serious physical harm or removal from the jurisdiction is based;

(2) Direct law-enforcement officers to take physical custody of the child immediately; and

(3) Provide for the placement of the child pending final relief.

(d) The respondent must be served with the petition, warrant and order immediately after the child is taken into physical custody.

(e) A warrant to take physical custody of a child is enforceable throughout this state. If the court finds on the basis of the testimony of the petitioner or other witness that a less intrusive remedy is not effective, it may authorize law-enforcement officers to enter private property to take physical custody of the child. If required by exigent circumstances of the case, the court may authorize law-enforcement officers to make a forcible entry at any hour.

(f) The court may impose conditions upon placement of a child to ensure the appearance of the child and the child’s custodian.

§48-20-312. Costs, fees and expenses.

(a) The court shall award the prevailing party, including a state, necessary and reasonable expenses incurred by or on behalf of the party, including costs, communication expenses, attorney’s fees, investigative fees, expenses for witnesses,
travel expenses and child care during the course of the proceed-
ings, unless the party from whom fees or expenses are sought 
establishes that the award would be clearly inappropriate.

(b) The court may not assess fees, costs or expenses against 
a state unless authorized by law other than this chapter.

§48-20-313. Recognition and enforcement.

A court of this state shall accord full faith and credit to an 
order issued by another state and consistent with this chapter 
which enforces a child custody determination by a court of 
another state unless the order has been vacated, stayed or 
modified by a court having jurisdiction to do so under part 20-
201, et seq.

§48-20-314. Appeals.

An appeal may be taken from a final order in a proceeding 
under this article in accordance with expedited appellate 
procedures in other civil cases. Unless the court enters a 
temporary emergency order under section 20-204, the enforcing 
court may not stay an order enforcing a child custody determi-
nation pending appeal.

§48-20-315. Role of prosecutor or public official.

(a) In a case arising under this chapter or involving the 
Hague Convention on the Civil Aspects of International Child 
Abduction, the prosecutor or other appropriate public official 
may take any lawful action, including resort to a proceeding 
under this article or any other available civil proceeding, to 
locate a child, obtain the return of a child or enforce a child 
custody determination if there is:

(1) An existing child custody determination;

(2) A request to do so from a court in a pending child 
custody proceeding;
(3) A reasonable belief that a criminal statute has been violated; or

(4) A reasonable belief that the child has been wrongfully removed or retained in violation of the Hague Convention on the Civil Aspects of International Child Abduction.

(b) A prosecutor or appropriate public official acting under this section acts on behalf of the court and may not represent any party.

§48-20-316. Role of law enforcement.

At the request of a prosecutor or other appropriate public official acting under section 20-315, a law-enforcement officer may take any lawful action reasonably necessary to locate a child or a party and assist a prosecutor or appropriate public official with responsibilities under said section.


If the respondent is not the prevailing party, the court may assess against the respondent all direct expenses and costs incurred by the prosecutor or other appropriate public official and law-enforcement officers under section 20-315 or 20-316.

PART 4. MISCELLANEOUS PROVISIONS.

§48-20-401. Application and construction.

In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

§48-20-402. Severability clause.

If any provision of this article or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this article which can be given effect without the invalid provision or application, and to this end the provisions of this article are severable.
§48-20-403. Effective date.

1 This article takes effect on the first day of July, two thousand.


1 A motion or other request for relief made in a child custody proceeding or to enforce a child custody determination which was commenced before the first day of July, two thousand, is governed by the law in effect at the time the motion or other request was made.

ARTICLE 22. ADOPTION.

PART 1. DEFINITIONS.


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

§48-22-102. Abandonment defined.

1 “Abandonment” means any conduct by the birth mother, legal father, determined father, outsider father, unknown father or putative father that demonstrates a settled purpose to forego all duties and relinquish all parental claims to the child.

§48-22-103. Adoptive parents, adoptive mother or adoptive father defined.

1 “Adoptive parents” or “adoptive mother” or “adoptive father” means those persons who, after adoption, are the mother and father of the child.
§48-22-104. Agency defined.

1 "Agency" means a public or private entity, including the department of health and human resources, that is authorized by law to place children for adoption.

§48-22-105. Birth father defined.

1 "Birth father" means the biological father of the child.

§48-22-106. Birth mother defined.

1 "Birth mother" means the biological mother of the child.


1 "Birth parents" mean both the biological father and the biological mother of the child.


1 "Consent" means the voluntary surrender to an individual, not an agency, by a minor child's parent or guardian, for purposes of the child's adoption, of the rights of the parent or guardian with respect to the child, including the legal and physical custody of the child.


1 "Determined father" means, before adoption, a person: (1) In whom paternity has been established pursuant to the provisions of article 24-101, et seq., and section 16-5-12, whether by adjudication or acknowledgment as set forth therein; or (2) who has been otherwise judicially determined to be the biological father of the child entitled to parental rights; or (3) who has asserted his paternity of the child in an action commenced pursuant to the provisions of article 24-101, et seq., that is pending at the time of the filing of the adoption petition.
§48-22-110. Legal father defined.

1 "Legal father" means, before adoption, the male person having the legal relationship of parent to a child: (1) Who is married to its mother at the time of conception; or (2) who is married to its mother at the time of birth of the child; or (3) who is the biological father of the child and who marries the mother before an adoption of the child.

§48-22-111. Marital child defined.

1 "Marital child" means a child born or conceived during marriage.


1 "Nonmarital child" means a child not born or conceived during marriage.

§48-22-113. Outsider father defined.

1 "Outsider father" means the biological father of a child born to or conceived by the mother while she is married to another man who is not the biological father of the child.

§48-22-114. Putative father defined.

1 "Putative father" means, before adoption, any man named by the mother as a possible biological father of the child pursuant to the provisions of section 22-502, who is not a legal or determined father.

§48-22-115. Relinquishment defined.

1 "Relinquishment" means the voluntary surrender to an agency by a minor child’s parent or guardian, for purposes of the child’s adoption, of the rights of the parent or guardian with respect to the child, including the legal and physical custody of the child.

1 "Stepparent adoption" means an adoption in which the
2 petitioner for adoption is married to one of the birth parents of
3 the child or to an adoptive parent of the child.

§48-22-117. Unknown father defined.

1 "Unknown father" means a biological father whose identity
2 the biological mother swears is unknown to her before adop-
3 tion, pursuant to the provisions of section 22-502.

PART 2. PERSONS WHO MAY ADOPT.

§48-22-201. Persons who may petition for decree of adoption.

1 Any person not married or any person, with his or her
2 spouse's consent, or any husband and wife jointly, may petition
3 a circuit court of the county wherein such person or persons
4 reside for a decree of adoption of any minor child or person
5 who may be adopted by the petitioner or petitioners.

PART 3. CONSENT OR RELINQUISHMENT; ABANDONMENT.

§48-22-301. Persons whose consent or relinquishment is required; exceptions.

1 (a) Subject to the limitations hereinafter set forth, consent
2 to or relinquishment for adoption of a minor child is required
3 of:
4
5 (1) The parents or surviving parent, whether adult or infant,
6 of a marital child;
7
8 (2) The outsider father of a marital child who has been
9 adjudicated to be the father of the child or who has filed a
10 paternity action which is pending at the time of the filing of the
11 petition for adoption;
(3) The birth mother, whether adult or infant, of a nonmarital child; and

(4) The determined father.

(b) Consent or relinquishment shall not be required of a parent or of any other person having custody of the adoptive child:

(1) Whose parental rights have been terminated pursuant to the provisions of article three, chapter forty-nine of this code;

(2) Whom the court finds has abandoned the child as set forth in 22-306; or

(3) Who, in a stepparent adoption, is the birth parent or adoptive parent of the child and is married to the petitioning adoptive parent. In such stepparent adoption, the parent must assent to the adoption by joining as a party to the petition for adoption.

(c) If the mother, legal father or determined father is under disability, the court may order the adoption if it finds:

(1) The parental rights of the person are terminated, abandoned or permanently relinquished;

(2) The person is incurably insane; or

(3) The disability arises solely because of age and an otherwise valid consent or relinquishment has been given.

(d) If all persons entitled to parental rights of the child sought to be adopted are deceased or have been deprived of the custody of the child by law, then consent or relinquishment is required of the legal guardian or of any other person having legal custody of the child at the time. If there is no legal guardian nor any person who has legal custody of the child, then consent or relinquishment is required from some discreet and suitable person appointed by the court to act as the next friend of the child in the adoption proceedings.
(e) If one of the persons entitled to parental rights of the child sought to be adopted is deceased, only the consent or relinquishment of the surviving person entitled to parental rights is required.

(f) If the child to be adopted is twelve years of age or over, the consent of the child is required to be given in the presence of a judge of a court of competent jurisdiction, unless for extraordinary cause, the requirement of such consent is waived by the court.

(g) Any consent to adoption or relinquishment of parental rights shall have the effect of authorizing the prospective adoptive parents or the agency to consent to medical treatment for the child, whether or not such authorization is expressly stated in the consent or relinquishment.

§48-22-302. Timing and execution of consent or relinquishment.

(a) No consent or relinquishment may be executed before the expiration of seventy-two hours after the birth of the child to be adopted.

(b) A consent or relinquishment executed by a parent or guardian as required by the provisions of section three of this article must be signed and acknowledged in the presence of one of the following:

(1) A judge of a court of record;

(2) A person whom a judge of a court of record designates to take consents or relinquishments;

(3) A notary public;

(4) A commissioned officer on active duty in the military service of the United States, if the person executing the consent or relinquishment is in military service; or
(5) An officer of the foreign service or a consular officer of
the United States in another country, if the person executing the
consent or relinquishment is in that country.

§48-22-303. Content of consent or relinquishment.

(a) A consent or relinquishment as required by the provi-
sions of section 22-301 must be written in plain English or, if
the person executing the consent or relinquishment does not
understand English, in the person’s primary language. The form
of the consent or relinquishment shall include the following, as
appropriate:

(1) The date, place and time of the execution of the consent
or relinquishment;

(2) The name, date of birth and current mailing address of
the person executing the consent or relinquishment;

(3) The date, place of birth and the name or pseudonym
(“Baby Boy _____ or Baby Girl _____”) of the minor child;

(4) The fact that the document is being executed more than
seventy-two hours after the birth of the child;

(5) If a consent, that the person executing the document is
voluntarily and unequivocally consenting to the transfer of legal
and physical custody to, and the adoption of the child by, an
adoptive parent or parents whose name or names may, but need
not be, specified;

(6) If a relinquishment, that the person executing the
relinquishment voluntarily consents to the permanent transfer
of legal and physical custody of the child to the agency for the
purposes of adoption;

(7) If a consent, that it authorizes the prospective adoptive
parents, or if a relinquishment, that it authorizes the agency, to
consent to medical treatment of the child pending any adoption
proceeding;
(8) That after the consent or relinquishment is signed and acknowledged, it is final and, unless revoked in accordance with the provisions of section 22-305, it may not be revoked or set aside for any other reason;

(9) That the adoption will forever terminate all parental rights, including any right to visit or communicate with the child and any right of inheritance;

(10) That the adoption will forever terminate all parental obligations of the person executing the consent or relinquishment;

(11) That the termination of parental rights and obligations is permanent whether or not any agreement for visitation or communication with the child is subsequently performed;

(12) That the person executing the consent or relinquishment does so of his or her own free will and the consent or relinquishment has not been obtained by fraud or duress;

(13) That the person executing the consent or relinquishment has:

(i) Received a copy of the consent or relinquishment;

(ii) Been provided the information and afforded the opportunity to participate in the voluntary adoption registry, pursuant to the provisions of article 23-101, et seq.;

(iii) Been advised of the availability of counseling;

(iv) Been advised of the consequences of misidentifying the other birth parent; and

(v) If a birth mother, been advised of the obligation to provide the information required by the provisions of section seven of this article in the case of an unknown father;
(14) That the person executing the consent or relinquishment has not received or been promised any money or anything of value for the consent or relinquishment, other than payments authorized by the provisions of section 22-803;

(15) Whether the child is an "Indian child" as defined in the Indian Child Welfare Act, 25 U.S.C. §1903;

(16) That the person believes the adoption of the child is in the child's best interest; and

(17) That the person who is consenting or relinquishing expressly waives notice of any proceeding for adoption unless the adoption is contested, appealed or denied.

(b) A consent or relinquishment may provide explicitly for its conditional revocation if:

(1) Another person whose consent or relinquishment is required does not execute the same within a specified period;

(2) A court determines not to terminate another person's parental relationship to the child; or

(3) In a direct placement for adoption, a petition for adoption by a prospective adoptive parent, named or described in the consent, is denied or withdrawn.

(c) A consent or relinquishment shall also include:

(1) If a consent, the name, address, telephone and facsimile numbers of the lawyer representing the prospective adoptive parents; or

(2) If a relinquishment, the name, address, telephone and facsimile numbers of the agency to which the child is being relinquished; and

(3) Specific instructions on how to revoke the consent or relinquishment.
§48-22-304. Consent or relinquishment by infants.

1 If a person who has executed a consent to or relinquishment for adoption is under eighteen years of age at the time of the filing of the petition, and such infant parent is a resident of the state, the consent or relinquishment shall be specifically reviewed and approved by the court and a guardian ad litem may be appointed to represent the interests of the infant parent. The guardian ad litem shall conduct a discreet inquiry regarding the consent or relinquishment given, and may inquire of any person having knowledge of the consent or relinquishment. If the guardian ad litem finds reasonable cause to believe that the consent or relinquishment was obtained by fraud or duress, the court may request the infant parent to appear before the court or at a deposition, so that inquiry may be made regarding the circumstances surrounding the execution of the consent or relinquishment. The failure of the court to appoint a guardian ad litem is not grounds for setting aside a decree of adoption.

§48-22-305. Revocation of consent or relinquishment for adoption.

(a) Parental consent or relinquishment, whether given by an adult or minor, may be revoked only if:

(1) The person who executed the consent or relinquishment and the prospective adoptive parent named or described in the consent or the lawyer for said adoptive parent, or the agency in case of relinquishment, agree to its revocation prior to the entry of an adoption order; or

(2) The person who executed the consent or relinquishment proves by clear and convincing evidence, in an action filed either within six months of the date of the execution of the consent or relinquishment or prior to the date an adoption order is final, whichever date is later, that the consent or relinquishment was obtained by fraud or duress; or

(3) The person who executed the consent or relinquishment proves by a preponderance of the evidence, prior to the entry of
an adoption order, that a condition allowing revocation as expressly set forth in the consent or relinquishment has occurred; or

(4) The person who executed the consent or relinquishment proves by clear and convincing evidence, prior to the entry of an adoption order, that the consent or relinquishment does not comply with the requirements set forth in this article.

(b) If the custody of a child during the pendency of a petition to revoke a consent or relinquishment is in issue, the court shall conduct a hearing, within thirty days of service of notice upon the respondent, to determine the issue of temporary custody. The court shall award such custody based upon the best interests of the child.


(a) Abandonment of a child over the age of six months shall be presumed when the birth parent:

(1) Fails to financially support the child within the means of the birth parent; and

(2) Fails to visit or otherwise communicate with the child when he or she knows where the child resides, is physically and financially able to do so and is not prevented from doing so by the person or authorized agency having the care or custody of the child: Provided, That such failure to act continues uninterrupted for a period of six months immediately preceding the filing of the adoption petition.

(b) Abandonment of a child under the age of six months shall be presumed when the birth father:

(1) Denounces the child's paternity any time after conception;
(2) Fails to contribute within his means toward the expense of the prenatal and postnatal care of the mother and the postnatal care of the child;

(3) Fails to financially support the child within father’s means; and

(4) Fails to visit the child when he knows where the child resides: Provided, That such denunciations and failure to act continue uninterrupted from the time that the birth father was told of the conception of the child until the time the petition for adoption was filed.

(c) Abandonment of a child shall be presumed when the unknown father fails, prior to the entry of the final adoption order, to make reasonable efforts to discover that a pregnancy and birth have occurred as a result of his sexual intercourse with the birth mother.

(d) Notwithstanding any provision in this section to the contrary, any birth parent shall have the opportunity to demonstrate to the court the existence of compelling circumstances preventing said parent from supporting, visiting or otherwise communicating with the child: Provided, That in no event may incarceration provide such a compelling circumstance if the crime resulting in the incarceration involved a rape in which the child was conceived.

PART 4. DELIVERY OF CHILD FOR ADOPTION.

§48-22-401. Delivery of child for adoption; written recital of circumstances.

Whenever a person delivers a child for adoption the person first receiving such child and the prospective adopting parent or parents shall be entitled to receive from such person a written recital of all known circumstances surrounding the birth, medical and family medical history of the child, and an itemization of any facts or circumstances unknown concerning
PART 5. PETITION FOR ADOPTION.


The petition for adoption may be filed at any time after the child who is the subject of the adoption is born, the adoptive placement determined and all consents or relinquishments that can be obtained have been executed. The hearing on the petition may be held no sooner than forty-five days after the filing of the petition and only after the child has lived with the adoptive parent or parents for a period of six months, proper notice of the petition has been given and all necessary consents or relinquishments have been executed and submitted or the rights of all nonconsenting birth parents have otherwise been terminated.


(a) The petition shall be verified and set forth:

(1) The name, age and place of residence of the petitioner or petitioners, and of the child, and the name by which the child shall be known;

(2) Whether such child is possessed of any property and a full description of the same, if any;

(3) Whether the petitioner or petitioners know the identity of the persons entitled to parental rights or, that the same are unknown to the petitioner or petitioners; and

(4) Whether and on what basis the parental rights of any birth parents should be terminated during the pendency of the adoption petition.

(1) Whether the birth mother was married at the probable time of conception of the child, or at a later time, and if so, the identity and last known address of such man;

(2) Whether the birth mother was cohabiting with a man at the probable time of conception of the child, and if so, the identity of such man, his last known address and why the woman contends that such man is not the biological father of the child;

(3) Whether the birth mother has received payments or promise of support from any man with respect to the child or her pregnancy, and if so, the identity of such man, his last known address and why the birth mother contends that such man is not the biological father of the child;

(4) Whether the birth mother has named any man as the father on the birth certificate of the child or in connection with applying for or receiving public assistance, and if so, the identity of such man, his last known address and why the birth mother contends such man is not the biological father of the child;

(5) Whether the birth mother identified any man as the father to any hospital personnel, and if so, the identity of such man, his last known address, the name and address of the hospital and why the birth mother now contends such man is not the biological father of the child;

(6) Whether the birth mother has informed any man that he may be the biological father of the child, and if so, the identity of such man, his last known address and why the birth mother now contends such man is not the biological father of the child;

(7) Whether any man has formally or informally acknowledged or claimed paternity of the child in any jurisdiction at the
time of the inquiry, and if so, the identity of such man, his last
known address and why the birth mother contends such man is
not the biological father of the child;

(8) That the birth mother has been advised that the failure
to identify or the misidentification of the birth father can result
in delays and disruptions in the processing of the adoption
petition;

(9) That the birth mother has been informed that her
statement concerning the identity of the father will be used only
for the limited purposes of adoption and that once the adoption
is complete, such identity will be sealed; and

(10) That the birth mother has been advised of the remedies
available to her for protection against domestic violence
pursuant to the provisions of article 27-101, et seq., of this
chapter.

(c) In the event the birth mother is deceased or her identity
or whereabouts are unknown, no such affidavit shall be
required.

(d) The affidavit of the birth mother in the case of an
unknown father shall be executed before any person authorized
to witness a consent or relinquishment pursuant to the provi-
sions of section 22-302. Any affidavit filed with the petition
pursuant to the provisions of this section shall be sealed in the
court file and may not be opened except by court order upon a
showing of good cause.

(e) If the person petitioning for adoption is less than fifteen
years older than the child sought to be adopted, such fact shall
be set forth specifically in the petition. In such case, the court
shall grant the adoption only upon a specific finding that
notwithstanding the differences in age of the petitioner and the
child, such adoption is in the best interest of the child: Pro-
vided, That in the case of a stepparent adoption, such specific
finding shall not be required and an adoption shall not be denied on the sole basis of proximity in age.

(f) The petition shall set forth any facts concerning the circumstances of the birth of the child known to the petitioner or petitioners. An effort shall be made to obtain medical and social information, which information, along with all nonidentifying information about the birth, shall accompany the petition and be made a part of the nonidentifying information to be sealed in the court file.

(g) Either the petition, the various consents or relinquishments attached thereto or filed in the cause, the affidavit of the birth mother as set forth herein or in an appendix signed by counsel or other credible persons shall fully disclose all that is known about the parentage of the child.

PART 6. NOTICE OF PROCEEDING FOR ADOPTION.

§48-22-601. Who shall receive notice.

(a) Unless notice has been waived, notice of a proceeding for adoption of a child must be served, within twenty days after a petition for adoption is filed, upon:

(1) Any person whose consent to the adoption is required pursuant to the provisions of section 22-301, but notice need not be served upon a person whose parental relationship to the child or whose status as a guardian has been terminated;

(2) Any person whom the petitioner knows is claiming to be the father of the child and whose paternity of the child has been established pursuant to the provisions of 24-101, et seq.;

(3) Any person other than the petitioner who has legal or physical custody of the child or who has visitation rights with the child under an existing court order issued by a court in this or another state;
(4) The spouse of the petitioner if the spouse has not joined in the petition; and

(5) A grandparent of the child if the grandparent’s child is a deceased parent of the child and, before death, the deceased parent had not executed a consent or relinquishment or the deceased parent’s parental relationship to the child had not been otherwise terminated.

(b) The court shall require notice of a proceeding for adoption to be served upon any person the court finds, at any time during the proceeding, is:

(1) A person described in subsection (a) of this section who has not been given notice;

(2) A person who has revoked consent or relinquishment pursuant to the provisions of section 22-305; or

(3) A person who, on the basis of a previous relationship with the child, a parent, an alleged parent or the petitioner, can provide relevant information that the court, in its discretion, wants to hear.

§48-22-602. How notice is to be served.

(a) Notice shall be served on each person as required under the provisions of section 22-601, in accordance with rule 4 of the West Virginia rules of civil procedure, except as otherwise provided in this article.

(b) The notice shall inform the person, in plain language, that his or her parental rights, if any, may be terminated in the proceeding and that such person may appear and defend any such rights within the required time after such service. The notice shall also provide that if the person upon whom notice is properly served fails to respond within the required time after its service, said person may not appear in or receive further notice of the adoption proceedings.
(c) In the case of any person who is a nonresident or whose whereabouts are unknown, service shall be achieved: (1) By personal service; (2) by registered or certified mail, return receipt requested, postage prepaid, to the person's last known address, with instructions to forward; or (3) by publication. If personal service is not achieved and the person giving notice has any knowledge of the whereabouts of the person to be served, including a last known address, service by mail shall be first attempted as provided herein. Any service achieved by mail shall be complete upon mailing and shall be sufficient service without the need for notice by publication. In the event that no return receipt is received giving adequate evidence of receipt of the notice at the address to which the notice was mailed or forwarded, or if the whereabouts of the person is unknown, then the person required to give notice shall cause service of notice by publication as a Class II publication in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area shall be the county where the proceedings are had, and in the county where the person to be served was last known to reside, except in cases of foreign adoptions where the child is admitted to this country for purposes of adoptive placement and the United States immigration and naturalization service has issued the foreign-born child a visa or unless good cause is shown for not publishing in the county where the person was last known to reside. The notice shall state the court and its address but not the names of the adopting parents or birth mother, unless the court so orders.

(d) In the case of a person under disability, service shall be made on the person and his or her personal representative, or if there be none, on a guardian ad litem.

(e) In the case of service by publication or mail or service on a personal representative or a guardian ad litem, the person shall be allowed thirty days from the date of the first publication or mailing or of such service on a personal representative or guardian ad litem in which to appear and defend his or her parental rights.
§48-22-603. Notice to an unknown father.

(a) In the case of an unknown father, the court shall inspect the affidavit submitted pursuant to the provisions of section 22-502, consider any additional evidence that the court, in its discretion, determines should be produced, and determine whether said father can be identified. The inspection and consideration of any additional evidence by the court shall be accomplished as soon as practicable after the filing of the petition, but no later than sixty days before the final hearing on the adoption petition.

(b) If the court identifies a father pursuant to the provisions of subsection (a) of this section, then notice of the proceeding for adoption shall be served on the father so identified in accordance with the provisions of section 22-602.

(c) If after consideration of the affidavit and/or the consideration of further evidence, the court finds that proper service cannot be made upon the father because his identity is unknown, the court shall order publication of the notice only if, on the basis of all information available, the court determines that publication is likely to lead to receipt of notice by the father. If the court determines that publication or posting is not likely to lead to receipt of notice, the court may dispense with the publication or posting of a notice.

PART 7. PROCEDURES FOR ADOPTION.


(a) When the cause has matured for hearing but not sooner than six months after the child has resided continuously in the home of the petitioner or petitioners, the court shall decree the adoption if:

(1) It determines that no person retains parental rights in such child except the petitioner and the petitioner's spouse, or the joint petitioners;
(2) That all applicable provisions of this article have been complied with;

(3) That the petitioner is, or the petitioners are, fit persons to adopt the child; and

(4) That it is in the best interests of the child to order such adoption.

(b) The court or judge thereof may adjourn the hearing of such petition or the examination of the parties in interest from time to time, as the nature of the case may require. Between the time of the filing of the petition for adoption and the hearing thereon, the court or judge thereof shall, unless the court or judge otherwise directs, cause a discreet inquiry to be made to determine whether such child is a proper subject for adoption and whether the home of the petitioner or petitioners is a suitable home for such child. Any such inquiry, if directed, shall be made by any suitable and discreet person not related to either the persons previously entitled to parental rights or the adoptive parents, or by an agency designated by the court, or judge thereof, and the results thereof shall be submitted to the court or judge thereof prior to or upon the hearing on the petition and shall be filed with the records of the proceeding and become a part thereof. The report shall include, but not be limited to, the following:

(1) A description of the family members, including medical and employment histories;

(2) A physical description of the home and surroundings;

(3) A description of the adjustment of the child and family;

(4) Personal references; and

(5) Other information deemed necessary by the court, which may include a criminal background investigation.
(c) If it shall be necessary, under the provisions of this article, that a discreet and suitable person shall be appointed to act as the next friend of the child sought to be adopted, then and in that case the court or judge thereof shall order a notice of the petition and of the time and place when and where the appointment of next friend will be made, to be published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county where such court is located. At the time and place so named and upon due proof of the publication of such notice, the court or judge thereof shall make such appointment, and shall thereupon assign a day for the hearing of such petition and the examination of the parties interested.

(d) Upon the day so assigned, the court or judge thereof shall proceed to a final hearing of the petition and examination of the parties in interest, under oath, and of such other witnesses as the court or judge thereof may deem necessary to develop fully the standing of the petitioners and their responsibility, and the status of the child sought to be adopted; and if the court or judge thereof shall be of the opinion from the testimony that the facts stated in the petition are true, and if upon examination the court or judge thereof is satisfied that the petitioner is, or the petitioners are, of good moral character, and of respectable standing in the community, and are able properly to maintain and educate the child sought to be adopted, and that the best interests of the child would be promoted by such adoption, then and in such case the court or judge thereof shall make an order reciting the facts proved and the name by which the child shall thereafter be known, and declaring and adjudging that from the date of such order, the rights, duties, privileges and relations, theretofore existing between the child and those persons previously entitled to parental rights, shall be in all respects at an end, and that the rights, duties, privileges and relations between the child and his or her parent or parents by adoption shall thenceforth in all respects be the same, including the rights of inheritance, as if the child had been born to such adopting parent or parents in lawful wedlock, except only as otherwise
Provided, That no such order shall disclose the names or addresses of those persons previously entitled to parental rights.

§48-22-702. Recordation of order; fees; disposition of records; names of adopting parents and persons previously entitled to parental rights not to be disclosed; disclosure of identifying and nonidentifying information; certificate for state registrar of vital statistics; birth certificate.

(a) The order of adoption shall be recorded in a book kept for that purpose, and the clerk shall receive the same fees as in other cases. All records of proceedings in adoption cases and all papers and records relating to such proceedings shall be kept in the office of the clerk of the circuit court in a sealed file, which file shall be kept in a locked or sealed cabinet, vault or other container and shall not be open to inspection or copy by anyone, except as otherwise provided in this article, or upon court order for good cause shown. No person in charge of adoption records shall disclose the names of the adopting parent or parents, the names of persons previously entitled to parental rights, or the name of the adopted child, except as otherwise provided in this article, or upon court order for good cause shown. The clerk of the court keeping and maintaining the records in adoption cases shall keep and maintain an index of such cases separate and distinct from all other indices kept or maintained by him or her, and the index of adoption cases shall be kept in a locked or sealed cabinet, vault or other container and shall not be open to inspection or copy by anyone, except as otherwise provided in this article, or upon court order for good cause shown. Nonidentifying information, the collection of which is provided for in article 23-101, et seq., of this chapter, shall be provided to the adoptive parents as guardians of the adopted child, or to the adult adoptee, by their submitting a duly acknowledged request to the clerk of the court. The clerk may charge the requesting party for copies of any documents, as provided in section eleven, article one, chapter fifty-nine of this code. Either birth parent may from time to time submit
additional social, medical or genetic history for the adoptee, which information shall be placed in the court file by the clerk, who shall bring the existence of this medical information to the attention of the court. The court shall immediately transmit all such nonidentifying medical, social or genetic information to the adoptive parents or the adult adoptee.

(b) If an adoptee, or parent of a minor adoptee, is unsuccessful in obtaining identifying information by use of the mutual consent voluntary adoption registry provided for in 23-101, et seq., identifying information may be sought through the following process:

(i) Upon verified petition of an adoptee at least eighteen years of age, or, if less than eighteen, his or her adoptive parent or legal guardian, the court may also attempt, either itself, or through its designated agent, to contact the birth parents, if known, to obtain their consent to release identifying information to the adoptee. The petition shall state the reasons why the adoptee desires to contact his or her birth parents, which reasons shall be disclosed to the birth parents if contacted. The court and its agent shall take any and all care possible to assure that none but the birth parents themselves are informed of the adoptee’s existence in relationship to them. The court may appoint the bureau of children and families, or a private agency which provides adoption services in accordance with standards established by law, to contact birth parents as its designated agent, the said agent shall report to the court the results of said contact.

(2) Upon the filing of a verified petition as provided in subdivision (1) of this subsection, should the court be unable to obtain consent from either of the birth parents to release identifying information, the court may release such identifying information to the adoptee, or if a minor, the adoptee’s parents or guardian, after notice to the birth parents and a hearing thereon, at which hearing the court must specifically find that there exists evidence of compelling medical or other good cause for release of such identifying information.
(c) Identifying information may only be obtained with the duly acknowledged consent of the mother or the legal or determined father who consented to the adoption or whose rights were otherwise relinquished or terminated, together with the duly acknowledged consent of the adopted child upon reaching majority, or upon court order for good cause shown. Any person previously entitled to parental rights may from time to time submit additional social or medical information which, notwithstanding other provisions of this article, shall be inserted into the record by the clerk of the court.

(d) Immediately upon the entry of such order of adoption, the court shall direct the clerk thereof forthwith to make and deliver to the state registrar of vital statistics a certificate under the seal of said court, showing:

1. The date and place of birth of the child, if known;
2. The name of the mother of the child, if known, and the name of the legal or determined father of the child, if known;
3. The name by which said child has previously been known;
4. The names and addresses of the adopting parents;
5. The name by which the child is to be thereafter known; and
6. Such other information from the record of the adoption proceedings as may be required by the law governing vital statistics and as may enable the state registrar of vital statistics to carry out the duties imposed upon him or her by this section.

(e) Upon receipt of the certificate, the registrar of vital statistics shall forthwith issue and deliver by mail to the adopting parents at their last-known address and to the clerk of the county commission of the county wherein such order of adoption was entered a birth certificate in the form prescribed by law, except that the name of the child shown in said certifi-
$48-22-703$. Effect of order as to relations of parents and child and as to rights of inheritance; intestacy of adopted child.

(a) Upon the entry of such order of adoption, any person previously entitled to parental rights, any parent or parents by any previous legal adoption, and the lineal or collateral kindred of any such person, parent or parents, except any such person or parent who is the husband or wife of the petitioner for adoption, shall be divested of all legal rights, including the right of inheritance from or through the adopted child under the statutes of descent and distribution of this state, and shall be divested of all obligations in respect to the said adopted child, and the said adopted child shall be free from all legal obligations, including obedience and maintenance, in respect to any such person, parent or parents. From and after the entry of such order of adoption, the adopted child shall be, to all intents and for all purposes, the legitimate issue of the person or persons so adopting him or her and shall be entitled to all the rights and privileges and subject to all the obligations of a natural child of such adopting parent or parents.

(b) For the purpose of descent and distribution, from and after the entry of such order of adoption, a legally adopted child shall inherit from and through the parent or parents of such child by adoption and from or through the lineal or collateral kindred of such adopting parent or parents in the same manner and to the same extent as though said adopted child were a natural child of such adopting parent or parents, but such child shall not inherit from any person entitled to parental rights prior to the adoption nor their lineal or collateral kindred, except that a child legally adopted by a husband or wife of a person entitled to parental rights prior to the adoption shall inherit from such person as well as from the adopting parent. If a legally adopted
child shall die intestate, all property, including real and personal, of such adopted child shall pass, according to the statutes of descent and distribution of this state, to those persons who would have taken had the decedent been the natural child of the adopting parent or parents.

§48-22-704. Finality of order; challenges to order of adoption.

1. (a) An order or decree of adoption is a final order for purposes of appeal to the supreme court of appeals on the date when the order is entered. An order or decree of adoption for any other purpose is final upon the expiration of the time for filing an appeal when no appeal is filed or when an appeal is not timely filed, or upon the date of the denial or dismissal of any appeal which has been timely filed.

2. (b) An order or decree of adoption may not be vacated, on any ground, if a petition to vacate the judgment is filed more than six months after the date the order is final.

3. (c) If a challenge is brought within the six-month period by an individual who did not receive proper notice of the proceedings pursuant to the provisions of this article, the court shall deny the challenge, unless the individual proves by clear and convincing evidence that the decree or order is not in the best interest of the child.

4. (d) A decree or order entered under this article may not be vacated or set aside upon application of a person who waived notice, or who was properly served with notice pursuant to this article and failed to respond or appear, file an answer or file a claim of paternity within the time allowed.

5. (e) A decree or order entered under this article may not be vacated or set aside upon application of a person alleging there is a failure to comply with an agreement for visitation or communication with the adopted child: Provided, That the court may hear a petition to enforce the agreement, in which case the court shall determine whether enforcement of the agreement
would serve the best interests of the child. The court may, in its sole discretion, consider the position of a child of the age and maturity to express such position to the court.

(f) The supreme court of appeals shall consider and issue rulings on any petition for appeal from an order or decree of adoption and petitions for appeal from any other order entered pursuant to the provisions of this article as expeditiously as possible. The circuit court shall consider and issue rulings on any petition filed to vacate an order or decree of adoption and any other pleadings or petitions filed in connection with any adoption proceeding as expeditiously as possible.

(g) When any minor has been adopted, he or she may, within one year after becoming of age, sign, seal and acknowledge before proper authority, in the county in which the order of adoption was made, a dissent from such adoption, and file such instrument of dissent in the office of the clerk of the circuit court which granted said adoption. The clerk of the county commission of such county and the circuit clerk shall record and index the same. The adoption shall be vacated upon the filing of such instrument of dissent.

PART 8. MISCELLANEOUS PROVISIONS.

§48-22-801. Adoption of adults.

Any adult person who is a resident of West Virginia may petition the circuit court or any other court of record having jurisdiction of adoption proceedings for permission to adopt one who has reached the age of eighteen years or over, and, if desired, to change the name of such person. The consent of the person to be adopted shall be the only consent necessary. The order of adoption shall create the same relationship between the adopting parent or parents and the person adopted and the same rights of inheritance as in the case of an adopted minor child. If a change in name is desired, the adoption order shall so state.
§48-22-802. Contracts limiting or restraining adoptions.

Any contract, agreement or stipulation which endeavors to deny to any person or persons the right to petition for adoption of any person, or which endeavors to alter the time or manner of adoption as provided in this article, is contrary to the public policy of the state and such portion of any contract, agreement or stipulation is null and void and of no effect.

§48-22-803. Prohibition of purchase or sale of child; penalty; definitions; exceptions.

(a) Any person or agency who knowingly offers, gives or agrees to give to another person money, property, service or other thing of value in consideration for the recipient’s locating, providing or procuring a minor child for any purpose which entails a transfer of the legal or physical custody of said child, including, but not limited to, adoption or placement, is guilty of a felony and subject to fine and imprisonment as provided herein.

(b) Any person who knowingly receives, accepts or offers to accept money, property, service or other thing of value to locate, provide or procure a minor child for any purpose which entails a transfer of the legal or physical custody of said child, including, but not limited to, adoption or placement, is guilty of a felony and subject to fine and imprisonment as provided herein.

(c) Any person who violates the provisions of this section is guilty of a felony and, upon conviction thereof, may be confined in the state correctional facility for not less than one year nor more than five years or, in the discretion of the court, be confined in jail not more than one year and fined not less than one hundred dollars nor more than two thousand dollars.

(d) A child whose parent, guardian or custodian has sold or attempted to sell said child in violation of the provisions of this article may be deemed an abused child as defined by section
three, article one, chapter forty-nine of this code. The court may
place such a child in the custody of the department of health
and human resources or with such other responsible person as
the best interests of the child dictate.

(e) This section does not prohibit the payment or receipt of
the following:

(1) Fees paid for reasonable and customary services
provided by the department of health and human resources or
any licensed or duly authorized adoption or child-placing
agency.

(2) Reasonable and customary legal, medical, hospital or
other expenses incurred in connection with the pregnancy, birth
and adoption proceedings.

(3) Fees and expenses included in any agreement in which
a woman agrees to become a surrogate mother.

(4) Any fees or charges authorized by law or approved by
a court in a proceeding relating to the placement plan, prospec-
tive placement or placement of a minor child for adoption.

(f) At the final hearing on the adoption, an affidavit of any
fees and expenses paid or promised by the adoptive parents
shall be submitted to the court.

ARTICLE 23. VOLUNTARY ADOPTION REGISTRY.

PART 1. GENERAL PROVISIONS.

§48-23-101. Policy regarding persons obtaining identifying inform-
ation after adoption.

(a) Adoption is based upon the legal termination of parental
rights and responsibilities of birth parents and the creation of
the legal relationship of parent and child between an adoptee
and his or her adoptive parents. These legal and social premises
underlying adoption must be maintained. The Legislature
recognizes that some adults who were adopted as children have
a strong desire to obtain identifying information about their
birth parents while other such adult adoptees have no such
desire. The Legislature further recognizes that some birth
parents have a strong desire to obtain identifying information
about their biological children who were surrendered for
adoption, while other birth parents have no such desire.

(b) The Legislature fully recognizes the right to privacy and
confidentiality of:

(1) Birth parents whose children were adopted;

(2) The adoptees; and

(3) The adoptive parents.

§48-23-102. Legislative purpose.

The purpose of this article is to:

(1) Set up a mutual consent voluntary adoption registry
where birth parents and adult adoptees may register their
willingness to the release of identifying information to each
other;

(2) To provide for the disclosure of such identifying
information to birth parents or adoptees, or both, through a
social worker employed by a licensed adoption agency,
provided each birth parent and the adult adoptee voluntarily
registers on his or her own; and

(3) To provide for the transmission of nonidentifying health
and social and genetic history to the adult adoptees, birth
parents and other specified persons; and

(4) to provide for disclosure of identifying information for
cause shown.
PART 2. DEFINITIONS.

§48-23-201. Applicability of definitions.
1 For the purposes of this article the words or terms defined
2 in this article, and any variation of those words or terms
3 required by the context, have the meanings ascribed to them in
4 this article. These definitions are applicable unless a different
5 meaning clearly appears from the context.

1 “Adoptee” means a person who has been legally adopted in
2 the state of West Virginia.

§48-23-203. Adoption defined.
1 “Adoption” means the judicial act of creating the relation-
2 ship of parent and child where it did not exist previously.

§48-23-204. Adult defined.
1 “Adult” means a person who is eighteen years of age or
2 more.

§48-23-205. Agency defined.
1 “Agency” means any public or voluntary organization
2 licensed or approved pursuant to the laws of any jurisdiction
3 within the United States to place children for adoption.

§48-23-206. Genetic and social history defined.
1 “Genetic and social history” means a comprehensive report,
2 when obtainable, on the birth parents, siblings to the birth
3 parents, if any, other children of either birth parent, if any, and
4 parents of the birth parents, which shall contain the following
5 information:
6 (1) Medical history;
(2) Health status;
(3) Cause of and age at death;
(4) Height, weight, eye and hair color;
(5) Ethnic origins;
(6) Where appropriate, levels of educational and professional achievement; and
(7) Religion, if any.

§48-23-207. Health history defined.

"Health history" means a comprehensive report of the child's health status at the time of placement for adoption and medical history, including neonatal, psychological, physiological and medical care history.

§48-23-208. Mutual consent voluntary adoption registry or registry defined.

"Mutual consent voluntary adoption registry" or "registry" means a place provided for herein where eligible persons as described in section 23-501 may indicate their willingness to have their identity and whereabouts disclosed to each other under conditions specified in this article.

§48-23-209. Putative father defined.

"Putative father" means any man not deemed or adjudicated under the laws of a jurisdiction of the United States to be the father of genetic origin of a child and who claims or is alleged to be the father of genetic origin of such child.

PART 3. ESTABLISHMENT AND MAINTENANCE OF VOLUNTARY ADOPTION REGISTRY.
§48-23-301. Division of human services to establish and maintain mutual consent voluntary adoption registry.

1 The division of human services, as provided for in §9-2-1, et seq. of this code, shall establish and maintain the mutual consent voluntary adoption registry, except that the division may contract out the function of establishing and maintaining the registry to a licensed voluntary agency with expertise in providing post-legal adoption services, in which case the agency shall establish and maintain the registry that would otherwise be operated by the division.

9 The secretary of the department of health and human resources shall promulgate and adopt such rules as are necessary for implementing this article.

PART 4. USE OF THE VOLUNTARY ADOPTION REGISTRY.

§48-23-401. Persons to whom use of the mutual consent voluntary adoption registry is available.

1 Use of the mutual consent voluntary adoption registry for obtaining identifying information about birth parents and adult adoptees is available to birth parents and adult adoptees, except as otherwise limited by section 23-402.

§48-23-402. Age limitations on use of the mutual consent voluntary adoption registry.

1 (a) A birth parent is not eligible to use the registry until his or her child who was adopted is eighteen years of age or older.

3 (b) An adult adoptee is not eligible to use the registry if he or she has a sibling in his or her adoptive family who is under the age of eighteen years.

§48-23-403. Registration by a birth father.

1 A birth father may register if:
(1) He was named as the father in the original sealed birth certificate;

(2) He legitimatized or formally acknowledged the child as provided by law; or

(3) He signed a voluntary abandonment and release for the child's adoption as provided by law.

§48-23-404. Registration by a birth parent who used an alias in terminating parental rights.

If a birth parent used an alias name in terminating his or her parental rights, and the alias is listed in the original sealed birth record, that birth parent may register if the agency, organization, entity or person that placed the child for adoption, certifies to the court that the individual seeking to register used the alias name set forth in the original sealed birth certificate.

PART 5. OPERATION OF THE VOLUNTARY ADOPTION REGISTRY.

§48-23-501. Prerequisites to disclosure of identifying information.

The adult adoptee and each birth parent may voluntarily, without having been contacted by any employee or agent of the entity operating the registry, place his or her name in the appropriate registry before any disclosure or identifying information can be made. A qualified person may register by submitting a notarized affidavit to the appropriate registry stating his or her name, address and telephone number and his or her willingness to be identified solely to the other relevant persons who register. No registration may be accepted until the prospective registrant submits satisfactory proof of his or her identity in accord with the provisions specified in section 23-601 of this article. The failure of any of the three above described persons to file a notarized affidavit with the registry for any reason, including death or disability, precludes the disclosure of identifying information to those relevant persons who do register.

Upon registering, the registrant shall participate in not less than one hour of counseling with a social worker employed by the entity that operates the registry, except if a birth parent or adult adoptee is domiciled outside the state, he or she shall obtain counseling from a social worker employed by a licensed agency in that other state selected by the entity that operates the registry. When an eligible person registers concerning an adoption that was arranged through an agency which has not merged or otherwise ceased operations, and that same agency is not operating the registry, the entity operating the registry shall notify by certified mail the agency which handled the adoption within ten business days after the date of registration.

§48-23-503. Cases where disclosure of identifying information cannot occur.

In any case where the identity of the birth father was unknown to the birth mother, or where the administrator learns that one or both of the birth parents are deceased, this information shall be shared with the adult adoptee. In these kinds of cases, the adoptee will not be able to obtain identifying information through the registry, and he or she would be told of his or her right to pursue whatever right otherwise exists by law to petition a court to release the identifying information.

§48-23-504. Matching and disclosure procedures.

(a) Each mutual consent voluntary adoption registry must be operated under the direction of an administrator.

(b) A person eligible to register may request the administrator to disclose identifying information by filing an affidavit which sets forth the following:

(1) The current name and address of the affiant;

(2) Any previous name by which the affiant was known;
(3) The original and adopted names, if known, of the adopted child;

(4) The place and date of birth of the adopted child; or

(5) The name and address of the adoption agency or other entity, organization or person placing the adopted child, if known.

(c) The affiant shall notify the registry of any change in name or location which occurs subsequent to his or her filing the affidavit. The registry has no duty to search for an affiant who fails to register his or her most recent address.

(d) The administrator of the mutual consent voluntary adoption registry shall process each affidavit in an attempt to match the adult adoptee and the birth parents. Such processing shall include research from agency records, when available, and when agency records are not available, research from court records to determine conclusively whether the affiants match.

(e) The administrator shall determine that there is a match when the adult adoptee and the birth mother or the adult adoptee and the birth father have each filed affidavits with the mutual consent voluntary adoption registry and have each received the counseling required in section 23-502.

(f) When a match has taken place, the department shall directly notify all parties through a direct and confidential contact. The contact shall be made by an employee or agent of the agency receiving the assignment and shall be made face to face, rather than by mail, telephone or other indirect means. The employee or agent shall be a trained social worker who has expertise in post-legal adoption services.

§48-23-505. Retention of data by the registry.

Any affidavits filed and other information collected shall be retained for ten years following the date of registration by any qualified person to which the information pertains. Any
A qualified person who registers may renew his or her registration for ten additional years within one hundred eighty days prior to the last day of ten years from the date of initial registration.

§48-23-506. Scope of information obtained by the mutual consent voluntary adoption registry.

A mutual consent voluntary adoption registry shall obtain only information necessary for identifying a birth parent or adult adoptee and in no event shall obtain information of any kind pertaining to the adoptive parents, any siblings to the adult adoptee who are children of the adoptive parents, the income of anyone and reasons for adoptive placement.

§48-23-507. Fees for operations of the mutual consent voluntary adoption registry.

All costs for establishing and maintaining a mutual consent voluntary adoption registry shall be obtained through user’s fees charged to all persons who register.

PART 6. HEALTH HISTORY; SOCIAL AND GENETIC HISTORY.

§48-23-601. Compilation of nonidentifying information on health history and social and genetic history.

(a) Prior to placement for adoption, the court shall require that the licensed adoption agency or, where an agency is not involved, the person, entity or organization handling the adoption, shall compile and provide to the prospective adoptive parents a detailed written health history and genetic and social history of the child. These histories must exclude information that would identify birth parents or members of a birth parent’s family. The histories must be set forth in a document that is separate from any document containing such identifying information.

(b) The court, or an agency designated by the court, or judge thereof, shall provide to an agency, person, or organiza-
tion handling the adoption the forms which must be utilized in
the acquisition of the above-described detailed nonidentifying
written health history and genetic and social history of the
child. If the records cannot be obtained, the court shall make
specific findings as to why the records are unobtainable.

Records containing such nonidentifying information and
which are set forth on a document described in subsection (a)
above, separate from any document containing identifying data:

(1) Shall be retained by the clerk of the court for ninety-nine years; and

(2) Shall be available upon request, throughout the time
specified in subdivision (1) of this subsection together with any
additional nonidentifying information which may have been
added on health or on genetic and social history, but which
excludes information identifying any birth parent or member of
a birth parent's family, or the adoptee or any adoptive parent of
the adoptee, to the following persons only:

(A) The adoptive parents of the child or, in the event or
death of the adoptive parents, the child's guardian;

(B) The adoptee upon reaching the age of eighteen;

(C) In the event of the death of the adoptee, the adoptee's
spouse if he or she is the legal parent of the adoptee's child or
the guardian of any child of the adoptee;

(D) In the event of the death of the adoptee, any progeny of
the adoptee who is age eighteen or older; and

(E) The birth parent of the adoptee.

The person requesting nonidentifying health history and
genetic and social history shall pay the actual and reasonable
costs of providing that information. This provision requiring
payment of costs is subject to sections of this article that
provide for the adoptee to obtain information by petitioning the court.

**PART 7. PROHIBITED CONDUCT.**

§48-23-701. Prohibited conduct.

(a) No person, agency, entity or organization of any kind, including, but not limited to, any officer or employee of this state and any employee, officer or judge of any court of this state, may disclose any confidential information relating to an adoption except as provided in this article or pursuant to a court order. Any employer who knowingly or negligently allows any employee to disclose information in violation of this article is subject to the penalties provided in subsection (b) of this section, together with the employee who made any disclosure prohibited by this law.

(b) Any person, agency, entity or organization of any kind who discloses information in violation of this law is liable to the parties so injured in an action to recover damages in respect thereto.

**PART 8. NONDISCLOSURE OF REGISTRY INFORMATION.**


(a) Notwithstanding any other provision of law, the information acquired by any registry may not be disclosed under any sunshine or freedom of information legislation, rules or practice.

(b) Notwithstanding any other provision of law, no person, group of persons, or entity, including an agency, may file a class action to force the registry to disclose identifying information.

**ARTICLE 24. ESTABLISHMENT OF PATERNITY.**


(a) A civil action to establish the paternity of a child and to obtain an order of support for the child may be instituted, by verified complaint, in the circuit court of the county where the child resides: Provided, That if such venue creates a hardship for the parties, or either of them, or if judicial economy requires, the court may transfer the action to the county where either of the parties resides.

(b) A “paternity proceeding” is a summary proceeding, equitable in nature and within the domestic relations jurisdiction of the courts, wherein a circuit court upon the petition of the state or another proper party may intervene to determine and protect the respective personal rights of a child for whom paternity has not been lawfully established, of the mother of the child and of the putative father of the child. The parties to a paternity proceeding are not entitled to a trial by jury.

(c) The sufficiency of the statement of the material allegations in the complaint set forth as grounds for relief and the grant or denial of the relief prayed for in a particular case shall rest in the sound discretion of the court, to be exercised by the court according to the circumstances and exigencies of the case, having due regard for precedent and the provisions of the statutory law of this state.

(d) A decree or order made and entered by a court in a paternity proceeding shall include a determination of the filial relationship, if any, which exists between a child and his or her putative father, and, if such relationship is established, shall resolve dependent claims arising from family rights and obligations attendant to such filial relationship.

(e) A paternity proceeding may be brought by any of the following persons:

(1) An unmarried woman with physical or legal custody of a child to whom she gave birth;
(2) A married woman with physical or legal custody of a child to whom she gave birth, if the complaint alleges that:

(A) The married woman lived separate and apart from her husband preceding the birth of the child;

(B) The married woman did not cohabit with her husband at any time during such separation and that such separation has continued without interruption; and

(C) The respondent, rather than her husband, is the father of the child;

(3) The state of West Virginia, including the bureau for child support enforcement;

(4) Any person who is not the mother of the child, but who has physical or legal custody of the child;

(5) The guardian or committee of the child;

(6) The next friend of the child when the child is a minor;

(7) By the child in his or her own right at any time after the child's eighteenth birthday but prior to the child's twenty-first birthday; or

(8) A man who believes he is the father of a child born out of wedlock, when there has been no prior judicial determination of paternity.

(f) Blood or tissue samples taken pursuant to the provisions of this article may be ordered to be taken in such locations as may be convenient for the parties so long as the integrity of the chain of custody of the samples can be preserved.

(g) A person who has sexual intercourse in this state submits to the jurisdiction of the courts of this state for a proceeding brought under this article with respect to a child who may have been conceived by that act of intercourse.
Service of process may be perfected according to the rules of civil procedure.

(h) When the person against whom the proceeding is brought has failed to plead or otherwise defend the action after proper service has been obtained, judgment by default shall be issued by the court as provided by the rules of civil procedure.

§48-24-102. Statute of limitations; prior statute of limitations not a bar to action under this article; effect of prior adjudication between husband and wife.

(a) Except for a proceeding brought by a child in his or her own right under the provisions of subdivision 24-101(e)(7), a proceeding for the establishment of the paternity of a child shall be brought prior to such child's eighteenth birthday.

(b) A proceeding to establish paternity under the provisions of this article may be brought by or on behalf of a child notwithstanding the fact that, prior to the first day of July, one thousand nine hundred eighty-six, an action to establish paternity may have been barred by a prior statute of limitations set forth in this code or otherwise provided for by law.

(c) A proceeding to establish paternity under the provisions of this article may be brought for any child who was not yet eighteen years of age on the sixteenth day of August, one thousand nine hundred eighty-four, regardless of the current age.

(d) A proceeding to establish paternity under the provisions of this article may be brought for any child who was not yet eighteen years of age on the sixteenth day of August, one thousand nine hundred eighty-four, and for whom a paternity action was brought but dismissed because a statute of limitations of less than eighteen years was then in effect.

(e) Any other provision of law to the contrary notwithstanding, when a husband and wife or former husband and wife, in
an action for divorce or an action to obtain a support order, have litigated the issue of the paternity of a child conceived during their marriage to the end that the husband has been adjudged not to be the father of such child, such prior adjudication of the issue of paternity between the husband and the wife shall not preclude the mother of such child from bringing a proceeding against another person to establish paternity under the provisions of this article.

§48-24-103. Medical testing procedures to aid in the determination of paternity.

(a) Prior to the commencement of an action for the establishment of paternity, the bureau for child support enforcement may order the mother, her child and the man to submit to genetic tests to aid in proving or disproving paternity. The bureau may order the tests upon the request, supported by a sworn statement, of any person entitled to petition the court for a determination of paternity as provided in section one of this article. If the request is made by a party alleging paternity, the statement shall set forth facts establishing a reasonable possibility or requisite sexual contact between the parties. If the request is made by a party denying paternity, the statement may set forth facts establishing a reasonable possibility of the nonexistence of sexual contact between the parties or other facts supporting a denial of paternity. If genetic testing is not performed pursuant to an order of the bureau for child support enforcement, the court may, on its own motion, or shall upon the motion of any party, order such tests. A request or motion may be made upon ten days' written notice to the mother and alleged father, without the necessity of filing a complaint. When the tests are ordered, the court or the bureau shall direct that the inherited characteristics, including, but not limited to, blood types be determined by appropriate testing procedures at a hospital, independent medical institution or independent medical laboratory duly licensed under the laws of this state, or any other state, and an expert qualified as an examiner of genetic markers shall analyze, interpret and report on the results.
(1) Blood or tissue test results which exclude the man as the father of the child are admissible and shall be clear and convincing evidence of nonpaternity and, if a complaint has been filed, the court shall, upon considering such evidence, dismiss the action.

(2) Blood or tissue test results which show a statistical probability of paternity of less than ninety-eight percent are admissible and shall be weighed along with other evidence of the respondent’s paternity.

(3) Undisputed blood or tissue test results which show a statistical probability of paternity of more than ninety-eight percent shall, when filed, legally establish the man as the father of the child for all purposes and child support may be established pursuant to the provisions of this chapter.

(4) When a party desires to challenge the results of the blood or tissue tests or the expert’s analysis of inherited characteristics, he or she shall file a written protest with the family law master or circuit court or with the bureau for child support enforcement, if appropriate, within thirty days of the filing of such test results, and serve a copy of such protest upon the other party. The written protest shall be filed at least thirty days prior to any hearing involving the test results. The court or the bureau for child support enforcement, upon reasonable request of a party, shall order that additional tests be made by the same laboratory or another laboratory within thirty days of the entry of the order, at the expense of the party requesting additional testing. Costs shall be paid in advance of the testing. When the results of the blood or tissue tests or the expert’s analysis which show a statistical probability of paternity of more than ninety-eight percent are confirmed by the additional testing, then the results are admissible evidence which is clear and convincing evidence of paternity. The admission of the evidence creates a presumption that the man tested is the father.
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(b) Documentation of the chain of custody of the blood or tissue specimens is competent evidence to establish the chain of custody. A verified expert's report shall be admitted at trial unless a challenge to the testing procedures or a challenge to the results of test analysis has been made before trial. The costs and expenses of making the test is shall be paid by the parties in proportions and at times determined by the court.

(c) Except as provided in subsection (d) of this section, when a blood test is ordered pursuant to this section, the moving party shall initially bear all costs associated with the blood test unless that party is determined by the court to be financially unable to pay those costs. This determination shall be made following the filing of an affidavit pursuant to section one, article two, chapter fifty-nine of this code. When the court finds that the moving party is unable to bear that cost, the cost shall be borne by the state of West Virginia. Following the finding that a person is the father based on the results of a blood test ordered pursuant to this section, the court shall order that the father be ordered to reimburse the moving party for the costs of the blood tests unless the court determines, based upon the factors set forth in this section, that the father is financially unable to pay those costs.

(d) When a blood test is ordered by the bureau for child support enforcement, the bureau shall initially bear all costs subject to recoupment from the alleged father if paternity is established.

§48-24-104. Establishment of paternity and duty of support.

(a) When the respondent, by verified responsive pleading, admits that the man is the father of the child and owes a duty of support, or if after a hearing on the merits, the court shall find, by clear and convincing evidence that the man is the father of the child, the court shall, subject to the provisions of subsection (c) of this section, order support in accordance with the support guidelines set forth in article 13-101, et seq., and the payment
of incurred expenses as provided in subsection (e) of this section.

(b) Upon motion by a party, the court shall issue a temporary order for child support pending a judicial determination of parentage if there is clear and convincing evidence of paternity on the basis of genetic tests or other scientifically recognized evidence.

(c) Reimbursement support ordered pursuant to this section shall be limited to a period not to exceed thirty-six months prior to the service of notice of the commencement of paternity or support establishment, unless the court finds, by clear and convincing evidence:

(1) That the respondent had actual knowledge that he was believed to be the father of the child;

(2) That the respondent deliberately concealed his whereabouts or deliberately evaded attempts to serve process upon himself or herself; or

(3) That the respondent deliberately misrepresented relevant information which would have enabled the petitioner to proceed with the cause of action.

If the court finds by clear and convincing evidence that the circumstances in subsection (1), (2) or (3) exist, then the court shall order reimbursement support to the date of birth of the child, subject to the equitable defense of laches.

(d) The court shall give full faith and credit to a determination of paternity made by any other state, based on the laws of that state, whether established through voluntary acknowledgment or through administrative or judicial process.

(e) Bills for pregnancy, childbirth and genetic testing are admissible and constitute prima facie evidence of medical expenses incurred.
(f) The thirty-six month limitation on reimbursement support does not apply to the award of medical expenses incurred.

(g) For purposes of this section, "reimbursement support" means the amount of money awarded as child support for a period of time prior to the entry of the order which establishes the support obligation.

§48-24-105. Representation of parties.

Notwithstanding any provision of this code to the contrary, no parent in any proceeding brought pursuant to this article may have counsel appointed for them according to section one, article twenty-one, chapter twenty-nine of this code or otherwise receive legal services provided solely by the state in such action. The bureau for child support enforcement providing representation to the state of West Virginia shall solely represent the state of West Virginia and does not provide any representation to any party.

§48-24-106. Establishing paternity by acknowledgment of natural father.

A written, notarized acknowledgment executed pursuant to the provisions of section twelve, article five, chapter sixteen of this code legally establishes the man as the father of the child for all purposes and child support may be established in accordance with the support guidelines set forth in article 13-101, et seq.

ARTICLE 25. CHANGE OF NAME.

§48-25-101. Petition to circuit court for change of name; contents thereof; notice of application.

Any person desiring a change of his or her own name, or that of his or her child or ward, may apply therefor to the circuit court or any other court of record having jurisdiction of the county in which he or she resides, or the judge thereof in vacation, by petition setting forth that he or she has been a bona fide resident of such county for at least one year prior to the
§48-25-102. Objections to change of name.

Any person who is likely to be injured by the change of name of any person so petitioning, or who knows of any reason why the name of any such petitioner should not be changed, may appear at the time and place named in the notice, and shall be heard in opposition to such change.

§48-25-103. When court may order change of name.

Upon the filing of such petition, and upon proof of the publication of such notice and of the matters set forth in the petition, and being satisfied that no injury will be done to any person by reason of such change, that reasonable and proper cause exists for changing the name of petitioner, and that such change is not desired because of any fraudulent or evil intent on the part of the petitioner, the court or judge thereof in vacation may order a change of name as applied for except as provided by the provisions of this section. The court may not grant any change of name for any person convicted of any felony during the time that the person is incarcerated. The court may not grant any change of name for any person required to register with the state police pursuant to the provisions of article eight-f, chapter sixty-one of this code during the period that such person is required to register. The court may not grant a change of name for persons convicted of first degree murder in violation of section one, article two, chapter sixty-one of this code for a period of ten years after the person is discharged from imprisonment or is discharged from parole, whichever occurs later. The court may not grant a change of name of any person convicted of violating any provision of section fourteen-a,
article two, chapter sixty-one of this code for a period of ten years after the person is discharged from imprisonment or is discharged from parole, whichever occurs later.

§48-25-104. Recordation of order changing name.

When such order is made the petitioner shall forthwith cause a certified copy thereof to be filed in the office of the clerk of the county commission of the county where petitioner resides, and such clerk shall record the same in a book to be kept for the purpose and index the same under both the old and the new names. For such recording and indexing the clerk shall be allowed the same fee as for a deed.

§48-25-105. When new name to be used.

When such change has been ordered and a certified copy of the order filed in the office of the county clerk, the new name shall thenceforth be used in place of the former name.

§48-25-106. Unlawful change of name.

Any person residing in this state who shall change his or her name, or assume another name, unlawfully, shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not exceeding one hundred dollars, and upon a repetition thereof shall be confined in the county or regional jail not exceeding sixty days.

§48-25-107. Unlawful change of name by certain felons and registrants.

(a) It is unlawful for any person convicted of first degree murder in violation of section one, article two, chapter sixty-one of this code, and for any person convicted of violating any provision of section fourteen-a, article two, chapter sixty-one of this code, for which a sentence of life imprisonment is imposed, to apply for a change of name for a period of ten years after the
person is discharged from imprisonment or is discharged from parole, whichever occurs later.

(b) It is unlawful for any person required to register with the state police pursuant to the provisions of article twelve, chapter fifteen of this code to apply for a change of name during the period that the person is required to register.

(c) It is unlawful for any person convicted of a felony to apply for a change of name during the period that such person is incarcerated.

(d) A person who violates the provisions of subsection (a), (b) or (c) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than two hundred fifty dollars nor more than ten thousand dollars or imprisoned in the county or regional jail for not more than one year, or both fined and incarcerated.

ARTICLE 26. DOMESTIC VIOLENCE ACT.

PART 1. GENERAL PROVISIONS.

§48-26-101. Title.

This article shall be known as the “West Virginia Domestic Violence Act”.

PART 2. DEFINITIONS.

§48-26-201. Applicability of definitions.

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


“Board” means the family protection services board created pursuant to section 26-301 of this article.
 §48-26-203. Department defined.

1. "Department" means the department of health and human resources.

§48-26-204. Shelter defined.

1. "Shelter" or "family protection shelter" means a licensed domestic violence shelter created for the purpose of receiving, on a temporary basis, persons who are victims of domestic violence, abuse or rape as well as the children of such victims.

§48-26-205. Secretary defined.

1. "Secretary" means the secretary of the department of health and human resources.

§48-26-206. Family protection program defined.

1. "Family protection program" or "program" means a licensed domestic violence program offered by a locally controlled organization primarily for the purpose of providing services to victims of domestic violence or abuse and their children.

PART 3. FAMILY PROTECTION SERVICES BOARD.

§48-26-301. Family protection services board continued; terms.

1. (a) The family protection services board, previously created, is continued. Membership of the board is comprised of five persons. The governor, with the advice and consent of the Senate, shall appoint three members of the board. One appointed member must be a commissioner of a shelter. One appointed member must be a member of a major trade association that represents shelters across the state. The final gubernatorial appointee must be a member of the public. The other two members are the secretary of the department of health and human resources, or his or her designee, and the chairperson of
the governor’s committee on crime, delinquency and correction, or his or her designee.

(b) The terms of the three members appointed by the governor are staggered terms of three years. The initial term of the commissioner of the shelter is a one-year term, the initial term of the representative of the trade association is a two-year term and the initial term of the appointed member of the public is a three-year term.

c) In the event that a member of the board ceases to be qualified for appointment, then his or her appointment terminates.

PART 4. DUTIES OF FAMILY PROTECTION SERVICES BOARD.

§48-26-401. Duties of board generally.

It is the duty of the board to:

(1) Regulate its procedural practice;

(2) Receive and consider applications for the development of shelters;

(3) Facilitate the formation and operation of shelters;

(4) Promulgate rules to implement the provisions of this article and any applicable federal guidelines;

(5) Advise the secretary on matters of concern relative to his or her responsibilities under this article;

(6) Study issues pertinent to family protection shelters, programs for domestic violence victims, and report the results to the governor and the Legislature;

(7) Conduct hearings as necessary under this article;
(8) Delegate to the secretary such powers and duties of the board as the board may deem appropriate to delegate, including, but not limited to, the authority to approve, disapprove, revoke or suspend licenses;

(9) Deliver funds to shelters within forty-five days of the approval of a proposal for such shelters;

(10) Establish a system of peer review which will ensure the safety, well-being and health of the clients of all shelters operating in the state;

(11) Evaluate annually each funded shelter to determine its compliance with the goals and objectives set out in its original application for funding or subsequent revisions;

(12) To award to shelters, for each fiscal year, ninety-five percent of the total funds collected and paid over during the fiscal year to the special revenue account established pursuant to section 2-604 of this chapter and to expend, during said period a sum not in excess of five percent of said funds for cost of administering provisions of this article;

(13) Establish and enforce system of standards for annual licensure for all shelters and programs in the state;

(14) Enforce standards; and

(15) Review its rules biannually.

§48-26-402. Duties regarding licenses for shelters and programs.

(a) The board shall establish an application for licensing all shelters and programs.

(b) Licenses may be renewed on an annual basis with all such licenses having a term of one year commencing on the first day of July and terminating on the thirtieth day of June of the next year.
(c) The board shall grant or deny any license within forty-five days of the receipt of the application.

(d) The license granted by the board shall be conspicuously displayed by the licensees.

(e) The board may grant a provisional license or grant a waiver of licensure if the board deems such waiver or provisional license necessary for the shelter or program. All such waivers or provisional licenses shall be reviewed semi-annually.

§48-26-403. Duties regarding rules.

The board shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to effectuate the provisions of this article.

§48-26-404. Regulation of intervention programs for perpetrators; required provisions; duties of providers.

(a) The family protection services board shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code governing the minimum level of responsibility, service and accountability expected from providers of programs of intervention for perpetrators of domestic violence. These rules shall be developed in consultation with public and private agencies that provide programs for victims of domestic violence and programs of intervention for perpetrators, with advocates for victims, with organizations that represent the interests of shelters, and with persons who have demonstrated expertise and experience in providing services to victims and perpetrators of domestic violence and their children. If a program of intervention for perpetrators receives funds from the state or is licensed by the state, the board shall review the program’s compliance with the rules promulgated pursuant to this subsection.
(b) The rules for programs for intervention for perpetrators of domestic violence shall include:

(1) Criteria concerning a perpetrator’s appropriateness for the program;

(2) Systems for communication and evaluation among the referring court, the public and private agencies that provide programs for victims of domestic violence and the programs of intervention for perpetrators; and

(3) Required qualifications concerning education, training and experience for providers of intervention programs.

(c) The standards shall be based upon and incorporate the following principles:

(1) The focus of a program is to end the acts of violence and ensure the safety of the victim and any children or other family or household members;

(2) Domestic violence constitutes behavior for which the perpetrator is accountable; and

(3) Although alcohol and substance abuse often exacerbate domestic violence, it is a separate problem which requires specialized intervention or treatment.

(d) Providers of perpetrator intervention programs:

(1) Shall require participants to sign the following releases:

(A) Allowing the provider to inform the victim and the victim’s advocates that the perpetrator is participating in a batterers’ intervention prevention program with the provider and to provide information to the victim and the victim’s advocates, if necessary, for the victim’s safety;

(B) Allowing prior and current treating agencies to provide information about the perpetrator to the provider; and
(C) Allowing the provider, for good cause, to provide information about the perpetrator to relevant legal entities, including courts, parole officers, probation officers and child protective services;

(2) Shall report to the court, if the participation was court ordered, and to the victim, if the victim requests and provides a method of notification, any assault, failure to comply with program requirements, failure to attend the program and threat of harm by the perpetrator;

(3) Shall report to the victim, without the participant’s authorization, all threats of harm;

(4) May report to the victim, without the participant’s authorization, the participant’s failure to attend.

§48-26-405. Licensing providers of intervention programs for perpetrators.

(a) The board shall establish an application for licensure for all providers of programs of intervention for perpetrators in accordance with section 26-404 of this article.

(b) Licenses may be renewed on an annual basis with all such licenses having a term of one year commencing on the first day of July and terminating on the thirtieth day of June on the next year.

(c) The board shall grant or deny any license within forty-five days of the receipt of the application.

(d) The license granted by the board shall be conspicuously displayed by the licensees.

(e) The board may grant a provisional license or grant a waiver of licensure if the board deems such waiver or provisional license necessary for the operation of a program. All such waivers or provisional licenses shall be reviewed semiannually.
§48-26-406. Closure of shelters; provisional licensee waivers.

(a) The board may close any shelter which violates the standards established under this article and which threatens the health, well being and safety of its clients: Provided, That the board shall establish a plan to place such clients in other shelters and to develop a method to continue serving the areas served by the shelter to be closed.

(b) The board may place a shelter, which violates standards established under this article and which threatens the health, well being and safety of its clients, under receivership and operate said shelter. The board shall have access and may use all assets of the shelter.

(c) In order to close or place a shelter in receivership, the board shall hold a public hearing within the confines of municipality or county in which the shelter is located. The board, by the first day of September, one thousand nine hundred eighty-nine, shall establish rules and regulations to govern the conduct of such hearings: Provided, That four members of the board must vote in the affirmative before a shelter is closed or placed in receivership.

(d) If a shelter disagrees with the findings of the board, the shelter may appeal such ruling to the circuit court of Kanawha County or the circuit court of the county where the shelter is located pursuant to the provisions of section four, article five, chapter twenty-nine-a of this code.

PART 5. DUTIES OF THE BUREAU FOR PUBLIC HEALTH.


(a) The bureau for public health of the department of health and human resources, in consultation with the family protection services board, shall:
(1) Assess the impact of domestic violence on public health; and

(2) Develop a state public health plan for reducing the incidence of domestic violence in this state.

(b) The state public health plan shall:

(1) Include, but not be limited to, public education, including the use of the various communication media to set forth the public health perspective on domestic violence;

(2) Be developed in consultation with public and private agencies that provide programs for victims of domestic violence, advocates for victims, organizations representing the interests of shelters, and persons who have demonstrated expertise and experience in providing health care to victims of domestic violence and their children; and

(3) Be completed on or before the first day of January, two thousand.

(c) The bureau for public health of the department of health and human resources shall:

(1) Transmit a copy of the state public health plan to the governor and the Legislature; and

(2) Review and update the state public health plan annually.

§48-26-502. Notice of victims’ rights, remedies and available services; required information.

(a) The bureau for public health of the department of health and human resources shall make available to health care facilities and practitioners a written form notice of the rights of victims and the remedies and services available to victims of domestic violence.

(b) A health care practitioner whose patient has injuries or conditions consistent with domestic violence shall provide to
the patient, and every health care facility shall make available

§48-26-503. Standards, procedures and curricula.

(a) The bureau for public health of the department of health

and human resources shall publish model standards, including

specialized procedures and curricula, concerning domestic

violence for health care facilities, practitioners and personnel.

(b) The procedures and curricula shall be developed in

consultation with public and private agencies that provide

programs for victims of domestic violence, advocates for

victims, organizations representing the interests of shelters and

personnel who have demonstrated expertise and experience in

providing health care to victims of domestic violence and their

children.

PART 6. FUNDING.

§48-26-601. Funding application requirements.

(a) A shelter or program may apply to the board for a grant

of funds as provided by this article. The application shall

include, but not be limited to, the following:

(1) Evidence that the organization submitting the applica-

tion is incorporated in this state as a nonprofit corporation;

(2) A list of the incorporators of the corporation and a list

of the officers and the board of directors;

(3) The proposed budget of the shelter or program for the

following fiscal year;

(4) A summary of the services proposed to be offered in the

following fiscal year by the shelter or program;
(5) An evaluation of local needs for a shelter or program;

(6) An estimate of the number of people to be served by the shelter or program during the following fiscal year; and

(7) Any other information the board may feel is necessary.

(b) In order to qualify for a grant of funds under this article, each family protection shelter or program shall:

(1) Provide or propose to provide a facility which will serve as temporary shelter to receive, care and provide services for persons who are victims of domestic violence or abuse and their children;

(2) Be incorporated in this state as a nonprofit corporation;

(3) Have a board of directors which represents a broad spectrum of the community to be served, including at least one person who is or has been a victim of domestic violence or abuse;

(4) Receive at least fifty-five percent of its funds from sources other than funds distributed under this article. These sources may be public or private and may include contributions of goods or services; and

(5) Require persons employed by or volunteering services to the shelter or program to maintain the confidentiality of any information which may identify individuals served by it.

(c) A family protection shelter or program may not be funded initially if it is shown that it discriminates in its services on the basis of race, religion, age, sex, marital status, national origin or ancestry. If such discrimination occurs after initial funding, the shelter or program may not be refunded until the discrimination ceases.

(d) A family protection shelter program may not be refunded if its original application projected the provision of
residential services and such services were not provided in the
first six months following disbursement of the original funds
under this article: Provided, That upon a subsequent showing
that the funds were used in the manner proposed in the original
application, the shelter or program is not barred from subse-
quently funding. A revision of the original application may be
filed with the board.

§48-26-602. Award provisions.

1 Grants made pursuant to this article shall be awarded on the
basis of the following criteria:

2 (1) Demonstration of local need for proposed services;

3 (2) Merit of project as proposed;

4 (3) Demonstration of local control of the shelter or pro-
gram;

5 (4) Administrative design and efficiency of the project; and

6 (5) The board shall develop a formula for equal distribution
of fifty percent of any money it awards.

§48-26-603. Domestic violence legal services fund.

1 There is hereby established in the state treasury a special
revenue account, designated as the “domestic violence legal
services fund”, which shall be an appropriated fund for receipt
of grants, gifts, fees, or federal or state funds designated for
legal services for domestic violence victims. Expenditures from
the fund shall be limited to attorneys employed by domestic
violence shelters, or employed by nonprofit agencies which
establish a collaborative relationship with a domestic violence
shelter, that provide civil legal services to victims of domestic
violence.

§48-26-604. Annual reports of shelters and programs receiving
funds.

1 A shelter or program receiving funds pursuant to this article
shall file an annual report with the board by the thirty-first day
of each October for the prior fiscal year. The report shall include statistics on the number of persons served, the relationship of the victim to the abuser, services provided to the abuser, the number of referrals made for medical, psychological, financial, educational, vocational, child care or legal services and the results of an independent audit. No information contained in the report may identify any person served by the shelter or enable any person to determine the identity of any such person.

PART 7. CONFIDENTIALITY.

§ 48-26-701. Confidentiality.

(a) No program or shelter receiving funds pursuant to this article shall disclose or be compelled to disclose, release or be compelled to release any written records created or maintained in providing services pursuant to this article except:

(1) Upon written consent of the person seeking or who has sought services from the program or the shelter;

(2) In any proceeding brought under sections four and five, article six, chapter nine of this code or article six, chapter forty-nine of this code;

(3) As mandated by article six-a, chapter forty-nine and article six, chapter nine of this code;

(4) Pursuant to an order of any court based upon a finding that said information is sufficiently relevant to a proceeding before the court to outweigh the importance of maintaining the confidentiality established by this section;

(5) To protect against a clear and substantial danger of imminent injury by a client to himself or herself or another;

(6) For treatment or internal review purposes to the staff of any program or shelter if the client is also being cared for by other health professionals in the program or shelter.
(b) No consent or authorization for the transmission or disclosure of confidential information shall be effective unless it is in writing and signed by the client. Every person signing an authorization shall be given a copy.

PART 8. EDUCATION CONCERNING DOMESTIC VIOLENCE.

§48-26-801. Continuing education for certain state employees.

(a) (1) Subject to the provisions of subdivision (2) of this subsection, the department of health and human resources shall provide or require continuing education concerning domestic violence for child protective services workers, adult protective services workers, social services workers, family support workers and workers in the bureau for child support enforcement.

(2) Funding for the continuing education provided or required under subdivision (1) of this section may not exceed the amounts allocated for that purpose by the spending unit from existing appropriations. No provision of this section may be construed to require the Legislature to make any appropriation.

(b) The courses or requirements shall be prepared and presented in consultation with public and private agencies that provide programs for victims of domestic violence or programs of intervention for perpetrators, advocates for victims, organizations representing the interests of shelters and the family protection services board.


(a)(1) Subject to the provisions of subdivision (2) of this subsection, as a part of the initial law-enforcement officer training required before a person may be employed as a law-enforcement officer pursuant to article twenty-nine, chapter
 thirty of this code, all law-enforcement officers shall receive
training concerning domestic violence.

(2) Funding for the training required under subdivision (1)
of this section may not exceed the amounts allocated by the
spending unit for that purpose from existing appropriations. No
provision of this section may be construed to require the
Legislature to make any appropriation.

(b) The course of instruction and the objectives in learning
and performance for the education of law-enforcement officers
required pursuant to this section shall be developed and
presented in consultation with public and private providers of
programs for victims of domestic violence and programs of
intervention for perpetrators, persons who have demonstrated
expertise in training and education concerning domestic
violence and organizations representing the interests of shelters.


(a) (1) Subject to the provisions of subdivision (2) of this
subsection, as a part of existing training for court personnel, the
supreme court of appeals shall develop and present courses of
continuing education concerning domestic violence for magis-
trates assistants, and juvenile and adult probation officers.

(2) Funding for the continuing education required under
subdivision (1) of this section may not exceed the amounts
allocated for that purpose by the supreme court of appeals from
existing appropriations. No provision of this section may be
construed to require the Legislature to make any appropriation.

(b) The course of instruction shall be prepared and may be
presented in consultation with public and private agencies that
provide programs for victims of domestic violence and pro-
grams of intervention for perpetrators, advocates for victims,
persons who have demonstrated expertise in training and
education concerning domestic violence, organizations repre-
senting the interests of shelters and the family protection services board.

§48-26-804. Required curricula for public education system.

(a)(1) Subject to the provisions of subdivision (2) of this subsection, the state board of education shall select or develop:

(A) Curricula that are appropriate for various ages for pupils concerning the dynamics of violence, prevention of violence, including domestic violence; and

(B) Curricula for school counselors, health care personnel, administrators and teachers concerning domestic violence.

(2) Funding for selecting or developing the curricula required under subdivision (1) of this section may not exceed the amounts allocated for that purpose by the spending unit from existing appropriations. No provision of this section may be construed to require the Legislature to make any appropriation.

(b) The curricula shall be selected or developed by the state board of education in consultation with public and private agencies that provide programs for conflict resolution, violence prevention, victims of domestic violence and programs of intervention for perpetrators of domestic violence, advocates for victims, organizations representing the interests of shelters, persons who have demonstrated expertise and experience in education and domestic violence and the family protection services board.

§48-26-805. Continuing education for school personnel who are required to report child abuse and neglect.

(a) (1) Subject to the provisions of subdivision (2) of this subsection, the state department of education shall provide or require courses of continuing education concerning domestic
violence for employees who are required by law to report child
abuse or neglect.

(2) Funding for the continuing education provided or
required under subdivision (1) of this section may not exceed
the amounts allocated for that purpose by the spending unit
from existing appropriations. No provision of this section may
be construed to require the Legislature to make any appropria-

(b) The courses or requirements shall be prepared and
presented in consultation with public and private agencies that
provide programs for victims of domestic violence, persons
who have demonstrated expertise in education and domestic
violence, advocates for victims, organizations representing the
interests of shelters and the family protection services board.

PART 9. LOCAL ADVISORY COUNCILS.

§48-26-901. Establishment of local advisory councils authorized.

A local government, a county or a combination thereof
may establish an advisory council on domestic violence.

§48-26-902. Purpose of local advisory councils.

The purpose of a local advisory council is to increase the
awareness and understanding of domestic violence and its
consequences and to reduce the incidence of domestic violence
within the locality by:

(1) Promoting effective strategies for identification of the
existence of domestic violence and intervention by public and
private agencies serving persons who are victims of domestic
violence;

(2) Providing for public education;

(3) Facilitating communication among public and private
agencies that provide programs to assist victims and programs
of intervention for perpetrators;
(4) Providing assistance to public and private agencies and providers of services to develop statewide procedures and community and staff education, including procedures to review fatalities; and

(5) Developing a comprehensive plan of data collection concerning domestic violence in cooperation with courts, prosecutors, law-enforcement officers, health care practitioners and other local agencies, in a manner that protects the identity of victims of domestic violence. Nothing contained in this subdivision shall be construed to modify or diminish any existing law relating to the confidentiality of records.

PART 10. RESERVED.

PART 11. MISCELLANEOUS PROVISIONS.

§48-26-1101. Referral to shelters.

Where shelters are available, the law-enforcement officer or other public authority investigating an alleged incident of domestic violence shall advise the victim of the availability of the family protection shelter to which that person may be admitted.

§48-26-1102. Continuation of board.

After having conducted a performance audit through its joint committee on government operations, pursuant to article ten, chapter four of this code, the Legislature hereby finds and declares that the family protection services board should be continued and reestablished. Accordingly, notwithstanding the provisions of said article, the family protection services board shall continue to exist until the first day of July, two thousand six, unless sooner terminated, continued or reestablished by act of the Legislature.

ARTICLE 27. PREVENTION AND TREATMENT OF DOMESTIC VIOLENCE.
PART 1. GENERAL PROVISIONS.


(a) The Legislature of this state finds that:

1. Every person has a right to be safe and secure in his or her home and family and to be free from domestic violence.

2. Children are often physically assaulted or witness violence against one of their parents or other family or household members, violence which too often ultimately results in death. These children may suffer deep and lasting emotional harm from victimization and from exposure to domestic violence;

3. Domestic violence is a major health and law-enforcement problem in this state with enormous costs to the state in both dollars and human lives. It affects people of all racial and ethnic backgrounds and all socioeconomic classes; and

4. Domestic violence can be deterred, prevented or reduced by legal intervention that treats this problem with the seriousness that it deserves.

(b) This article shall be liberally construed and applied to promote the following purposes:

1. To assure victims of domestic violence the maximum protection from abuse that the law can provide;

2. To create a speedy remedy to discourage violence against family or household members with whom the perpetrator of domestic violence has continuing contact;

3. To expand the ability of law-enforcement officers to assist victims, to enforce the domestic violence law more effectively, and to prevent further abuse;
(4) To facilitate equal enforcement of criminal law by deterring and punishing violence against family and household members as diligently as violence committed against strangers;

(5) To recognize that domestic violence constitutes serious criminal behavior with potentially tragic results and that it will no longer be excused or tolerated; and

(6) To recognize that the existence of a former or ongoing familial or other relationship should not serve to excuse, explain or mitigate acts of domestic violence which are otherwise punishable as crimes under the laws of this state.

PART 2. DEFINITIONS.


For the purposes of this article and article 26-101, et seq., of this chapter, the words or terms defined in this article, and any variation of those words or terms required by the context, have the meanings ascribed to them in this section. These definitions are applicable unless a different meaning clearly appears from the context.


“Domestic violence”, or “abuse” means the occurrence of one or more of the following acts between family or household members, as that term is defined in section 27-203:

(1) Attempting to cause or intentionally, knowingly or recklessly causing physical harm to another with or without dangerous or deadly weapons;

(2) Placing another in reasonable apprehension of physical harm;

(3) Creating fear of physical harm by harassment, psychological abuse or threatening acts;
(4) Committing either sexual assault or sexual abuse as those terms are defined in articles eight-b and eight-d, chapter sixty-one of this code; and

(5) Holding, confining, detaining or abducting another person against that person's will.

§48-27-203. **Family or household members defined.**

“Family or household members” means persons who:

1. Are or were married to each other;
2. Are or were living together as spouses;
3. Are or were sexual or intimate partners;
4. Are or were dating: *Provided,* That a casual acquaintance or ordinary fraternization between persons in a business or social context does not establish a dating relationship;
5. Are or were residing together in the same household;
6. Are or were related by marriage or related by consanguinity within the second degree;
7. Have a child in common, regardless of whether they have ever married or lived together; or
8. Are the father, stepfather, mother, stepmother, brother or sister of a family or household member described in subdivisions one through seven of this subsection.

§48-27-204. **Law-enforcement agency defined.**

(a) “Law-enforcement agency” means and is limited to:

1. The state police and its members;
(2) A county sheriff and his or her law-enforcement deputies; and

(3) A police department in any municipality as defined in section two, article one, chapter eight of this code.

(b) The term "law-enforcement agency" includes the department of health and human resources in those instances of child abuse reported to the department that are not otherwise reported to any other law-enforcement agency.

§48-27-205. Program for victims of domestic violence defined.

"Program for victims of domestic violence" means a licensed program for victims of domestic violence and their children, which program provides advocacy, shelter, crisis intervention, social services, treatment, counseling, education or training.


"Program of intervention for perpetrators" means a licensed program, where available, or if no licensed program is available, a program that:

(1) Accepts perpetrators of domestic violence into educational intervention groups or counseling pursuant to a court order; or

(2) Offers educational intervention groups to perpetrators of domestic violence.

PART 3. PROCEDURE.

§48-27-301. Jurisdiction.

Circuit courts and magistrate courts, as constituted under chapter fifty of this code, have concurrent jurisdiction over proceedings under this article: Provided, That on and after the first day of September, two thousand one, magistrate court
jurisdiction shall be limited, and thereafter, final hearings wherein a protective order is sought shall be heard before a circuit judge or a family law master.


The action may be heard in the county in which the domestic violence occurred, in the county in which the respondent is living or in the county in which the petitioner is living, either temporarily or permanently. If the parties are married to each other, the action may also be brought in the county in which an action for divorce between the parties may be brought as provided by 5-106.


The petitioner’s right to relief under this article shall not be affected by his or her leaving a residence or household to avoid further abuse.


(a) An action under this article is commenced by the filing of a verified petition.

(b) No person shall be refused the right to file a petition under the provisions of this article. No person shall be denied relief under the provisions of this article if she or he presents facts sufficient under the provisions of this article for the relief sought.

(c) Husband and wife are competent witnesses in domestic violence proceedings and cannot refuse to testify on the grounds of the privileged nature of their communications.

§48-27-305. Persons who may file petition.

A petition for a protective order may be filed by:

(1) A person seeking relief under this article for herself or himself;
(2) An adult family or household member for the protection of the victim or for any family or household member who is a minor child or physically or mentally incapacitated to the extent that he or she cannot file on his or her own behalf, or

(3) A person who reported or was a witness to domestic violence and who, as a result, has been abused, threatened, harassed or who has been the subject of other actions intended to intimidate the person.

§48-27-306. Counterclaim or affirmative defenses.

(a) A respondent named in a petition alleging domestic violence may file a verified counterclaim stating any claim that the respondent has against the petitioner that would be a basis for filing a petition under this article.

(b) In response to a petition or counterclaim, the person alleged to have committed the domestic violence may assert any affirmative defense that he or she may have available.


No person accompanying a person who is seeking to file a petition under the provisions of this article is precluded from being present if his or her presence is desired by the person seeking a petition unless the person’s behavior is disruptive to the proceeding.

§48-27-308. Charges for fees and costs postponed.

No fees shall be charged for the filing of petitions or other papers, service of petitions or orders, copies of orders, or other costs for services provided by, or associated with, any proceedings under this article until the matter is brought before the court for final resolution.


Any petition filed under the provisions of this article shall be given priority over any other civil action before the court,
except actions in which trial is in progress, and shall be
docketed immediately upon filing. Any appeal to the circuit
court of a magistrate’s judgment on a petition for relief under
this article shall be heard within ten working days of the filing
of the appeal.

§48-27-310. Full faith and credit.

Any protective order issued pursuant to this article shall be
effective throughout the state in every county. Any protective
order issued by any other state, territory or possession of the
United States, Puerto Rico, the District of Columbia or Indian
tribe shall be accorded full faith and credit and enforced as if it
were an order of this state whether or not such relief is available
in this state. A protective order from another jurisdiction is
presumed to be valid if the order appears authentic on its face
and shall be enforced in this state. If the validity of the order is
contested, the court or law enforcement to which the order is
presented shall, prior to the final hearing, determine the
existence, validity and terms of such order in the issuing
jurisdiction. A protective order from another jurisdiction may
be enforced even if the order is not entered into the state
law-enforcement information system described by 27-802.


A protective order may be served on the respondent by
means of a Class I legal advertisement published notice, with
the publication area being the county in which the respondent
resides, published in accordance with the provisions of section
two, article three, chapter fifty-nine of this code if: (1) The
petitioner files an affidavit with the court stating that an attempt
at personal service pursuant to rule four of the West Virginia
rules of civil procedure has been unsuccessful or evidence is
adduced at the hearing for the protective order that the respon-
dent has left the state of West Virginia; and (2) a copy of the
order is mailed by certified or registered mail to the respondent
at the respondent’s last known residence and returned undeliv-
ered.
PART 4. COORDINATION WITH PENDING CIRCUIT COURT ACTIONS.

§48-27-401. Proceedings when divorce action is pending.

(a) During the pendency of a divorce action, a person may file for and be granted relief provided by this article, until an order is entered in the divorce action pursuant to part 5-501, et seq.

(b) If a person who has been granted relief under this article should subsequently become a party to an action for divorce, separate maintenance or annulment, such person shall remain entitled to the relief provided under this article including the right to file for and obtain any further relief, so long as no temporary order has been entered in the action for divorce, annulment and separate maintenance, pursuant to part 5-501, et seq.

(c) Except as provided in section 27-402 of this article for a petition and a temporary emergency protective order, no person who is a party to a pending action for divorce, separate maintenance or annulment in which an order has been entered pursuant to part 5-501, et seq., of this chapter, shall be entitled to file for or obtain relief against another party to that action under this article until after the entry of a final order which grants or dismisses the action for divorce, annulment or separate maintenance.

(d) Notwithstanding the provisions set forth in section 27-505, any order issued pursuant to this section where a subsequent action is filed seeking a divorce, annulment or separate maintenance, shall remain in full force and effect by operation of this statute until a temporary or final order is issued pursuant to section 5-501, et seq., or a final order granting or dismissing the action for divorce, annulment or separate maintenance.
§48-27-402. Proceedings in magistrate court when temporary divorce, annulment or separate maintenance order is in effect.

(a) The provisions of this section apply where a temporary order has been entered by a family law master or judge in an action for divorce, annulment or separate maintenance, notwithstanding the provisions of subsection 27-401(c).

(b) A person who is a party to an action for divorce, annulment or separate maintenance in which a temporary order has been entered pursuant to section 5-501 of this chapter may petition the magistrate court for a temporary emergency protective order pursuant to this section for any violation of the provisions of this article occurring after the date of entry of the temporary order pursuant to section 5-501 of this chapter.

(c) The only relief that a magistrate may award pursuant to this section is a temporary emergency protective order:

(1) Directing the respondent to refrain from abusing the petitioner or minor children or both;

(2) Ordering the respondent to refrain from entering the school, business or place of employment of the petitioner or household members or family members for the purpose of violating the protective order; and

(3) Ordering the respondent to refrain from contacting, telephoning, communicating with, harassing or verbally abusing the petitioner.

(d) A temporary emergency protective order may modify an award of custody or visitation only upon a showing, by clear and convincing evidence, of the respondent's abuse of a child, as abuse is defined in section 27-202. An order of modification shall clearly state which party has custody and describe why custody or visitation arrangements were modified.
(e) The magistrate shall forthwith transmit a copy of any temporary emergency protective order, together with a copy of the petition, by mail or by facsimile machine to the family law master before whom the action is pending and to law-enforcement agencies. Upon receipt of the petition and order, the master shall examine its provisions. Within ten days of the magistrate’s issuance of the temporary emergency protective order, the master shall issue an order either to extend such emergency protection for a time certain or to vacate the magistrate’s order. The master shall forthwith give notice to all parties and to the issuing magistrate court. The magistrate court clerk shall forward a copy of the master’s order to law-enforcement agencies.

If no temporary order has been entered in the pending action for divorce, annulment or separate maintenance, the master shall forthwith return the order with such explanation to the issuing magistrate. The magistrate who issued the order shall vacate the order, noting thereon the reason for termination. The magistrate court clerk shall transmit a copy of the vacated order to the parties and law-enforcement agencies.

§48-27-403. Temporary orders of court; hearings; persons present.

(a) Upon filing of a verified petition under this article, the court may enter such temporary orders as it may deem necessary to protect the petitioner or minor children from domestic violence and, upon good cause shown, may do so ex parte without the necessity of bond being given by the petitioner. Clear and convincing evidence of immediate and present danger of abuse to the petitioner or minor children shall constitute good cause for the issuance of an ex parte order pursuant to this section. If the respondent is not present at the proceeding, the petitioner or the petitioner’s legal representative shall certify to the court, in writing, the efforts which have been made to give notice to the respondent or just cause why notice should not be required. Copies of medical reports or records may be admitted into evidence to the same extent as though the original thereof.
The custodian of such records shall not be required to be present to authenticate such records for any proceeding held pursuant to this subsection. Following such proceeding, the court shall order a copy of the petition to be served immediately upon the respondent, together with a copy of any temporary order issued pursuant to the proceedings, notice setting forth the time and place of the final hearing and a statement of the right of the respondent to be present and to be represented by counsel. Copies of any order made under the provisions of this section shall also be issued to the petitioner and any law-enforcement agency having jurisdiction to enforce the order, including municipal police, the county sheriff’s office and local office of the state police, within twenty-four hours of the entry of the order. A temporary protective order is effective until such time as a hearing is held and is in full force and effect in every county in this state.

(b) Within five days following the issuance of the court’s temporary order, a final hearing shall be held at which the petitioner must prove the allegation of domestic violence, or that he or she reported or witnessed domestic violence against another and has, as a result, been abused, threatened, harassed or has been the subject of other actions to attempt to intimidate him or her, by a preponderance of the evidence, or such petition shall be dismissed. If the respondent has not been served with notice of the temporary order, the hearing may be continued in order to permit service to be effected. The failure to obtain service upon the respondent does not constitute a basis for dismissing the petition. Copies of medical reports may be admitted into evidence to the same extent as though the original thereof, upon proper authentication, by the custodian of such records.

(c) No person requested by a party to be present during a hearing held under the provisions of this article shall be precluded from being present unless such person is to be a witness in the proceeding and a motion for sequestration has been made and such motion has been granted. A person found
by the court to be disruptive may be precluded from being present.

(d) If a hearing is continued, the court may make or extend such temporary orders as it deems necessary.

PART 5. PROTECTIVE ORDERS; VISITATION ORDERS.


(a) The court shall enter a protective order if it finds, after hearing the evidence adduced by the parties, that the petitioner has proved the allegations of domestic violence by a preponderance of the evidence. If the respondent is present at the hearing and elects not to contest the allegations of domestic violence or does not contest the relief sought, the petitioner is not required to adduce evidence and prove the allegations of domestic violence and the court may directly address the issues of the relief requested.

(b) The court may modify the terms of a protective order at any time upon subsequent petition filed by any party.


(a) A protective order must order the respondent to refrain from abusing, harassing, stalking, threatening or otherwise intimidating the petitioner or the minor children, or engaging in other conduct that would place the petitioner or the minor children in reasonable fear of bodily injury.

(b) The protective order must inform the respondent that he or she is prohibited from possessing any firearm or ammunition, notwithstanding the fact that the respondent may have a valid license to possess a firearm, and that possession of a firearm or ammunition while subject to the court's protective order is a criminal offense under federal law.
(c) The protective order must inform the respondent that the order is in full force and effect in every county of this state.

(d) The protective order must contain on its face the following statement, printed in bold-faced type or in capital letters:

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


The terms of a protective order may include:

1. Granting possession to the petitioner of the residence or household jointly resided in at the time the abuse occurred;

2. Awarding temporary custody of or establishing temporary visitation rights with regard to minor children named in the order;

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

4. Ordering the noncustodial parent to pay to the caretaker parent a sum for temporary support and maintenance of the petitioner and children, if any;

5. Ordering the respondent to pay to the petitioner a sum for temporary support and maintenance of the petitioner, where appropriate;

6. Ordering the respondent to refrain from entering the school, business or place of employment of the petitioner or household or family members for the purpose of violating the protective order;
(7) Ordering the respondent to participate in an intervention program for perpetrators;

(8) Ordering the respondent to refrain from contacting, telephoning, communicating, harassing or verbally abusing the petitioner.

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

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

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


When the person to be protected is a person who reported or was a witness to the domestic violence, the terms of a protective order may order the respondent:

(1) Order the respondent to refrain from abusing, contacting, telephoning, communicating, harassing, verbally abusing or otherwise intimidating the person to be protected; and

(2) Order the respondent to refrain from entering the school, business or place of employment of the person to be protected for the purpose of violating the protective order.
§48-27-505. Time period a protective order is in effect; extension of order; notice of order or extension.

(a) Except as otherwise provided by subsection 27-401(d) of this article, a protective order issued by a magistrate, family law master or circuit judge pursuant to this article is effective for either ninety days or one hundred eighty days, in the discretion of the court. If the court enters an order for a period of ninety days, upon receipt of a written request from the petitioner prior to the expiration of the ninety day period, the court shall extend its order for an additional ninety-day period.

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

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

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

§48-27-506. Effect of protective order on real and personal property.

No order entered pursuant to this article may in any manner affect title to any real property, except as provided in section 14-301 for past due child support. The personal property of any

Mutual protective orders are prohibited unless both parties have filed a petition under part 3 of this article and have proven the allegations of domestic violence by a preponderance of the evidence. This shall not prevent other persons, including the respondent, from filing a separate petition. The court may consolidate two or more petitions if he or she determines that consolidation will further the interest of justice and judicial economy. The court shall enter a separate order for each petition filed.

§48-27-508. Costs to be paid to family court fund.

Any person against whom a protective order is issued shall be assessed costs of twenty-five dollars. Such costs shall be paid to the family court fund established pursuant to section 29-403 of this chapter.

§48-27-509. Conditions of visitation in cases involving domestic violence.

(a) A court may award visitation of a child by a parent who has committed domestic violence only if the court finds that adequate provision for the safety of the child and the petitioner can be made.

(b) In a visitation order, a court may:

(1) Order an exchange of a child to occur in a protected setting;

(2) Order that supervision be provided by another person or agency;
(3) Order the perpetrator of domestic violence to attend and complete, to the satisfaction of the court, a program of intervention for perpetrators as a condition of the visitation;

(4) Order the perpetrator of domestic violence to abstain from possession or consumption of alcohol or controlled substances during the visitation and for the twelve hours that precede the visitation;

(5) Order the perpetrator of domestic violence to pay the costs of supervised visitation, if any;

(6) Prohibit overnight visitation;

(7) Impose any other condition that the court considers necessary to provide for the safety of the child, the petitioner or any other family or household member.

(c) Regardless of whether visitation is allowed, the court may order that the address of the child and the petitioner be kept confidential.

(d) If a court allows a family or household member to supervise visitation, the court shall establish conditions to be followed during visitation.


Any party to a temporary or final protective order may as a matter of right present a petition for appeal, within five days of entry of the order in magistrate court, to the circuit court. The order shall remain in effect pending an appeal unless stayed by the circuit court. No bond shall be required for any appeal under this section. In any case where a petition for appeal is filed under this section, the petition shall be heard de novo by the circuit court within ten days from the filing of the petition for appeal.


Two years after the entry of a final protective order, the circuit court, may, upon motion, order that the protective order
and references to the order be purged from the file maintained
by any law-enforcement agency and may further order that the
file maintained by the court be sealed and not opened except
upon order of the court when such is in the interest of justice.

PART 6. DISPOSITION OF DOMESTIC VIOLENCE ORDERS.

§48-27-601. Filing of orders with law-enforcement agency; affida­
vit as to award of possession of real property; service of order on respondent.

(a) Upon entry of an order pursuant to section 27-403 or
part 27-501, et seq., or an order entered pursuant to part 5-501,
et seq., granting relief provided for by this article, a copy of the
order shall, no later than the close of the next business day, be
transmitted by the court or the clerk of the court to a local office
of the municipal police, the county sheriff and the West
Virginia state police, where it shall be placed in a confidential
file, with access provided only to the law-enforcement agency
and the respondent named on the order.

(b) A sworn affidavit may be executed by a party who has
been awarded exclusive possession of the residence or house-
hold, pursuant to an order entered pursuant to section 27-503,
and shall be delivered to such law-enforcement agencies
simultaneously with any order, giving his or her consent for a
law-enforcement officer to enter the residence or household,
without a warrant, to enforce the protective order or temporary
order.

(c) Orders shall be promptly served upon the respondent.
Failure to serve a protective order on the respondent does not
stay the effect of a valid order if the respondent has actual
notice of the existence and contents of the order.

PART 7. LAW ENFORCEMENT RESPONSE
TO DOMESTIC VIOLENCE.

§48-27-701. Service of pleadings and orders by law-enforcement
officers.
Notwithstanding any other provision of this code to the contrary, all law-enforcement officers are hereby authorized to serve all pleadings and orders filed or entered pursuant to this article on Sundays and legal holidays. No law-enforcement officer shall refuse to serve any pleadings or orders entered pursuant to this article.

§48-27-702. Law-enforcement officers to provide information and transportation.

(a) Any law-enforcement officer responding to an alleged incident of domestic violence shall inform the parties of the availability of the possible remedies provided by this article and the possible applicability of the criminal laws of this state. Any law-enforcement officer investigating an alleged incident of domestic violence shall advise the victim of such violence of the availability of the family protection shelter to which such person may be admitted.

(b) If there is reasonable cause to believe that a person is a victim of domestic violence or is likely to be a victim of domestic violence, a law-enforcement officer responding to an alleged incident of domestic violence shall, in addition to providing the information required in subsection (a) of this section, provide transportation for or facilitate transportation of the victim, upon the request of such victim, to a shelter or an appropriate court.

PART 8. RECORD-KEEPING BY LAW-ENFORCEMENT OFFICERS.


(a) Each law-enforcement agency shall maintain records on all incidents of domestic violence reported to it and shall monthly make and deliver to the West Virginia state police a report on a form prescribed by the state police, listing all such incidents of domestic violence. Such reports shall include:

(1) The age and sex of the victim and the perpetrator of domestic violence;
(2) The relationship between the parties;

(3) The type and extent of abuse;

(4) The number and type of weapons involved;

(5) Whether the law-enforcement agency responded to the complaint and if so, the time involved, the action taken and the time lapse between the agency’s action and the victim’s request for assistance;

(6) Whether any prior reports have been made, received or filed regarding domestic violence on any prior occasion and if so, the number of such prior reports; and

(7) The effective dates and terms of any protective order issued prior to or following the incident to protect the victim:

Provided, That no information which will permit the identification of the parties involved in any incident of domestic violence shall be included in such report.

(b) The West Virginia state police shall tabulate and analyze any statistical data derived from the reports made by law-enforcement agencies pursuant to this section and publish a statistical compilation in its annual uniform crime report, as provided for in section twenty-four, article two, chapter fifteen of this code. The statistical compilation shall include, but is not limited to, the following:

(1) The number of domestic violence complaints received;

(2) The number of complaints investigated;

(3) The number of complaints received from alleged victims of each sex;

(4) The average time lapse in responding to such complaints;

(5) The number of complaints received from alleged victims who have filed such complaints on prior occasions;
(6) The number of aggravated assaults and homicides resulting from such repeat incidents;

(7) The type of police action taken in disposition of the cases; and

(8) The number of alleged violations of protective orders.


(a) The West Virginia state police shall maintain a registry in which it shall enter certified copies of orders entered by courts from every county in this state pursuant to the provisions of this article, or from other jurisdictions pursuant to their laws:

Provided, That the provisions of this subsection are not effective until a central automated record system is developed.

(b) A petitioner who obtains a protective order pursuant to this article, or from another jurisdiction pursuant to its law, may register that order in any county within this state where the petitioner believes enforcement may be necessary.

(c) A protective order may be registered by the petitioner in a county other than the issuing county by obtaining a copy of the order of the issuing court, certified by the clerk of that court, and presenting that certified order to the local office of the West Virginia state police where the order is to be registered.

(d) Upon receipt of a certified order for registration, the local office of the state police shall provide certified copies to any law-enforcement agency within its jurisdiction, including the city police and the county sheriff’s office.

(e) Nothing in this section precludes the enforcement of an order in a county other than the county or jurisdiction in which the order was issued, if the petitioner has not registered the order in the county in which an alleged violation of the order occurs.

Nothing in this article shall be construed to authorize the inclusion of information contained in a report of an incident of abuse in any local, state, interstate, national or international systems of criminal identification pursuant to section twenty-four, article two, chapter fifteen of this code. Provided, that nothing in this section shall prohibit the West Virginia state police from processing information through its criminal identification bureau with respect to any actual charge or conviction of a crime.

PART 9. SANCTIONS.

§48-27-901. Civil contempt; violation of protective orders; order to show cause.

(a) Any party to a protective order or a legal guardian or guardian ad litem may file a petition for civil contempt alleging a violation of an order issued pursuant to the provisions of this article. Such petition shall be filed in a court in the county in which the violation occurred or the county in which the order was issued.

(b) When a petition for an order to show cause is filed, a hearing on the petition shall be held within five days from the filing of the petition. Any order to show cause which is issued shall be served upon the alleged violator.

(c) Upon a finding of contempt, the court may order the violator to comply with specific provisions of the protective order and post a bond as surety for faithful compliance with such order.


(a) When a respondent abuses the petitioner or minor children, or both, or is physically present at any location in knowing and willful violation of the terms of a temporary or final protective order issued by a magistrate, a circuit court judge or a family law master under the provisions of this article
or section 5-508 granting the relief pursuant to the provisions of this article, any person authorized to file a petition pursuant to the provisions of section 27-305 or the legal guardian or guardian ad litem may file a petition for civil contempt as set forth in section 27-901.

(b) When any such violation of a valid order has occurred, the petitioner may file a criminal complaint. If the court finds probable cause upon the complaint, the court shall issue a warrant for arrest of the person charged.


(a) A respondent who abuses the petitioner and/or minor children or who is physically present at any location in knowing and willful violation of the terms of a temporary or final protective order issued by a magistrate, a circuit court judge or a family law master under the provisions of this article or section 5-508 granting the relief pursuant to the provisions of this article, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in the county or regional jail for a period of not less than one day nor more than one year, which jail term shall include actual confinement of not less than twenty-four hours, and shall be fined not less than two hundred fifty dollars nor more than two thousand dollars.

(b) When a respondent previously convicted of the offense described in subsection (a) of this section abuses the petitioner and/or minor children or is physically present at any location in knowing and willful violation of the terms of a temporary or final protective order issued under the provisions of this article, the respondent is guilty of a misdemeanor and, upon conviction thereof, shall be confined in the county or regional jail for not less than three months nor more than one year, which jail term shall include actual confinement of not less than twenty-four hours, and fined not less than five hundred dollars nor more than three thousand dollars, or both.

PART 10. ARRESTS.

(a) When a law-enforcement officer observes any respondent abuse the petitioner and/or minor children or the respondent's physical presence at any location in knowing and willful violation of the terms of a temporary or final protective order issued by a magistrate, a circuit court judge or a family law master under the provisions of this article or section 5-508 granting the relief pursuant to the provisions of this article, he or she shall immediately arrest the respondent.

(b) When a family or household member is alleged to have committed a violation of the provisions of section 27-903, a law-enforcement officer may arrest the perpetrator for said offense where:

1. The law-enforcement officer has observed credible corroborative evidence, as defined in subsection 27-1002(b), that the offense has occurred; and

2. The law-enforcement officer has received, from the victim or a witness, a verbal or written allegation of the facts constituting a violation of section 27-903; or

3. The law-enforcement officer has observed credible evidence that the accused committed the offense.

(c) Any person who observes a violation of a protective order as described in this section, or the victim of such abuse or unlawful presence, may call a local law-enforcement agency, which shall verify the existence of a current order, and shall direct a law-enforcement officer to promptly investigate the alleged violation.

(d) Where there is an arrest, the officer shall take the arrested person before a court or a magistrate and, upon a finding of probable cause to believe a violation of an order as set forth in this section has occurred, the court or magistrate shall set a time and place for a hearing in accordance with the West Virginia rules of criminal procedure.
§48-27-1002. Arrest in domestic violence matters; conditions.

(a) Notwithstanding any provision of this code to the contrary, if a person is alleged to have committed a violation of the provisions of subsection (a) or (b), section twenty-eight, article two, chapter sixty-one of this code against a family or household member, in addition to any other authority to arrest granted by this code, a law-enforcement officer has authority to arrest that person without first obtaining a warrant if:

1. The law-enforcement officer has observed credible corroborative evidence that an offense has occurred; and either:

2. The law-enforcement officer has received, from the victim or a witness, an oral or written allegation of facts constituting a violation of section twenty-eight, article two, chapter sixty-one of this code; or

3. The law-enforcement officer has observed credible evidence that the accused committed the offense.

(b) For purposes of this section, credible corroborative evidence means evidence that is worthy of belief and corresponds to the allegations of one or more elements of the offense and may include, but is not limited to, the following:

1. Condition of the alleged victim.—One or more contusions, scratches, cuts, abrasions, or swellings; missing hair; torn clothing or clothing in disarray consistent with a struggle; observable difficulty in breathing or breathlessness consistent with the effects of choking or a body blow; observable difficulty in movement consistent with the effects of a body blow or other unlawful physical contact.

2. Condition of the accused.—Physical injury or other conditions similar to those set out for the condition of the victim which are consistent with the alleged offense or alleged acts of self-defense by the victim.
(3) Condition of the scene.—Damaged premises or furnishings, disarray or misplaced objects consistent with the effects of a struggle.

(4) Other conditions.—Statements by the accused admitting one or more elements of the offense; threats made by the accused in the presence of an officer; audible evidence of a disturbance heard by the dispatcher or other agent receiving the request for police assistance; written statements by witnesses.

(a) Whenever any person is arrested pursuant to subsection (a) of this section, the arrested person shall be taken before a magistrate within the county in which the offense charged is alleged to have been committed in a manner consistent with the provisions of Rule 1 of the Administrative Rules for the Magistrate Courts of West Virginia.

(d) If an arrest for a violation of subsection (c), section twenty-eight, article two, chapter sixty-one of this code is authorized pursuant to this section, that fact constitutes prima facie evidence that the accused constitutes a threat or danger to the victim or other family or household members for the purpose of setting conditions of bail pursuant to section seventeen-c, article one-c, chapter sixty-two of this code.

(e) Whenever any person is arrested pursuant to the provisions of this article or for a violation of an order issued pursuant to section 5-508, the arresting officer:

(1) Shall seize all weapons that are alleged to have been involved or threatened to be used in the commission of domestic violence; and

(2) May seize a weapon that is in plain view of the officer or was discovered pursuant to a consensual search, as necessary for the protection of the officer or other persons.

PART 11. MISCELLANEOUS PROVISIONS.

§48-27-1101. The forms to be provided.
The West Virginia supreme court of appeals shall prescribe forms which are necessary and convenient for proceedings pursuant to this article, and the court shall distribute such forms to the clerk of the circuit court and magistrate court of each county within the state.


The governor's committee on crime, delinquency and correction shall develop and promulgate rules for state, county and municipal law-enforcement officers and law-enforcement agencies with regard to domestic violence. The notice of the public hearing on the rules shall be published before the first day of July, one thousand nine hundred ninety-one. Prior to the publication of the proposed rules, the governor's committee on crime, delinquency and correction shall convene a meeting or meetings of an advisory committee to assist in the development of the rules. The advisory committee shall be composed of persons invited by the committee to represent state, county and local law-enforcement agencies and officers, to represent magistrates and court officials, to represent victims of domestic violence, to represent shelters receiving funding pursuant to article 26-101, et seq., of this chapter and to represent other persons or organizations who, in the discretion of the committee, have an interest in the rules. The rules and the revisions thereof as provided in this section shall be promulgated as legislative rules in accordance with chapter twenty-nine-a of this code. Following the promulgation of said rules, the committee shall meet at least annually to review the rules and to propose revisions as a result of changes in law or policy.


All law-enforcement officers shall receive training relating to response to calls involving domestic violence.

1 All judges may and magistrates and family law masters shall receive a minimum of three hours of training by the first day of October, one thousand nine hundred ninety-three, and three hours per year each year thereafter on domestic violence which shall include training on the psychology of domestic violence, the battered wife and child syndromes, sexual abuse, courtroom treatment of victims, offenders and witnesses, available sanctions and treatment standards for offenders, and available shelter and support services for victims. The supreme court of appeals may provide such training in conjunction with other judicial education programs offered by the supreme court.

§48-27-1105. Rule for time-keeping requirements.

1 The supreme court of appeals shall promulgate a procedural rule to establish time-keeping requirements for magistrates, magistrate court clerks and magistrate assistants so as to assure the maximum funding of incentive payments, grants and other funding sources available to the state for the processing of cases filed for the establishment of temporary orders of child support pursuant to the provisions of this article.

ARTICLE 28. [Reserved]

ARTICLE 29. PROPERTY, RIGHTS AND LIABILITIES OF MARRIED WOMEN; HUSBAND AND WIFE.

PART 1. EMANCIPATION FROM ALL DISABILITIES AND INCAPACITIES.

§48-29-101. Emancipation from all disabilities under common law.

1 All married women, including married women who are not residents of this state to the extent that they are affected by the laws of this state, are fully emancipated from all the disabilities and relieved from all the incapacities to which they were formerly subject under common law.
§48-29-102. Emancipation from all disabilities to contract.

1 All married women, including married women who are not
2 residents of this state to the extent that they are affected by the
3 laws of this state, may make contracts of any kind and assume
4 or stipulate for obligations of any kind, in any form or manner
5 permitted under this code. In no case may any act, contract or
6 obligation of a married woman require, for its validity or
7 effectiveness, the authority of her husband or of a judge.

§48-29-103. Emancipation from all disabilities as to personal or
real property.

1 All married women, including married women who are not
2 residents of this state to the extent that they are affected by the
3 laws of this state, may own in their own right, real and personal
4 property, acquired by descent, gift or purchase and may
5 manage, sell, convey or dispose of any real or personal property
6 to the same extent and in the same manner a married man can
7 property belonging to him.

§48-29-104. Liability for married woman’s torts.

1 All married women, including married women who are not
2 residents of this state to the extent that they are affected by the
3 laws of this state, are liable for torts that they have committed.

§48-29-105. Emancipation from liability for torts or contracts of
spouse.

1 No married person, including married persons who are not
2 residents of this state to the extent that they are affected by the
3 laws of this state, is liable for the contracts or torts of his or her
4 spouse.

PART 2. CONVEYANCES BETWEEN MARRIED PERSONS.

§48-29-201. Burden of proof.
The burden of proof in any proceeding questioning the validity or lawfulness of any conveyance or transfer of property or any interest in property from one spouse to the other spouse by the spouse making the conveyance or transfer, or his or her heir, devisee or creditor is on the spouse in whose favor the conveyance or transfer was made.

§48-29-202. Presumption of gift in certain transactions between husband and wife.

Where one spouse purchases real or personal property and pays for the real or personal property, but takes title in the name of the other spouse, the transaction, in the absence of evidence of a contrary intention, is presumed to be a gift by the spouse so purchasing to the spouse in whose name the title is taken:

Provided, That in the case of an action under the provisions of article seven of this chapter wherein the court is required to determine what property of the parties constitutes marital property and equitably divide the same, the presumption created by this section does not apply, and a gift between spouses must be affirmatively proved.

PART 3. HUSBAND AND WIFE.

§48-29-301. Requirement of a writing for contract between husband and wife.

A contract between a husband and wife shall not be enforceable by way of action or defense, unless there is some writing sufficient to indicate that a contract has been made between them and signed by the spouse against whom enforcement is sought or by his or her authorized agent or broker.

§48-29-302. Loss of consortium.

A married woman may sue and recover for loss of consortium to the same extent and in all cases as a married man.
§48-29-303. Liability of husband and wife for purchases and services.

(a) A husband and wife are both liable for the reasonable and necessary services of a physician rendered to the husband or wife while residing together as husband and wife, or for reasonable and necessary services of a physician rendered to their minor child while residing in the family of its parents, and for the rental of any tenement or premises actually occupied by the husband and wife as a residence and reasonably necessary to them for such purpose.

(b) A husband and wife are liable when any article purchased by either goes to:

(1) The support of the family;

(2) The joint benefit of both;

(3) The reasonable apparel of either and their minor child residing in the family;

(4) The reasonable support of a spouse and child while abandoned by the other spouse;

(c) A husband and wife are liable for the reasonable services of any domestic, laborer or other person from which the family or both husband and wife benefit.

ARTICLE 30. PROCEEDING BEFORE A FAMILY LAW MASTER.

PART 1. HEARINGS.

§48-30-101. Hearings before a master.

(a) Persons entitled to notice of a master's hearing shall be timely informed of:

(1) The time, place and nature of the hearing;
(2) The legal authority and jurisdiction under which the hearing is to be held; and

(3) The matters of fact and law asserted.

(b) The master shall give all interested parties opportunity for the submission and consideration of facts, arguments, offers of settlement or proposals of adjustment when time, the nature of the proceedings and the public interest permit. To the extent that the parties are unable to settle or compromise a controversy by consent, the master shall provide the parties a hearing and make a recommended order in accordance with the provisions of sections 30-102 and 30-202.

(c) The master who presides at the reception of evidence pursuant to section 30-102 shall prepare the default order or make and enter the temporary order provided for in section 30-201, or make the recommended order required by section thirteen of this article, as the case may be. Except to the extent required for disposition of ex parte matters as authorized by this chapter, a master may not consult a person or party on a fact in issue, unless on notice and opportunity for all parties to participate; nor shall the master attempt to supervise or direct an employee or agent engaged in the performance of investigative or prosecuting functions for a prosecuting attorney, the division of human services or any other agency or political subdivision of this state.

§48-30-102. Hearing procedures.

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

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

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

(1) Administer oaths and affirmations, compel the attendance of witnesses and the production of documents, examine witnesses and parties and otherwise take testimony, receive relevant evidence and establish a record;

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

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

(4) Regulate the course of the hearing;

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

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

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

(8) Accept stipulated agreements;

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

(10) Recommend orders in accordance with the provisions of section 30-202;

(11) Require the issuance of subpoenas and subpoenas duces tecum, issue writs of attachment, hold hearings in aid of execution and propound interrogatories in aid of execution and fix bond or other security in connection with an action for enforcement in a child or spousal support matter; and
(12) Take other action authorized by general order of the circuit court or the chief judge thereof consistent with the provisions of this chapter.

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

(e) Hearings before a family law master shall be recorded electronically. A magnetic tape or other electronic recording medium on which a hearing is recorded shall be indexed and securely preserved by the secretary-clerk of the family law master and shall not be placed in the case file in the office of the circuit clerk: Provided, That upon the request of the family law master, such magnetic tapes or other electronic recording media shall be stored by the clerk of the circuit court. When requested by either of the parties, a family law master shall provide a duplicate copy of the tape or other electronic recording medium of each hearing held. For evidentiary purposes, a duplicate of such electronic recording prepared by the secretary-clerk shall be a "writing" or "recording" as those terms are defined in rule 1001 of the West Virginia rules of evidence, and unless the duplicate is shown not to reflect the contents accurately, it shall be treated as an original in the same manner that data stored in a computer or similar data is regarded as an "original" under such rule. The party requesting the copy shall pay to the family law master an amount equal to the actual cost of the tape or other medium or the sum of five dollars, whichever is greater. Unless otherwise ordered by the court, the
preparation of a transcript and the payment of the cost thereof shall be the responsibility of the party requesting the transcript.

(f) The recording of the hearing or the transcript of testimony, as the case may be, and the exhibits, together with all papers and requests filed in the proceeding, constitute the exclusive record for recommending an order in accordance with section 30-202, and on payment of lawfully prescribed costs, shall be made available to the parties. When a family law master's final recommended order rests on official notice of a material fact not appearing in the evidence in the record, a party is entitled, on timely request, to an opportunity to show the contrary.

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

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

§48-30-103. Acts or failures to act in the physical presence of family law masters.

(a) If in the master's presence a party, witness or other person conducts himself or herself in a manner which would constitute direct contempt if committed in the presence of a
circuit judge, the master shall halt any proceeding which may be in progress and inform the person that their conduct constitutes direct contempt and give notice of the procedures and possible dispositions which may result.

(b) (1) If a circuit judge is sitting in the same county in which the conduct occurred, or is otherwise available, the alleged contemnor shall be immediately taken before the circuit judge. Disposition of these matters shall be given priority over any other matters, with the exception of a criminal trial in progress.

(2) If a circuit judge is unavailable, then the master shall schedule a hearing before the circuit court and the alleged contemnor shall be advised, on the record, of the time and place of the hearing. The master may elect, in his or her discretion, to obtain a warrant for the arrest of the alleged contemnor from the magistrate court on the charge of contempt with the matter to be heard by the circuit court.

(c) At the hearing, the circuit court shall be advised of the charges, receive the evidence and rule in the same manner as would be appropriate if the conduct complained of occurred in the physical presence of a circuit judge. In addition to other sanctions the court may award attorney's fees and costs.

(d) Prior to or during any hearing before a master, if the master determines that a situation exists which warrants the presence of security during such hearing, the master shall inform the sheriff of the need for such security and the time and place of the hearing, and the sheriff shall assign a deputy to act as bailiff during such hearing.

§48-30-104. Family law master's docket.

(a) Every family law master shall establish a regular docket or other means for hearing urgent motions regarding child support, child custody or visitation, protection from family
violence or abuse, possession of the home or other urgent matter. The family law master shall make all decisions and rulings before him or her within thirty days, or sooner after the close of the evidence in the proceeding before the master. If the master’s recommended decision is not so timely made, the master shall, in writing, notify the administrator of the West Virginia supreme court as to why he or she has not so ruled; and the administrator of the West Virginia supreme court may take appropriate action against said master including pay suspensions, or reprimand or dismissal without pay for up to six months.

(b) Upon the request of the family law master, the clerk of the circuit court shall, under the general direction of the master, maintain the master’s docket, schedule trials and hearings and deliver case files to the master.

PART 2. TEMPORARY ORDERS; DEFAULT ORDERS; RECOMMENDED ORDERS.

§48-30-201. Default orders; temporary orders.

(a) In any proceeding in which the amount of support is to be established, if the obligor has been served with notice of a hearing before a master and does not enter an appearance, the family law master shall prepare a default order for entry by the circuit judge, which order fixes support in an amount at least equal to the amount paid as public assistance under section four, article three, chapter nine of this code, if the obligee or custodian receives public assistance, or in an amount at least equal to the amount that would be paid as public assistance if the obligee or custodian were eligible to receive public assistance, unless the family law master has sufficient information in the record so as to determine the amount to be fixed in accordance with the child support guidelines.

(b) A master who presides at a hearing under the provisions of section 30-102 is authorized to make and enter temporary support and custody orders which, when entered, shall be
enforceable and have the same force and effect under law as temporary support orders made and entered by a judge of the circuit court, unless and until such support orders are modified, vacated or superseded by an order of the circuit court.

(c) All orders prepared by a master shall provide for automatic withholding from income of the obligor if arrearages in support occur, if no such provision already exists in prior orders or if the existing order as it relates to withholding is not in compliance with applicable law.


(a) This section applies, according to the provisions thereof, when a hearing has been conducted in accordance with section 30-102.

(b) A master who has presided at the hearing pursuant to section 30-102 shall recommend an order and findings of fact and conclusions of law to the circuit court within ten days following the close of the evidence. Before the recommended order is made, the master may, in his or her discretion, require the parties to submit proposed findings and conclusions and the supporting reasons therefor.

(c) The master shall sign and send the recommended order, any separate document containing the findings of fact and conclusions of law and the notice of recommended order as set forth in section 30-203 to the attorney for each party, or if a party is unrepresented, directly to the party, in the same manner as pleadings subsequent to an original complaint are served in accordance with rule five of the rules of civil procedure. The master shall file the recommended order and the record in the office of the circuit clerk prior to the expiration of the ten-day period during which exceptions can be filed.

(d) A copy of any supporting documents or a summary of supporting documents, prepared or used by the bureau for child support enforcement attorney or an employee of the bureau for child support enforcement, and all documents introduced into
evidence before the master, shall be made available to the
attorney for each party and to each of the parties before the
circuit court takes any action on the recommendation.

(e) All recommended orders of the master shall include the
statement of findings of fact and conclusions of law, and the
reasons or basis therefor, on all the material issues of fact, law,
or discretion presented on the record; and the appropriate
sanction, relief or denial thereof. In every action where visita-
tion is recommended, the master shall specify a schedule for
visitation by the noncustodial parent: Provided, That with
respect to any existing order which provided for visitation but
which does not provide a specific schedule for visitation by the
noncustodial parent, upon motion of any party, notice of
hearing and hearing, the master shall recommend an order
which provides a specific schedule of visitation by the
noncustodial parent.

§48-30-203. Form of notice of recommended order.

IN THE CIRCUIT COURT OF COUNTY, WEST VIR-
GINIA,

Petitioner,

vs. CIVIL ACTION NO.

Respondent.

NOTICE OF RECOMMENDED ORDER

The undersigned family law master hereby recommends the
enclosed order to the circuit court of county. If you
wish to file objections to this decision, you must file a written
petition in accordance with the provisions of section 48-30-302
of the West Virginia Code within a period of ten days ending on
, with the circuit clerk of county
and send a copy to counsel for the opposing party or if the party
is unrepresented to the party, and to the office of the family law
master located at __________.
If no written petition for review is filed by ----, then the recommended order will be sent to the circuit judge assigned to this case. A recommended order which is not signed by a party, or counsel for a party who is represented, by the end of the ten-day period will still be sent to the circuit judge for entry.

YOUR FAILURE TO SIGN THE ORDER AS HAVING BEEN INSPECTED OR APPROVED WILL NOT DELAY THE ENTRY THEREOF.

Family Law Master

§48-30-204. Orders to be entered by circuit court exclusively.

With the exception of temporary support and custody orders entered by a master in accordance with the provisions of section 30-201 and section 1-304, and procedural orders entered pursuant to the provisions of section 30-102, an order imposing sanctions or granting or denying relief may not be made and entered except as authorized by law. Upon entry of a final order in any action for divorce, separate maintenance or annulment, the clerk of the circuit court shall deliver an attested copy of such order to the parties who have appeared in such action or their counsel of record by personal delivery or by first class mail.

PART 3. CIRCUIT COURT REVIEW.

§48-30-301. Circuit court review of master’s action or recommended order.

(a) A person who alleges that he or she will be adversely affected or aggrieved by a recommended order of a master is entitled to review of the proceedings. The recommended order of the master is the subject of review by the circuit court and a procedural action or ruling not otherwise directly reviewable is subject to review only upon the review of the recommended order by the circuit court.
When a master's action or recommended order is presented to the circuit court for review upon the petition of any party and such action or recommended order is subject to review, the family law master or circuit court shall enter a temporary support and custody order or otherwise provide for relief during the pendency of the review proceedings upon any party's request therefor or on the master's or court's own motion if the family law master or court deems such order or other relief to be fair and equitable.


(a) Within ten days after the master's recommended order, any separate document with findings of fact and conclusions of law and the notice of recommended order is served on the parties as set forth in section 30-202, any party may file exceptions thereto in a petition requesting that the action by the master be reviewed by the circuit court. Failure to timely file the petition shall constitute a waiver of exceptions, unless the petitioner, prior to the expiration of the ten-day period, moves for and is granted an extension of time from the circuit court. At the time of filing the petition, a copy of the petition for review shall be served on all parties to the proceeding, in the same manner as pleadings subsequent to an original complaint are served under rule five of the rules of civil procedure.

(b) Not more than ten days after the filing of the petition for review, a responding party wishing to file a cross-petition that would otherwise be untimely may file, with proof of service on all parties, a cross-petition for review.

§48-30-303. Form of petition for review.

(a) The petition for review shall contain a list of exceptions in the form of questions presented for review, expressed in the terms and circumstances of the case, designating and pointing out the errors complained of with reasonable certainty, so as to
direct the attention of the circuit court specifically to them, but
without unnecessary detail. The statement of questions should
be short and concise and should not be argumentative or
repetitious. The statement of a question presented will be
deemed to comprise every subsidiary question fairly included
therein. Only the questions set forth in the petition or fairly
included therein will be considered by the court. Parts of the
master’s report not excepted to are admitted to be correct, not
only as regards the principles, but as to the evidence, upon
which they are founded.

(b) The circuit court may require, or a party may choose to
submit with the petition for review, a brief in support thereof,
which should include a direct and concise argument amplifying
the reasons relied upon for modification of the master’s
recommended order and citing the constitutional provisions,
statutes and regulations which are applicable.

§48-30-304. Answer in opposition to a petition for review.

(a) A respondent shall have ten days after the filing of a
petition within which to file an answer disclosing any matter or
ground why the recommended order of the master should not be
modified by the court in the manner sought by the petition. The
judge may require, or a party may choose to submit with the
answer, a brief in opposition to the petition, which should
include a direct and concise argument in support of the master’s
recommended order and citing the constitutional provisions,
statutes and regulations which are applicable.

(b) No motion by a respondent to dismiss a petition for
review will be received.

(c) Any party may file a supplemental brief at any time
while a petition for review is pending, calling attention to new
cases or legislation or other intervening matter not available at
the time of the party’s last filing.
§48-30-305. Circuit court review of family law master’s recommended order.

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

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

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

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

(c) The circuit court shall examine the recommended order of the family law master, along with the findings and conclusions of the family law master, and may recommit the case, with instructions, for further hearing before the master or may, in its discretion, enter an order upon different terms, as the ends of justice may require. Conclusions of law of the family law master shall be subject to de novo review by the circuit court. The circuit court shall be held to the clearly erroneous standard in reviewing findings of fact. The circuit court shall not follow the recommendation, findings and conclusions of a master found to be:

1. Arbitrary, capricious, an abuse of discretion or otherwise not in conformance with the law;

2. Contrary to constitutional right, power, privilege or immunity;
30 (3) In excess of statutory jurisdiction, authority or limitations 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 circuit court shall review the whole record or those parts of it cited by a party. If the circuit court finds that a family law master’s recommended order is deficient as to matters which might be affected by evidence not considered or inadequately developed in the family law master’s recommended order, the court may recommit the recommended order to the family law master, with instructions indicating the court’s opinion, or the circuit court may proceed to take such evidence without recommitting the matter.

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

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

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

PART 4. MISCELLANEOUS PROVISIONS.

§48-30-401. County commissions required to furnish offices for the family law master.
Each county commission of this state has a duty to provide premises for the family law master which are adequate for the conduct of the duties required of such master under the provisions of this chapter and which conform to standards established by rules promulgated by the supreme court of appeals. The administrative office of the supreme court of appeals shall pay to the county commission a reasonable amount as rent for the premises furnished by the county commission to the family law master and his or her staff pursuant to the provisions of this section.

§48-30-402. Budget of the family law master system.

The budget for the payment of the salaries and benefits of the family law masters and clerical and secretarial assistants shall be included in the appropriation for the supreme court of appeals. The family law master administration fund is hereby created and shall be a special account in the state treasury. The fund shall operate as a special fund administered by the state auditor which shall be appropriated by line item by the Legislature for payment of administrative expenses of the family law master system. All agencies or entities receiving federal matching funds for the services of family law masters and their staff, including, but not limited to, the commissioner of the bureau for child support enforcement and the secretary of the department of health and human resources, shall enter into an agreement with the administrative office of the supreme court of appeals whereby all federal matching funds paid to and received by said agencies or entities for the activities by family law masters and staff of the program shall be paid into the family law master administration fund. Said agreement shall provide for advance payments into the fund by such agencies, from available federal funds pursuant to Title IV-D of the Social Security Act and in accordance with federal regulations.

§48-30-403. Family court fund.

The office and the clerks of the circuit courts shall, on or before the tenth day of each month, transmit all fees and costs
received for the services of the office under this chapter to the
state treasurer for deposit in the state treasury to the credit of a
special revenue fund to be known as the “family court fund”,
which is hereby created. All moneys collected and received
under this chapter and paid into the state treasury and credited
to the “family court fund” shall be used by the administrative
office of the supreme court of appeals solely for paying the
costs associated with the duties imposed upon the family law
masters under the provisions of this chapter which require
activities by the family law masters which are not subject to
being matched with federal funds or subject to reimbursement
by the federal government. Such moneys shall not be treated by
the auditor and treasurer as part of the general revenue of the
state.

§48-30-404. Continuation of family law masters system.

After having conducted a performance and fiscal audit
through its joint committee on government operations, pursuant
to article ten, chapter four of this code, the Legislature hereby
finds and declares the family law masters system should be
continued and reestablished as recreated in article two-a,
chapter fifty-one of this code.

CHAPTER 49. CHILD WELFARE.

ARTICLE 3. CHILD WELFARE AGENCIES.

§49-3-1. Consent by agency or department to adoption of child;
statement of relinquishment by parent; petition to
terminate parental rights.

(a)(1) Whenever a child welfare agency licensed to place
children for adoption or the department of health and human
resources has been given the permanent legal and physical
custody of any child and the rights of the mother and the rights
of the legal, determined, putative, outside or unknown father of
the child have been terminated by order of a court of competent
jurisdiction or by a legally executed relinquishment of parental
rights, the child welfare agency or the department may consent
to the adoption of the child pursuant to the provisions of article
twenty-two, chapter forty-eight of this code.

(2) Relinquishment for an adoption to an agency or to the
department is required of the same persons whose consent or
relinquishment is required under the provisions of section three
hundred one, article twenty-two, chapter forty-eight of this
code. The form of any relinquishment so required shall conform
as nearly as practicable to the requirements established in
section three hundred three, article twenty-two, chapter forty-
eight, and all other provisions of that article providing for
relinquishment for adoption shall govern the proceedings
herein.

(3) For purposes of any placement of a child for adoption
by the department, the department shall first consider the
suitability and willingness of any known grandparent or
grandparents to adopt the child. Once any such grandparents
who are interested in adopting the child have been identified,
the department shall conduct a home study evaluation, includ-
ing home visits and individual interviews by a licensed social
worker. If the department determines, based on the home study
evaluation, that the grandparents would be suitable adoptive
parents, it shall assure that the grandparents are offered the
placement of the child prior to the consideration of any other
prospective adoptive parents.

(4) The department shall make available, upon request, for
purposes of any private or agency adoption proceeding,
preplacement and post-placement counseling services by
persons experienced in adoption counseling, at no cost, to any
person whose consent or relinquishment is required pursuant to
the provision of article twenty-two, chapter forty-eight of this
code.

(b)(1) Whenever the mother has executed a relinquishment
pursuant to this section, and the legal, determined, putative,
outlier or unknown father, as those terms are defined pursuant
to the provisions of, part one, article twenty-two, chapter
forty-eight of this code, has not executed a relinquishment, the
child welfare agency or the department may, by verified
petition, seek to have the father's rights terminated based upon
the grounds of abandonment or neglect of said child. Abandon-
ment may be established in accordance with the provisions of
section three hundred six, article twenty-two, chapter
forty-eight of this code.

(2) Unless waived by a writing acknowledged as in the case
of deeds or by other proper means, notice of the petition shall
be served on any person entitled to parental rights of a child
prior to its adoption who has not signed a relinquishment of
custody of the child.

(3) In addition, notice shall be given to any putative,
outlier or unknown father who has asserted or exercised
parental rights and duties to and with the child and who has not
relinquished any parental rights and such rights have not
otherwise been terminated, or who has not had reasonable
opportunity before or after the birth of the child to assert or
exercise such rights: Provided, That if such child is more than
six months old at the time such notice would be required and
such father has not asserted or exercised his parental rights and
he knew the whereabouts of the child, then such father shall be
presumed to have had reasonable opportunity to assert or
exercise such rights.

(c)(1) Upon the filing of the verified petition seeking to
have the parental rights terminated, the court shall set a hearing
on the petition. A copy of the petition and notice of the date,
time and place of the hearing on said petition shall be person-
ally served on any respondent at least twenty days prior to the
date set for the hearing.

(2) Such notice shall inform the person that his parental
rights, if any, may be terminated in the proceeding and that
such person may appear and defend any such rights within twenty days of such service. In the case of any such person who is a nonresident or whose whereabouts are unknown, service shall be achieved: (1) By personal service; (2) by registered or certified mail, return receipt requested, postage prepaid, to the person's last known address, with instructions to forward; or (3) by publication. If personal service is not acquired, then if the person giving notice shall have any knowledge of the whereabouts of the person to be served, including a last known address, service by mail shall be first attempted as herein provided. Any such service achieved by mail shall be complete upon mailing and shall be sufficient service without the need for notice by publication. In the event that no return receipt is received giving adequate evidence of receipt of the notice by the addressee or of receipt of the notice at the address to which the notice was mailed or forwarded, or if the whereabouts of the person are unknown, then the person required to give notice shall file with the court an affidavit setting forth the circumstances of any attempt to serve the notice by mail, and the diligent efforts to ascertain the whereabouts of the person to be served. If the court determines that the whereabouts of the person to be served cannot be ascertained and that due diligence has been exercised to ascertain such person's whereabouts, then the court shall order service of such notice by publication as a Class II publication in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area shall be the county where such proceedings are had, and in the county where the person to be served was last known to reside. In the case of a person under disability, service shall be made on the person and his personal representative, or if there be none, on a guardian ad litem.

(3) In the case of service by publication or mail or service on a personal representative or a guardian ad litem, the person shall be allowed thirty days from the date of the first publication or mailing of such service on a personal representative or guardian ad litem in which to appear and defend such parental rights.
(d) A petition under this section may be instituted in the county where the child resides or where the child is living.

(e) If the court finds that the person certified to parental rights is guilty of the allegations set forth in the petition, the court shall enter an order terminating his parental rights and shall award the legal and physical custody and control of said child to the petitioner.

CHAPTER 51. COURTS AND THEIR OFFICERS.

ARTICLE 2A. CIRCUIT COURTS; FAMILY COURT DIVISION.

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

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

1. Actions to obtain orders of support brought under the provisions of section one hundred one, article fourteen, chapter forty-eight of this code;

2. All actions to establish paternity brought under the provisions of article twenty-four, chapter forty-eight of this code, and any dependent claims related to such action regarding child support, custody and visitation;

3. All petitions for writs of habeas corpus wherein the issue contested is child custody;

4. All motions for temporary relief affecting child custody, visitation, child support, spousal support or domestic violence, wherein either party has requested such referral or the court on its own motion in individual cases or by general order has referred such motions to the family law master; Provided, That if the family law master determines, in his or her discretion, that the pleadings raise substantial issues concerning the identification of separate property or the division of marital property which may have a bearing on an award of support, the family
(5) All petitions for modification of an order involving child custody, child visitation, child support or spousal support;

(6) All actions for divorce, annulment or separate maintenance brought pursuant to articles three, four and five, chapter forty-eight of this code: Provided, That an action for divorce, annulment or separate maintenance which does not involve child custody or child support shall be heard by a circuit judge if, at the time of the filing of the action, the parties file a written property settlement agreement which has been signed by both parties;

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

(8) All actions commenced under article sixteen, chapter forty-eight of this code or the interstate family support act of another state;

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

(10) All actions to allocate custodial responsibility for a minor child, including actions brought pursuant to the uniform child custody jurisdiction act and actions brought to establish grandparent visitation: Provided, That any action instituted under article six, chapter forty-nine of this code shall be heard by a circuit judge;

(11) Civil contempt and direct contempts: Provided, That criminal contempts must be heard by a circuit judge; and
(12) On and after the first day of September, two thousand one, final hearings in domestic violence proceedings wherein a protective order is sought.

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

CHAPTER 56. PLEADING AND PRACTICE.

ARTICLE 10. MISCELLANEOUS PROVISIONS RELATING TO PROCEDURE.

§56-10-8. Priority of cases involving placement of children.

Any action or motion which involves a contested issue regarding the permanent or temporary placement of a minor child shall be given priority over any civil action before the court except actions in which trial is in progress and actions brought under article twenty-seven, chapter forty-eight of this code and shall be docketed immediately upon filing.

CHAPTER 57. EVIDENCE AND WITNESSES.

ARTICLE 3. COMPETENCY OF WITNESSES.

§57-3-9. Communications to priests, nuns, clergy, rabbis, Christian Science practitioners or other religious counselors not subject to being compelled as testimony.

No priest, nun, rabbi, duly accredited Christian Science practitioner or member of the clergy authorized to celebrate the rites of marriage in this state pursuant to the provisions of article two, chapter forty-eight of this code shall be compelled to testify in any criminal or grand jury proceedings or in any domestic relations action in any court of this state:
(1) With respect to any confession or communication, made to such person, in his or her professional capacity in the course of discipline enjoined by the church or other religious body to which he or she belongs, without the consent of the person making such confession or communication; or

(2) With respect to any communication made to such person, in his or her professional capacity, by either spouse, in connection with any effort to reconcile estranged spouses, without the consent of the spouse making the communication.

This subsection is in addition to the protection and privilege afforded pursuant to section three hundred one, article one, chapter forty-eight of this code.

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

ARTICLE 1. FEES AND ALLOWANCES.

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

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

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

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

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

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

(2) Into the special revenue account of the state treasury, established pursuant to section six hundred four, article two, chapter forty-eight of this code, an amount of thirty dollars;

(3) Into the family court fund established under section four hundred thirty, article thirty, chapter forty-eight of this code, an amount of fifty dollars; and

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

(c) For each action for divorce, separate maintenance or annulment instituted in the circuit court, the clerk of the court shall, at the end of each month, pay into the funds or accounts in this subsection an amount equal to the amount set forth in this subsection of every filing fee received for instituting such divorce action as follows:
(1) Into the regional jail and correctional facility development fund in the state treasury established pursuant to the provisions of section ten, article twenty, chapter thirty-one of this code, the amount of ten dollars;

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

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

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

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

(e) The clerk of the court from which a protective order is issued shall, at the end of each month, pay into the family court fund established under section four hundred three, article thirty, chapter forty-eight of this code an amount equal to every fee received pursuant to the provisions of section five hundred eight, article twenty-seven, chapter forty-eight of this code.

(f) The clerk of each circuit court shall, at the end of each month, pay into the regional jail and prison development fund in the state treasury an amount equal to forty dollars of every
fee for service received in any criminal case against any respondent convicted in such court and shall pay an amount equal to five dollars of every such fee into the court security fund in the state treasury established pursuant to the provisions of section fourteen, article three, chapter fifty-one of this code.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

In 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 is approved this the 29th day of April, 2001.

Governor