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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

Regular Session, 2001



ENROLLED

Committee Substitute for

SENATE BILL NO. 652

(By Senator Wooten)



PASSED April 14, 2001

In Effect from **Passage**

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COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 652

(Senator Wooton, *original sponsor*)

[Passed April 14, 2001; in effect from passage.]

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

fourteen, article twelve of said chapter; to further amend said article by adding thereto three new sections, designated sections one hundred fifteen, one hundred sixteen and one hundred seventeen; to amend and reenact sections four hundred one, four hundred two, four hundred three, four hundred four, five hundred one, five hundred two, five hundred three, eight hundred one and eight hundred two, article thirteen of said chapter; to further amend said article by adding thereto a new section, designated section eight hundred three; to amend and reenact section seven hundred one, article fourteen of said chapter; to amend and reenact section one hundred five, article eighteen of said chapter; to amend and reenact section one hundred three, article nineteen of said chapter; to amend and reenact section one hundred one, article twenty-four of said chapter; to amend and reenact sections two hundred two, two hundred three, two hundred four, two hundred five, two hundred six, three hundred one, three hundred nine, four hundred one, four hundred two, four hundred three, five hundred five, five hundred ten, nine hundred one, nine hundred two, nine hundred three, one thousand one, eleven hundred one and eleven hundred four, article twenty-seven of said chapter; to further amend said article by adding thereto three new sections, designated sections two hundred seven, two hundred eight and two hundred nine; to amend and reenact section seventeen, article one, chapter fifty-two of said code; and to amend and reenact sections eleven and twenty-eight-a, article one, chapter fifty-nine of said code, all relating generally to substantive revisions in the recodification of domestic relations law; providing for the calculation of interest on support obligations, and the award or approval of prejudgment interest in a domestic relations action; providing for proceedings in contempt; providing for the collection of child or spousal support by collection agencies; authorizing court to enter protective order as temporary relief in divorce proceeding; providing for revising or altering an order concerning the maintenance of parties to an action for divorce or separate maintenance; describing the effect of

fault or misconduct on an award for spousal support; eliminating the bar that denies spousal support if both parties prove a grounds for divorce, or if a party determined to be at fault has committed adultery, been convicted of a felony subsequent to the marriage or has abandoned or deserted for six months; creating a parent education and mediation fund in the state treasury; defining certain terms applicable to medical support enforcement; providing for use of the national medical support notice; revising terminology used in child support awards; making technical revisions to worksheets; revising archaic terminology; requiring enrollment of the child in a health-care coverage plan; establishing the obligation of an employer to transfer the national medical support notice to the appropriate plan; establishing notice requirements for certain newly hired employees; requiring a notice upon termination of a parent's employment; making the liability of a parent for employee contributions subject to appropriate enforcement; providing a parent with a description of the coverage available, and other documents; requiring notice of coverage to the IV-D agency; describing the employer's duties upon service of a national medical support notice; describing the employer's duties where a parent is required by court or administrative order to provide health care coverage; providing that the signature of the custodian for a child constitutes a valid authorization to an insurer; describing the obligations of an insurer; providing for the transfer of notice upon an obligated parent's change of unemployment; establishing eligibility of a child until emancipation or termination of the child from coverage; providing for contempt and other remedies if an obligated parent fails to comply with an order to provide insurance coverage; establishing a mandatory date for the use of the national medical support notice; providing for the payment of arrearages or reimbursement support when the obligor is not paying a current child support obligation; setting forth the general duties and powers of the bureau for child support enforcement; setting forth the duties of bureau for child support enforcement attorneys; providing for the

jurisdiction of courts over paternity proceedings; requiring that a copy of the complaint be served on the person whose name appears as the father on the birth certificate if the proceeding is brought against another person; defining and redefining terms used in domestic violence proceedings; revising procedures for domestic violence petitions; providing for emergency protective orders; providing for hearings on final protective orders; establishing appeal process and standard of review; providing for proceedings in contempt and criminal complaints; establishing misdemeanor offense and criminal penalties; authorizing arrest for violations; requiring forms; requiring judicial education; providing for the manner in which jury costs are to be deposited in the state treasury; increasing certain fees to be charged by the clerk of the circuit court; and providing for the disposition of filing fees in divorce and other civil actions.

Be it enacted by the Legislature of West Virginia:

That sections two hundred twenty-two, two hundred thirty-nine, three hundred two and three hundred four, article one, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that said article be further amended by adding thereto eight new sections, designated sections two hundred thirty-three.one, two hundred thirty-three.two, two hundred thirty-five.one, two hundred thirty-five.two, two hundred thirty-five.three, two hundred thirty-five.four, two hundred thirty-five.five and three hundred seven; that section five hundred nine, article five of said chapter be amended and reenacted; that sections one hundred three and one hundred four, article eight of said chapter be amended and reenacted; that article nine of said chapter be amended by adding thereto a new section, designated section six hundred four; that sections one hundred one, one hundred four, one hundred five, one hundred six, one hundred seven, one hundred eight, one hundred nine, one hundred ten, one hundred eleven, one hundred twelve, one hundred thirteen and one hundred fourteen, article twelve of said chapter; that said article be further amended by adding thereto three new sections,

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

CHAPTER 48. DOMESTIC RELATIONS.

ARTICLE 1. GENERAL PROVISIONS; DEFINITIONS.

PART 2. DEFINITIONS.

§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 or spousal support,
7 including actions brought under the provisions of the
8 uniform interstate family support act; and
- 9 (6) To allocate custodial responsibility and determine
10 decision-making responsibility, or to otherwise determine
11 child custody, as in an action petitioning for a writ of
12 habeas corpus wherein the issue is child custody.

§48-1-233.1. Mediation defined.

1 “Mediation” means a method of alternative dispute
2 resolution in which a neutral third person helps resolve a
3 dispute. Mediation is an informal, non-adversarial process
4 whereby the neutral third person, the mediator, assists
5 parties to a dispute to resolve, by agreement, some or all of
6 the differences between them. The mediator has no
7 authority to render a judgment on any issue of the dispute.

§48-1-233.2. Mediator defined.

1 “Mediator” means a neutral third person who interposes
2 between two contending parties, with their consent, for the
3 purpose of assisting them in settling their differences.

§48-1-235.1. Parent defined.

1 “Parent” means a legal parent as defined in section 1-
2 232 unless otherwise specified.

§48-1-235.2. Parenting functions defined.

1 “Parenting functions” means tasks that serve the needs
2 of the child or the child’s residential family. Parenting
3 functions include caretaking functions, as defined in
4 section 1-210. Parenting functions also include functions
5 that are not caretaking functions, including:

- 6 (A) Provision of economic support;

7 (B) Participation in decision-making regarding the
8 child's welfare;

9 (C) Maintenance or improvement of the family residence,
10 home or furniture repair, home-improvement projects,
11 yard work and house cleaning;

12 (D) Financial planning and organization, car repair and
13 maintenance, food and clothing purchasing, cleaning and
14 maintenance of clothing, and other tasks supporting the
15 consumption and savings needs of the family; and

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

§48-1-235.3. Parenting plan defined.

1 "Parenting plan" means a temporary parenting plan as
2 defined in subdivision (22) of this section or a permanent
3 parenting plan as defined in subdivision (17) of this
4 section.

§48-1-235.4. Permanent parenting plan defined.

1 "Permanent parenting plan" means a plan for parenting
2 a child that is incorporated into a final order or subse-
3 quent modification order in a domestic relations action.
4 The plan principally establishes, but is not limited to, the
5 allocation of custodial responsibility and significant
6 decision-making responsibility and provisions for resolu-
7 tion of subsequent disputes between the parents.

§48-1-235.5. Rehabilitative spousal support defined.

1 "Rehabilitative spousal support" means spousal support
2 payable for a specific and determinable period of time,
3 designed to cease when the payee is, after the exercise of
4 reasonable efforts, in a position of self-support.

§48-1-239. Shared parenting defined.

1 (a) "Shared parenting" means either basic shared
2 parenting or extended shared parenting.

3 (b) "Basic shared parenting" means an arrangement
4 under which one parent keeps a child or children overnight
5 for less than thirty-five percent of the year and under
6 which both parents contribute to the expenses of the child
7 or children in addition to the payment of child support.

8 (c) "Extended shared parenting" means an arrangement
9 under which each parent keeps a child or children over-
10 night for more than thirty-five percent of the year and
11 under which both parents contribute to the expenses of the
12 child or children in addition to the payment of child
13 support.

PART 3. MISCELLANEOUS PROVISIONS
RELATING TO DOMESTIC RELATIONS.

§48-1-302. Calculation of interest.

1 (a) If an obligation to pay interest arises under this
2 chapter, the rate of interest is that specified in section 56-
3 6-31 of this code. Interest accrues only upon the outstand-
4 ing principal of such obligation. On and after the ninth
5 day of June, one thousand nine hundred ninety-five, this
6 section will be construed to permit the accumulation of
7 simple interest, and may not be construed to permit the
8 compounding of interest. Interest which accrued on
9 unpaid installments accruing before the ninth day of June,
10 one thousand nine hundred ninety-five, may not be
11 modified by any court, irrespective of whether such
12 installment accrued simple or compound interest: *Pro-*
13 *vided*, That unpaid installments upon which interest was
14 compounded before the effective date of this section shall
15 accrue only simple interest thereon on and after the ninth
16 day of June, one thousand nine hundred ninety-five.

17 (b) Notwithstanding any other provision of law, no court
18 may award or approve prejudgment interest in a domestic
19 relations action against a party unless the court finds, in
20 writing, that the party engaged in conduct that would
21 violate subsection (b), rule eleven of the West Virginia
22 rules of civil procedure. If prejudgment interest is

23 awarded, the court shall calculate prejudgment interest
24 from the date the offending representation was presented
25 to the court.

26 (c) Upon written agreement by both parties, an obligor
27 may petition the court to enter an order conditionally
28 suspending the collection of all or part of the interest that
29 has accrued on past due child support prior to the date of
30 the agreement: *Provided*, That said agreement shall also
31 establish a reasonable payment plan which is calculated to
32 fully discharge all arrearages within twenty-four months.
33 Upon successful completion of the payment plan, the court
34 shall enter an order which permanently relieves the
35 obligor of the obligation to pay the accrued interest. If the
36 obligor fails to comply with the terms of the written
37 agreement, then the court shall enter an order which
38 reinstates the accrued interest. Any proceeding com-
39 menced pursuant to the provisions of this subsection may
40 only be filed after the first day of January, two thousand
41 one and before the thirty-first day of December, two
42 thousand one.

§48-1-304. Proceedings in contempt.

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

17 (b) If trial is had under the provisions of subsection (a)
18 of this section and the court elects to treat a finding of
19 criminal contempt as a civil contempt, and the matter is
20 not tried before a jury and the court finds the defendant in
21 contempt for willfully failing to comply with an order of
22 the court made pursuant to the provisions of articles three,
23 four, five, eight, nine, eleven, twelve, fourteen and fifteen,
24 and if the court further finds the person has the ability to
25 purge himself of contempt, the court shall afford the
26 contemnor a reasonable time and method whereby he may
27 purge himself of contempt. If the contemnor fails or
28 refuses to purge himself of contempt, the court may
29 confine the contemnor to the county jail for an indetermi-
30 nate period not to exceed six months or until such time as
31 the contemnor has purged himself, whichever shall first
32 occur. If the petition alleges civil contempt, the matter
33 shall be heard by the family court. The family court has
34 the same power and authority as the circuit court under
35 the provisions of this section for criminal contempt
36 proceedings which the circuit court elects to treat as civil
37 contempt.

38 (c) In the case of a charge of contempt based upon the
39 failure of the defendant to pay alimony, child support or
40 separate maintenance, if the court or jury finds that the
41 defendant did not pay because he was financially unable
42 to pay, the defendant may not be imprisoned on charges of
43 contempt of court.

44 (d) Regardless of whether the court or jury finds the
45 defendant to be in contempt, if the court shall find that a
46 party is in arrears in the payment of alimony, child
47 support or separate maintenance ordered to be paid under
48 the provisions of this article, the court shall enter judg-
49 ment for such arrearage and award interest on such
50 arrearage from the due date of each unpaid installment.
51 Following any hearing wherein the court finds that a party
52 is in arrears in the payment of alimony, child support or
53 separate maintenance, the court may, if sufficient assets

54 exist, require security to ensure the timely payment of
55 future installments.

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

§48-1-307. Collection of child or spousal support by collection agencies.

1 (a) Any person attempting to collect a child or spousal
2 support obligation or arrearage on behalf of a resident or
3 from a resident of this state is subject to the provisions of
4 article sixteen, chapter forty-seven of this code, and the
5 provisions of this section, and is otherwise subject to the
6 jurisdiction of this state.

7 (b) The amount of delinquent child or spousal support or
8 arrearage established by order of a court of competent
9 jurisdiction in this state is not subject to waiver or com-
10 promise, either by agreement of the parties or by a collec-
11 tion agency acting on behalf of a party and may only be
12 modified by an order of a court of competent jurisdiction.

13 (c) No child or spousal support or arrearage of child or
14 spousal support collected by the state IV-D agency may be
15 redirected to any collection agency.

16 (d) No collection agency attempting to collect a child or
17 spousal support obligation or arrearage on behalf of a
18 resident or from a resident of this state may include any
19 funds collected by a IV-D agency in the amount from
20 which their fee is determined or collected.

21 (e) No collection agency, other than an attorney licensed
22 to practice law in this state, attempting to collect a child

23 support or spousal support obligation or arrearage may
24 engage in conduct which is considered the practice of law,
25 including, but not limited to:

26 (1) The performance of legal services, the offering of
27 legal advice or the making of a false representation,
28 directly or by implication, that a person is an attorney;

29 (2) Any communication with persons in the name of an
30 attorney or upon stationery or other written matter
31 bearing an attorney's name; and

32 (3) Any demand for or payment of money constituting a
33 share of compensation for services performed or to be
34 performed by an attorney in collecting a claim.

35 (f) No collection agency may collect or attempt to collect
36 any money alleged to be due and owing by any threat,
37 coercion or attempt to coerce, including, but not limited to:

38 (1) The use, or the express or implicit threat of use, of
39 violence or other criminal means, to cause harm to the
40 person, reputation or property of any person;

41 (2) The accusation or threat to accuse any person of
42 fraud, of any crime, or of any conduct which, if true,
43 would tend to disgrace the other person or in any way
44 subject them to ridicule or contempt of society;

45 (3) False accusations made to another person, including
46 any credit reporting agency, that a person is willfully
47 refusing to pay a just claim, or the threat to make such
48 false accusations;

49 (4) The threat that nonpayment of an alleged claim will
50 result in the arrest of any person, or of the taking of any
51 other action requiring judicial sanction, without informing
52 the person that there must be in effect a court order
53 permitting the action before it can be taken; and

54 (5) The threat to take any action prohibited by this
55 section or other law regulating the conduct of a collection
56 agency.

57 (g) No collection agency may unreasonably oppress or
58 abuse any person in connection with the collection of or
59 attempt to collect any child or spousal support obligation
60 or arrearage, including, but not limited to:

61 (1) The use of profane or obscene language or language
62 that is intended to unreasonably abuse the listener or
63 reader;

64 (2) The placement of telephone calls without disclosure
65 of the caller's identity and with the intent to annoy, harass
66 or threaten any person at the called number;

67 (3) Causing expense to any person in the form of long
68 distance telephone tolls, telegram fees or other charges
69 incurred by a medium of communication, by concealment
70 of the true purpose of the communication; and

71 (4) Causing a telephone to ring or engaging any person
72 in telephone conversation repeatedly or continuously, or at
73 unusual times or at times known to be inconvenient, with
74 intent to annoy, abuse, oppress or threaten any person at
75 the called number.

76 (h) No collection agency may unreasonably publicize
77 information relating to any alleged child or spousal
78 support obligation or arrearage, including, but not limited
79 to:

80 (1) The communication to any employer or his or her
81 agent of any information relating to an employee's indebt-
82 edness other than through proper legal action, process or
83 proceeding;

84 (2) The disclosure, publication, or communication of
85 information relating to a child or spousal support obliga-
86 tion or arrearage to any relative or family member of the
87 obligor, except through proper legal action or process or at
88 the express and unsolicited request of the obligor;

89 (3) The disclosure, publication or communication of any
90 information relating to an obligor's child or spousal

91 support obligation or arrearage to any other person other
92 than a credit reporting agency, by publishing or posting
93 any list of persons, commonly known as "deadbeat lists,"
94 or in any manner other than through proper legal action,
95 process or proceeding; and

96 (4) The use of any form of communication to the obligor,
97 which ordinarily may be seen by any other person, that
98 displays or conveys any information about the alleged
99 claim other than the name, address and telephone number
100 of the collection agency.

101 (i) No collection agency may use any fraudulent, decep-
102 tive or misleading representation or means to collect or
103 attempt to collect claims or to obtain information concern-
104 ing support obligors, including, but not limited to:

105 (1) The use of any business, company or organization
106 name while engaged in the collection of claims, other than
107 the true name of the collection agency's business, company
108 or organization;

109 (2) Any false representation that the collection agency
110 has in its possession information or something of value for
111 the obligor with the underlying purpose of soliciting or
112 discovering information about the person;

113 (3) The failure to clearly disclose the name of the person
114 to whom the claim is owed, at the time of making any
115 demand for money;

116 (4) Any false representation or implication of the
117 character, extent or amount of a claim against an obligor
118 or of the status of any legal proceeding;

119 (5) Any false representation or false implication that any
120 collection agency is vouched for, bonded by, affiliated with
121 an agency, instrumentality, agent or official of this state or
122 of the federal or local government;

123 (6) The use, distribution or sale of any written communi-
124 cation which simulates or is falsely represented to be a

125 document authorized, issued or approved by a court, an
126 official or any other legally constituted or authorized
127 authority, or which creates a false impression about its
128 source, authorization or approval;

129 (7) Any representation that an existing obligation of the
130 obligor may be increased by the addition of attorney's fees,
131 investigation fees, service fees or any other fees or charges
132 when in fact the fees or charges may not legally be added
133 to the existing obligation; and

134 (8) Any false representation or false impression about
135 the status or true nature of the services rendered by the
136 collection agency.

137 (j) No collection agency may use unfair or unconsciona-
138 ble means to collect or attempt to collect any claim,
139 including, but not limited to:

140 (1) The collection of or the attempt to collect any
141 interest in excess of that interest authorized by the provi-
142 sions of this chapter, or other charge, fee or expense
143 incidental to the principal obligation that exceeds ten
144 percent of the principal amount from an obligor or obligee;
145 and

146 (2) Any communication with an obligor whenever it
147 appears the obligor is represented by an attorney and the
148 attorney's name and address are known, or could be easily
149 ascertained, unless the attorney fails to answer correspon-
150 dence, return telephone calls or discuss the obligation in
151 question, or unless the attorney and the obligor consent to
152 direct communication.

153 (k) No collection agency may use, distribute, sell or
154 prepare for use any written communication which violates
155 or fails to conform to United States postal laws and
156 regulations.

157 (l) No collection agency may place a telephone call or
158 otherwise communicate by telephone with an obligor at

159 any place, including a place of employment, falsely stating
160 that the call is "urgent" or an "emergency".

161 (m) No collection agency may attempt to collect any
162 portion of a fee from any money collected by any other
163 entity or authority. The collection agency may only collect
164 a fee from funds procured solely through its collection
165 activities.

166 (n) A collection agency must provide the state IV-D
167 agency with an accounting of any money collected and
168 forwarded to the obligee as child support, spousal support,
169 or arrearages every sixty days until the collection agency
170 ceases all collection activity.

171 (o) Any resident of this state who contracts for services
172 with a collection agency to collect child support, spousal
173 support arrearages may, upon thirty days written notice,
174 cancel the contract for collection. The notice must be
175 mailed to the collection agency by first class mail. All
176 contracts signed by residents of this state must include
177 written notification of this right of cancellation.

178 (p) Any person who violates the provisions of this
179 section is subject the penalties set forth in section 47-16-5
180 and section 11-12-9.

181 (q) Any person who violates the provisions of this
182 section is liable to the injured party in a civil action.
183 Additionally, any person who violates the provisions of
184 this section is guilty of a misdemeanor and, upon convic-
185 tion thereof, shall be fined not less than one thousand
186 dollars nor more than five thousand dollars for each
187 separate incident.

188 (r) For any action filed pursuant to this section alleging
189 illegal, fraudulent or unconscionable conduct or any
190 prohibited debt collection practice, the court, in its
191 discretion, may award all or a portion of the costs of
192 litigation, including reasonable attorney fees, court costs
193 and fees, to the injured party. Upon a finding by the court

194 that an action filed pursuant to this section on the grounds
195 of illegal, fraudulent or unconscionable conduct or any
196 prohibited debt collection practice was brought in bad
197 faith and for the purposes of harassment, the court may
198 award the defendant reasonable attorney fees.

ARTICLE 5. DIVORCE.

§48-5-509. Enjoining abuse, emergency protective order.

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

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

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

11 (3) Harassing or verbally abusing the other in a public
12 place.

13 (b) Any order entered by the court to protect a party
14 from abuse may grant any other relief that may be appro-
15 priate for inclusion under the provisions of article twenty-
16 seven of this chapter.

17 (c) The court, in its discretion, may enter a protective
18 order, as provided in article twenty-seven of this chapter,
19 as part of the temporary relief in a divorce action.

ARTICLE 8. SPOUSAL SUPPORT.

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

1 (a) Upon ordering a divorce or granting a decree of
2 separate maintenance, the court may require either party
3 to pay spousal support in the form of periodic install-
4 ments, or a lump sum, or both, for the maintenance of the

5 other party. Payments of spousal support are to be
6 ordinarily made from a party's income, but when the
7 income is not sufficient to adequately provide for those
8 payments, the court may, upon specific findings set forth
9 in the order, order the party required to make those
10 payments to make them from the corpus of his or her
11 separate estate. An award of spousal support shall not be
12 disproportionate to a party's ability to pay as disclosed by
13 the evidence before the court.

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

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

1 In determining whether spousal support is to be
2 awarded, or in determining the amount of spousal support,
3 if any, to be awarded, the court shall consider and com-
4 pare the fault or misconduct of either or both of the
5 parties and the effect of the fault or misconduct as a
6 contributing factor to the deterioration of the marital
7 relationship.

ARTICLE 9. CUSTODY OF CHILDREN.

§48-9-604. Parent education and mediation fund.

1 There is hereby created in the state treasury a special
2 revenue account, designated the "parent education and
3 mediation fund". The moneys of the fund shall be ex-
4 pended by the administrator of the supreme court of
5 appeals for parent education and mediation programs.

ARTICLE 12. MEDICAL SUPPORT.

**§48-12-101. Definitions applicable to medical support enforce-
ment.**

1 For the purposes of this article:

2 (1) "Custodian for the children" means a parent, legal
3 guardian, committee or other third party appointed by
4 court order as custodian of a child or children for whom
5 child support is ordered.

6 (2) "Obligated parent" means a natural or adoptive
7 parent who is required by agreement or order to pay for
8 insurance coverage and medical care, or some portion
9 thereof, for his or her child.

10 (3) "Insurance coverage" means coverage for medical,
11 dental, including orthodontic, optical, psychological,
12 psychiatric or other health care service.

13 (4) "Child" means a child to whom a duty of child
14 support is owed.

15 (5) "Medical care" means medical, dental, optical,
16 psychological, psychiatric or other health care service for
17 children in need of child support.

18 (6) "Insurer" means any company, health maintenance
19 organization, self-funded group, multiple employer
20 welfare arrangement, hospital or medical services corpora-
21 tion, trust, group health plan, as defined in 29 U.S.C. §
22 1167, Section 607(1) of the Employee Retirement Income
23 Security Act of 1974 or other entity which provides
24 insurance coverage or offers a service benefit plan.

25 (7) "National medical support notice" means the written
26 notice described in 29 U.S.C. §1169 (a)(5)(C) and 42 U.S.C.
27 §666 (a)(19), and issued as a means of enforcing the health
28 care coverage provisions in a child support order for
29 children whose parent or parents are required to provide
30 health-care coverage through an employment-related
31 group health plan. This notice is considered under ERISA
32 to be a qualified medical child support order (QMSO).

33 (8) "Qualified medical child support order" means a
34 medical child support order which creates or recognizes

35 the existence of an alternate recipient's right to, or assigns
36 to an alternate recipient the right to, receive benefits from
37 which a participant or beneficiary is eligible under a group
38 health plan. A qualified medical child support order must
39 include the name and the last known mailing address, if
40 any, of the participant and the name and mailing address
41 of each alternate recipient covered by the order, except
42 that, to the extent provided in the order, the name and
43 mailing address of an official of the IV-D agency may be
44 substituted for the mailing address of any alternate
45 recipient, a reasonable description of the type of coverage
46 provided to each alternate recipient, or the manner in
47 which the type of coverage is determined, and the time
48 period for which the order applies.

**§48-12-104. Use of national medical support notice; employer
to enroll child and withhold premium.**

1 (a) All child support orders which include a provision
2 for health care coverage of a child shall be enforced, where
3 appropriate, through the use of the national medical
4 support notice, as set forth in 42 U.S.C. §666 (a)(19) and 29
5 U.S.C. §1169 (a)(5)(C) et seq.

6 (b) Unless alternative coverage is permitted in any order
7 by a court of competent jurisdiction, in any case in which
8 a parent is required pursuant to a child support order to
9 provide the health care coverage and the employer of the
10 parent is known to the IV-D agency, the IV-D agency shall
11 use the national medical support notice to give notice of
12 the provision for the health care coverage of the child to
13 the employer. The employer shall enroll the child as a
14 beneficiary in the group insurance plan and withhold any
15 required premium from the obligated parent's income or
16 wages, and remit any amount withheld for the premium
17 directly to the plan.

§48-12-105. Employer's obligation to transfer notice to appropriate plan.

1 Within twenty business days after the date of receipt of
2 the national medical support notice, the employer shall
3 transfer the notice, excluding the severable employer
4 withholding notice described in section 401 (b)(2)(C) of the
5 Child Support Performance and Incentive Act of 1998, to
6 the appropriate plan providing any health care coverage
7 for which the child is eligible.

§48-12-106. Notice requirements for certain newly-hired employees.

1 In any case in which the parent is a newly hired em-
2 ployee who is reported to the state directory of new hires
3 pursuant to section 18-125 of this chapter, and if the
4 bureau for child support enforcement is currently provid-
5 ing services for this case, the agency shall issue, where
6 appropriate, the national medical support notice, together
7 with an income withholding notice issued pursuant to
8 section 14-405 of this chapter, within two days after the
9 date of the entry of the employee in the directory.

§48-12-107. Notice requirement upon termination of parent.

1 In any case in which the employment of the parent with
2 any employer who received a national medical support
3 notice is terminated, the employer is required to notify the
4 IV-D agency of the termination, within fourteen days of
5 the termination, and shall provide the bureau for child
6 support enforcement with the obligor's last known address
7 at the time of termination.

§48-12-108. Certain liabilities of parent for contributions under the plan subject to enforcement; exceptions.

1 Any liability a parent may have for employee contribu-
2 tions required under the plan for enrollment of the child is
3 subject to appropriate enforcement unless the parent
4 contests the enforcement based upon a mistake of fact,

5 except that if enforcement of both the full amount of cash
6 child support and the full amount of medical support
7 violates the application provisions of 15 U.S.C. §1673,
8 Section 303(b) of the Consumer Credit Protection Act, then
9 the current month's cash child support shall receive
10 priority, and shall be deducted in full prior to any deduc-
11 tion being made for payment of either current medical
12 support or health insurance premiums. If the employee
13 contests the withholding in the manner prescribed within
14 the notice, the employer must initiate withholding until
15 such time as the employer receives notice that the contest
16 is resolved.

**§48-12-109. Custodial parent to receive coverage information,
documents.**

1 Within forty business days after the date of the national
2 medical support notice, the plan administrator shall
3 provide to the custodial parent a description of the
4 coverage available and any forms or documents, including
5 an insurance enrollment card, to effectuate the coverage.

**§48-12-110. Employer, union to notify IV-D agency within
forty days of receipt of notice.**

1 Within forty days of receipt of a national medical
2 support notice, the obligated parent's employer,
3 multiemployer trust or union shall notify the IV-D agency
4 with respect to whether coverage for the child is available,
5 and if so, whether the child is covered under the plan, the
6 effective date of the coverage and the name of the insurer.

**§48-12-111. Employer's duties upon service of national medical
support notice.**

1 (a) Upon service of the national medical support notice
2 requiring insurance coverage for the children, the em-
3 ployer, multiemployer trust or union shall enroll the child
4 as a beneficiary in the group insurance plan and withhold
5 any required premium from the obligated parent's income
6 or wages, unless the child is already enrolled in this plan.

7 (b) If more than one plan is offered by the employer,
8 multiemployer trust or union, the child shall be enrolled in
9 the same plan as the obligated parent. If the obligated
10 parent is not enrolled for insurance coverage, the employer
11 shall promptly report the availability of plans to the IV-D
12 agency. The IV-D agency, in consultation with parent,
13 shall promptly select the most appropriate plan, consider-
14 ing both the health needs of the child and the cost to the
15 parents, and shall notify the plan administrator and the
16 parties of the selection.

17 (c) Insurance coverage for the child which is ordered
18 pursuant to the provisions of this section shall not be
19 terminated except as provided in section 12-115 of this
20 chapter.

§48-12-112. Employer's duties where court-ordered coverage available.

1 (a) Where a parent is required by a court or administra-
2 tive order to provide health coverage, which is available
3 through an employer doing business in this state, the
4 employer is required:

5 (1) To permit the parent to enroll under family coverage
6 any child who is otherwise eligible for coverage without
7 regard to any enrollment season restrictions;

8 (2) If the parent is enrolled but fails to make application
9 to obtain coverage of the child, to enroll the child under
10 family coverage upon application by the child's other
11 parent, by the state agency administering the medicaid
12 program or by the bureau for child support enforcement;

13 (3) Not to disenroll or eliminate coverage of the child
14 unless the employer is provided satisfactory written
15 evidence that:

16 (A) The court or administrative order is no longer in
17 effect;

18 (B) The child is or will be enrolled in comparable
19 coverage which will take effect no later than the effective
20 date of disenrollment; or

21 (C) The employer eliminated family health coverage for
22 all of its employees; and

23 (4) To withhold from the employee's compensation the
24 employee's share, if any, of premiums for health coverage
25 and to pay this amount to the insurer: *Provided*, That the
26 amount so withheld may not exceed the maximum amount
27 permitted to be withheld under 15 U.S.C. §1673, Section
28 303(b) of the consumer credit protection act.

**§48-12-113. Signature of custodian of child is valid authoriza-
tion to insurer; insurer's obligations.**

1 (a) The signature of the custodian for the child shall
2 constitute a valid authorization to the insurer for the
3 purposes of processing an insurance payment to the
4 provider of medical care for the child.

5 (b) No insurer, employer or multiemployer trust in this
6 state may refuse to honor a claim for a covered service
7 when the custodian for the child or the obligated parent
8 submits proof of payment for medical bills for the child.

9 (c) The insurer shall reimburse the custodian for the
10 child or the obligated parent who submits copies of
11 medical bills for the child with proof of payment.

12 (d) All insurers in this state shall comply with the
13 provisions of section 33-15-16 and section 33-16-11 of this
14 code and shall provide insurance coverage for the child of
15 a covered employee notwithstanding the amount of
16 support otherwise ordered by the court and regardless of
17 the fact that the child may not be living in the home of the
18 covered employee.

**§48-12-114. Notice to be transferred on parent's change of
employment.**

1 Where an obligated parent changes employment and the
2 new employer provides the obligated parent's health care
3 coverage, the bureau for child support enforcement shall
4 transfer to the new employer notice of the obligated
5 parent's duty to provide health care coverage by use of the
6 national medical support notice.

**§48-12-115. Insurer to notify custodian when obligated parent's
employment is terminated or coverage is denied,
modified or terminated; explanation of conver-
sion privileges; employer to notify bureau of
termination.**

1 When an order for insurance coverage for a child
2 pursuant to this article is in effect and the obligated
3 parent's employment is terminated or the insurance
4 coverage for the child is denied, modified or terminated,
5 the insurer shall in addition to complying with the re-
6 quirements of article sixteen-a, chapter thirty-three of this
7 code, within ten days after the notice of change in cover-
8 age is sent to the covered employee, notify the custodian
9 for the child and provide an explanation of any conversion
10 privileges available from the insurer. In any case in which
11 the employment of the obligated parent to provide insur-
12 ance is terminated, the employer shall notify the bureau
13 for child support enforcement of the termination.

**§48-12-116. Child is eligible for coverage until emancipated;
remedies available if obligated parent fails to
provide ordered coverage; failure to maintain
coverage is basis for modification of support
order.**

1 (a) A child of an obligated parent shall remain eligible
2 for insurance coverage until the child is emancipated or
3 until the insurer under the terms of the applicable insur-
4 ance policy terminates said child from coverage, which-
5 ever is later in time, or until further order of the court.

6 (b) If the obligated parent fails to comply with the order
7 to provide insurance coverage for the child, the court shall:

8 (1) Hold the obligated parent in contempt for failing or
9 refusing to provide the insurance coverage or for failing or
10 refusing to provide the information required in subdivision
11 (4) of this subsection;

12 (2) Enter an order for a sum certain against the obli-
13 gated parent for the cost of medical care for the child and
14 any insurance premiums paid or provided for the child
15 during any period in which the obligated parent failed to
16 provide the required coverage;

17 (3) In the alternative, other enforcement remedies
18 available under sections 14-2, 14-3 and 14-4 of this
19 chapter, or otherwise available under law, may be used to
20 recover from the obligated parent the cost of medical care
21 or insurance coverage for the child;

22 (4) In addition to other remedies available under law,
23 the bureau for child support enforcement may initiate an
24 income withholding against the wages, salary or other
25 employment income of, and withhold amounts from state
26 tax refunds to any person who:

27 (A) Is required by court or administrative order to
28 provide coverage of the cost of health services to a child;
29 and

30 (B) Has received payment from a third party for the
31 costs of the services but has not used the payments to
32 reimburse either the other parent or guardian of the child
33 or the provider of the services, to the extent necessary to
34 reimburse the state medicaid agency for its costs: *Pro-*
35 *vided*, That claims for current and past due child support
36 shall take priority over these claims.

37 (c) Proof of failure to maintain court ordered insurance
38 coverage for the child constitutes a showing of substantial
39 change in circumstances or increased need, and provides
40 a basis for modification of the child support order.

§48-12-117. Mandatory date for use the national medical support notice.

- 1 Provisions of this article which require the use of the
- 2 national medical support notice are not mandatory until
- 3 April 1, 2002.

ARTICLE 13. GUIDELINES FOR CHILD SUPPORT AWARDS.

PART 4. SUPPORT IN BASIC SHARED PARENTING CASES.

§48-13-401. Basic child support obligation in basic shared parenting.

- 1 For basic shared parenting cases, the total child support
- 2 obligation consists of the basic child support obligation
- 3 plus the child's share of any unreimbursed health care
- 4 expenses, work-related child care expenses and any other
- 5 extraordinary expenses agreed to by the parents or
- 6 ordered by the court less any extraordinary credits agreed
- 7 to by the parents or ordered by the court.

§48-13-402. Division of basic child support obligation in basic shared parenting.

- 1 For basic shared parenting cases, the total basic child
- 2 support obligation is divided between the parents in
- 3 proportion to their income. From this amount is sub-
- 4 tracted the payor's direct expenditures of any items which
- 5 were added to the basic child support obligation to arrive
- 6 at the total child support obligation.

§48-13-403. Worksheet for calculating basic child support obligation in basic shared parenting cases.

- 1 Child support for basic shared parenting cases shall be
- 2 calculated using the following worksheet:

WORKSHEET A: BASIC SHARED PARENTING

IN THE FAMILY COURT OF _____ COUNTY,
WEST VIRGINIA

CASE NO. _____

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

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

Children	SSN	Date of Birth	Children	SSN	Date of Birth
PART I. CHILD SUPPORT ORDER			Mother	Father	Combined
1. MONTHLY GROSS INCOME (Exclusive of overtime compensation)			\$	\$	
a. Minus preexisting child support payment			-	-	
b. Minus maintenance paid			-	-	
c. Plus overtime compensation, if not excluded, and not to exceed 50%, pursuant to W. Va. Code §48-1-228(b)(6)			+	+	
d. Additional dependents deduction					
2. MONTHLY ADJUSTED GROSS INCOME			\$	\$	\$
3. PERCENTAGE SHARE OF INCOME (Each parent's income from line 2 divided by Combined Income)					100%
4. BASIC OBLIGATION (Use Line 2 combined to find amount from schedule.)					\$

5. ADJUSTMENTS (Expenses paid directly by each parent)			
a. Work-Related Child Care Costs Adjusted for Federal Tax Credit (0.75 x actual work-related child care costs.)	\$	\$	
b. Extraordinary Medical Expenses (Uninsured only) and Children's Portion of Health Insurance Premium Costs.	\$	\$	
c. Extraordinary Expenses (Agreed to by parents or by order of the court.)	\$	\$	
d. Minus Extraordinary Adjustments (Agreed to by parents or by order of court.)			
e. Total Adjustments (For each column, add 5a, 5b, and 5c. Subtract Line 5d. Add the parent's totals together for Combined amount.)	\$	\$	\$
6. TOTAL SUPPORT OBLIGATION (Add line 4 and line 5e Combined.)			\$
7. EACH PARENT'S SHARE OF THE TOTAL CHILD SUPPORT OBLIGATION (Line 3 x line 6 for each parent.)	\$	\$	
8. PAYOR PARENT ADJUSTMENT (Enter payor parent's line 5e.)	\$	\$	
9. RECOMMENDED CHILD SUPPORT ORDER (Subtract line 8 from line 7 for the payor parent only. Leave payee parent column blank.)	\$	\$	
PART II. ABILITY TO PAY CALCULATION (Complete if the payor parent's adjusted monthly gross income is below \$1,550.)			

10. Spendable Income (0.80 x line 2 for payor parent only.)			
11. Self Support Reserve	\$500	\$500	
12. Income Available for Support (Line 10 - line 11. If less than \$50, then \$50)			
13. Adjusted Child Support Order (Lessor of Line 9 and Line 12.)			
Comments, calculations, or rebuttals to schedule or adjustments if payor parent directly pays extraordinary expenses.			
PREPARED BY:			Date:

§48-13-404. Additional calculation to be made in basic shared parenting cases.

1 In cases where the payor parent's adjusted gross income
 2 is below one thousand five hundred fifty dollars per
 3 month, an additional calculation in Worksheet A, Part II
 4 shall be made. This additional calculation sets the child
 5 support order at whichever is lower.

6 (1) Child support at the amount determined in Part I; or

7 (2) The difference between eighty percent of the payor
 8 parent's adjusted gross income and five hundred dollars,
 9 or fifty dollars, whichever is more.

PART 5. SUPPORT IN EXTENDED SHARED PARENTING OR SPLIT PHYSICAL CUSTODY CASES.

§48-13-501. Extended shared parenting adjustment.

1 Child support for cases with extended shared parenting
 2 is calculated using Worksheet B. The following method is
 3 used only for extended shared parenting: That is, in cases
 4 where each parent has the child for more than one hun-
 5 dred twenty-seven days per year (thirty-five percent).

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

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

40 (3) The final amount of the child support order is
41 determined by summing what each parent owes for the
42 basic support obligation and additional direct expenses as

43 defined in subdivisions (1) and (2) of this section. The
 44 respective sums are then offset, with the parent owing
 45 more paying the other parent the difference between the
 46 two amounts.

§48-13-502. Extended shared parenting worksheet.

- 1 Child support for extended shared parenting cases shall
- 2 be calculated using the following worksheet:

WORKSHEET B: EXTENDED SHARED PARENTING

IN THE FAMILY COURT OF _____ COUNTY,
 WEST VIRGINIA

CASE NO. _____

Mother: _____ SS No.: _____

Father: _____ SS No.: _____

Children	SSN	Date of Birth	Children	SSN	Date of Birth
PART I. BASIC OBLIGATION			Mother	Father	Combined
1. MONTHLY GROSS INCOME (Exclusive of overtime compensation)			\$	\$	
a. Minus preexisting child support payment			-	-	
b. Minus maintenance paid			-	-	
c. Plus overtime compensation, if not excluded, and not to exceed 50%, pursuant to W. Va. Code §48A-1-228(b)(6)			+	+	
d. Additional dependent deduction					

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 PARENTING ADJUSTMENT			
5. Shared Parenting Basic Obligation (line 4 x 1.50)			\$
6. Each Parent's Share (Line 5 x each parent's line 3)	\$	\$	
7. Overnights with Each Parent (must total 365)			365
8. Percentage with Each Parent (Line 7 divided by 365)	%	%	100%
9. Amount Retained (Line 6 x line 8 for each parent)	\$	\$	
10. Each Parent's Obligation (Line 6 - line 9)	\$	\$	
11. AMOUNT TRANSFERRED FOR BASIC OBLIGATION (Subtract smaller amount on line 10 from larger amount on line 10. Parent with larger amount on line 10 owes the other parent the difference. Enter \$0 for other parent.)	\$	\$	
PART III. ADJUSTMENTS FOR ADDITIONAL EXPENSES (Expenses paid directly by each parent.)			

12a. Work-Related Child Care Costs Adjusted for Federal Tax Credit (0.75 x actual work-related child care costs.)	\$	\$	
12b. Extraordinary Medical Expenses (Uninsured only) and Children's Portion of Health Insurance Premium Costs.	\$	\$	
12c. Extraordinary Additional Expenses (Agreed to by parents or by order of the court.)	\$	\$	
12d. Minus Extraordinary Adjustments (Agreed to by parents or by order of the court.)	\$	\$	
12e. Total Adjustments (For each column, add 11a, 11b, and 11c. Subtract line 11d. Add the parent's totals together for Combined amount.)	\$	\$	\$
13. Each Parent's Share of Additional Expenses (Line 3 x line 12e Combined.)	\$	\$	
14. Each Parent's Net Share of Additional Direct Expenses (Each parent's line 13-line 12e. If negative number, enter \$0)	\$	\$	
15. AMOUNT TRANSFERRED FOR ADDITIONAL EXPENSES (Subtract smaller amount on line 14 from larger amount on line 14. Parent with larger amount on line 14 owes the other parent the difference. Enter \$0 for other parent.)	\$	\$	
PART IV. RECOMMENDED CHILD SUPPORT ORDER			

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

§48-13-503. Split physical custody adjustment.

1 In cases with split physical custody, the court shall use
2 Worksheet A as set forth in section 13-403 to calculate a
3 separate child support order for each parent based on the
4 number of children in that parent's custody. Instead of
5 transferring the calculated orders between parents, the
6 two orders are offset. The difference of the two orders is
7 the child support order to be paid by the parent with the
8 higher sole-parenting order.

PART 8. MISCELLANEOUS PROVISIONS RELATING
TO CHILD SUPPORT ORDERS.

§48-13-801. Tax exemption for child due support.

1 Unless otherwise agreed to by the parties, the court shall
2 allocate the right to claim dependent children for income
3 tax purposes to the payee parent except in cases of ex-
4 tended shared parenting. In extended shared parenting
5 cases, these rights shall be allocated between the parties in
6 proportion to their adjusted gross incomes for child
7 support calculations. In a situation where allocation
8 would be of no tax benefit to a party, the court need make

9 no allocation to that party. However, the tax exemptions
10 for the minor child or children should be granted to the
11 payor parent only if the total of the payee parent's income
12 and child support is greater when the exemption is
13 awarded to the payor parent.

§48-13-802. Investment of child support.

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

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

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

§48-13-803. Reimbursement or arrearage only support.

1 When the payor is not paying any current support
2 obligation but is required to pay for arrearages or reim-

3 bursement support, the court shall set a payment amount
4 for the repayment of reimbursement support or of a
5 support arrearage that is reasonable pursuant to the
6 provisions of this article or section 6-301, but not to
7 exceed the limits set out in section 14-408.

**ARTICLE 14. REMEDIES FOR THE ENFORCEMENT OF SUPPORT OBLIGA-
TIONS.**

**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.**

1 (a) An obligor with a pattern of overdue support may be
2 required by order of the court to post bond, give security
3 or some other guarantee to secure payment of overdue
4 support. The guarantee may include an order requiring
5 that stocks, bonds or other assets of the obligor be held in
6 escrow by the court until the obligor pays the support.

7 (b) No less than fifteen days before such an order may be
8 entered the bureau for child support enforcement attorney
9 shall cause the mailing of a notice by first class mail to the
10 obligor informing the obligor of the impending action, his
11 or her right to contest it, and setting forth a date, time and
12 place for a meeting with the bureau for child support
13 enforcement attorney and the date, time and place of a
14 hearing before the family court if the impending action is
15 contested.

ARTICLE 18. BUREAU FOR CHILD SUPPORT ENFORCEMENT.

**§48-18-105. General duties and powers of the bureau for child
support enforcement.**

1 In carrying out the policies and procedures for enforcing
2 the provisions of this chapter, the bureau shall have the
3 following power and authority:

4 (1) To undertake directly, or by contract, activities to
5 obtain and enforce support orders and establish paternity;

6 (2) To undertake directly, or by contract, activities to
7 establish paternity for minors for whom paternity has not
8 been acknowledged by the father or otherwise established
9 by law;

10 (3) To undertake directly, or by contract, activities to
11 collect and disburse support payments;

12 (4) To contract for professional services with any person,
13 firm, partnership, professional corporation, association or
14 other legal entity to provide representation for the bureau
15 and the state in administrative or judicial proceedings
16 brought to obtain and enforce support orders and establish
17 paternity;

18 (5) To ensure that activities of a contractor under a
19 contract for professional services are carried out in a
20 manner consistent with attorneys' professional responsi-
21 bilities as established in the rules of professional conduct
22 as promulgated by the supreme court of appeals;

23 (6) To contract for collection services with any person,
24 firm, partnership, corporation, association or other legal
25 entity to collect and disburse amounts payable as support;

26 (7) To ensure the compliance of contractors and their
27 employees with the provisions of this chapter and legisla-
28 tive rules promulgated pursuant to this chapter, and to
29 terminate, after notice and hearing, the contractual
30 relationship between the bureau and a contractor who
31 fails to comply;

32 (8) To require a contractor to take appropriate remedial
33 or disciplinary action against any employee who has
34 violated or caused the contractor to violate the provisions
35 of this chapter, in accordance with procedures prescribed
36 in legislative rules promulgated by the commission;

37 (9) To locate parents who owe a duty to pay child
38 support;

39 (10) To cooperate with other agencies of this state and
40 other states to search their records to help locate parents;

41 (11) To cooperate with other states in establishing and
42 enforcing support obligations;

43 (12) To exercise such other powers as may be necessary
44 to effectuate the provisions of this chapter.

ARTICLE 19. BUREAU FOR CHILD SUPPORT ENFORCEMENT ATTORNEY.

§48-19-103. Duties of the bureau for support enforcement attorneys.

1 Subject to the control and supervision of the commis-
2 sioner:

3 (a) The bureau for child support enforcement attorney
4 shall supervise and direct the secretarial, clerical and
5 other employees in his or her office in the performance of
6 their duties as such performance affects the delivery of
7 legal services. The bureau for child support enforcement
8 attorney will provide appropriate instruction and supervi-
9 sion to employees of his or her office who are nonlawyers,
10 concerning matters of legal ethics and matters of law, in
11 accordance with applicable state and federal statutes,
12 rules and regulations.

13 (b) In accordance with the requirements of rule 5.4(c) of
14 the rules of professional conduct as promulgated and
15 adopted by the supreme court of appeals, the bureau for
16 child support enforcement attorney shall not permit a
17 nonlawyer who is employed by the department of health
18 and human resources in a supervisory position over the
19 bureau for child support enforcement attorney to direct or
20 regulate the attorney's professional judgment in rendering
21 legal services to recipients of services in accordance with
22 the provisions of this chapter; nor shall any nonlawyer
23 employee of the department attempt to direct or regulate
24 the attorney's professional judgment.

25 (c) The bureau for child support enforcement attorney
26 shall make available to the public an informational
27 pamphlet, designed in consultation with the commissioner.
28 The informational pamphlet shall explain the procedures
29 of the court and the bureau for child support enforcement
30 attorney; the duties of the bureau for child support
31 enforcement attorney; the rights and responsibilities of the
32 parties; and the availability of human services in the
33 community. The informational pamphlet shall be pro-
34 vided as soon as possible after the filing of a complaint or
35 other initiating pleading. Upon request, a party to a
36 domestic relations proceeding shall receive an oral expla-
37 nation of the informational pamphlet from the office of
38 the bureau for child support enforcement attorney.

39 (d) The bureau for child support enforcement shall act
40 to establish the paternity of every child born out of
41 wedlock for whom paternity has not been established,
42 when the child's caretaker is an applicant for or recipient
43 of temporary assistance for needy families, and when the
44 caretaker has assigned to the division of human services
45 any rights to support for the child which might be forth-
46 coming from the putative father: *Provided*, That if the
47 bureau for child support enforcement attorney is informed
48 by the secretary of the department of health and human
49 resources or his or her authorized employee that it has
50 been determined that it is against the best interest of the
51 child to establish paternity, the bureau for child support
52 enforcement attorney shall decline to so act. The bureau
53 for child support enforcement attorney, upon the request
54 of the mother, alleged father or the caretaker of a child
55 born out of wedlock, regardless of whether the mother,
56 alleged father or the caretaker is an applicant or recipient
57 of temporary assistance for needy families, shall undertake
58 to establish the paternity of such child.

59 (e) The bureau for child support enforcement attorney
60 shall undertake to secure support for any individual who
61 is receiving temporary assistance for needy families when

62 such individual has assigned to the division of human
63 services any rights to support from any other person such
64 individual may have: *Provided*, That if the bureau for
65 child support enforcement attorney is informed by the
66 secretary of the department of health and human resources
67 or his or her authorized employee that it has been deter-
68 mined that it is against the best interests of a child to
69 secure support on the child's behalf, the bureau for child
70 support enforcement attorney shall decline to so act. The
71 bureau for child support enforcement attorney, upon the
72 request of any individual, regardless of whether such
73 individual is an applicant or recipient of temporary
74 assistance for needy families, shall undertake to secure
75 support for the individual. If circumstances require, the
76 bureau for child support enforcement attorney shall utilize
77 the provisions of article 16-101, et seq. of this code and
78 any other reciprocal arrangements which may be adopted
79 with other states for the establishment and enforcement of
80 support obligations, and if such arrangements and other
81 means have proven ineffective, the bureau for child
82 support enforcement attorney may utilize the federal
83 courts to obtain and enforce court orders for support.

84 (f) The bureau for child support enforcement attorney
85 shall pursue the enforcement of support orders through the
86 withholding from income of amounts payable as support:

87 (1) Without the necessity of an application from the
88 obligee in the case of a support obligation owed to an
89 obligee to whom services are already being provided under
90 the provisions of this chapter; and

91 (2) On the basis of an application for services in the case
92 of any other support obligation arising from a support
93 order entered by a court of competent jurisdiction.

94 (g) The bureau for child support enforcement attorney
95 may decline to commence an action to obtain an order of
96 support under the provisions of article 14-101, et seq., if an
97 action for divorce, annulment or separate maintenance is

98 pending, or the filing of such action is imminent, and such
99 action will determine the issue of support for the child:
100 *Provided*, That such action shall be deemed to be immi-
101 nent if it is proposed by the obligee to be commenced
102 within the twenty-eight days next following a decision by
103 the bureau for child support enforcement attorney that an
104 action should properly be brought to obtain an order for
105 support.

106 (h) If the bureau for child support enforcement office,
107 through the bureau for child support enforcement attor-
108 ney, shall undertake paternity determination services,
109 child support collection or support collection services upon
110 the written request of an individual who is not an appli-
111 cant or recipient of assistance from the division of human
112 services, the office may impose an application fee for
113 furnishing such services. Such application fee shall be in
114 a reasonable amount, not to exceed twenty-five dollars, as
115 determined by the commissioner: *Provided*, That the
116 commissioner may fix such amount at a higher or lower
117 rate which is uniform for this state and all other states if
118 the secretary of the federal department of health and
119 human services determines that a uniform rate is appro-
120 priate for any fiscal year to reflect increases or decreases
121 in administrative costs. Any cost in excess of the applica-
122 tion fee so imposed may be collected from the obligor who
123 owes the child or spousal support obligation involved.

ARTICLE 24. ESTABLISHMENT OF PATERNITY.

§48-24-101. Paternity proceedings.

1 (a) A civil action to establish the paternity of a child and
2 to obtain an order of support for the child may be insti-
3 tuted, by verified complaint, in the circuit court of the
4 county where the child resides: *Provided*, That if such
5 venue creates a hardship for the parties, or either of them,
6 or if judicial economy requires, the court may transfer the
7 action to the county where either of the parties resides.

8 (b) A “paternity proceeding” is a summary proceeding,
9 equitable in nature and within the domestic relations
10 jurisdiction of the courts, wherein a court upon the
11 petition of the state or another proper party may intervene
12 to determine and protect the respective personal rights of:

13 (A) A child for whom paternity has not been lawfully
14 established,

15 (B) The mother of the child; and

16 (C) The putative father of the child.

17 (2) The parties to a paternity proceeding are not entitled
18 to a trial by jury.

19 (c) The sufficiency of the statement of the material
20 allegations in the complaint set forth as grounds for relief
21 and the grant or denial of the relief prayed for in a partic-
22 ular case shall rest in the sound discretion of the court, to
23 be exercised by the court according to the circumstances
24 and exigencies of the case, having due regard for precedent
25 and the provisions of the statutory law of this state.

26 (d) An order made and entered by a court in a paternity
27 proceeding shall include a determination of the filial
28 relationship, if any, that exists between a child and his or
29 her putative father, and, if such relationship is established,
30 shall resolve dependent claims arising from family rights
31 and obligations attendant to such filial relationship.

32 (e) A paternity proceeding may be brought by any of the
33 following persons:

34 (1) An unmarried woman with physical or legal custody
35 of a child to whom she gave birth;

36 (2) A married woman with physical or legal custody of
37 a child to whom she gave birth, if the complaint alleges
38 that:

40 (A) The married woman lived separate and apart from
41 her husband preceding the birth of the child;

42 (B) The married woman did not cohabit with her
43 husband at any time during such separation and that such
44 separation has continued without interruption; and

45 (C) The respondent, rather than her husband, is the
46 father of the child;

47 (3) The state of West Virginia, including the bureau for
48 child support enforcement;

49 (4) Any person who is not the mother of the child, but
50 who has physical or legal custody of the child;

51 (5) The guardian or committee of the child;

52 (6) The next friend of the child when the child is a
53 minor;

54 (7) By the child in his or her own right at any time after
55 the child's eighteenth birthday but prior to the child's
56 twenty-first birthday; or

57 (8) A man who believes he is the father of a child born
58 out of wedlock, when there has been no prior judicial
59 determination of paternity.

60 (f) If a paternity proceeding is brought that names the
61 father of the child as being someone other than the person
62 whose name appears on the child's birth certificate, then
63 the person bringing the action shall cause a copy of the
64 verified complaint to be served on the person named as the
65 father on the birth certificate. Service must be in accor-
66 dance with rule 4 of the rules of civil procedure.

67 (g) Blood or tissue samples taken pursuant to the
68 provisions of this article may be ordered to be taken in
69 such locations as may be convenient for the parties so long
70 as the integrity of the chain of custody of the samples can
71 be preserved.

72 (h) A person who has sexual intercourse in this state
73 submits to the jurisdiction of the courts of this state for a
74 proceeding brought under this article with respect to a
75 child who may have been conceived by that act of inter-
76 course. Service of process may be perfected according to
77 the rules of civil procedure.

78 (i) When the person against whom the proceeding is
79 brought has failed to plead or otherwise defend the action
80 after proper service has been obtained, judgment by
81 default shall be issued by the court as provided by the
82 rules of civil procedure.

ARTICLE 27. PREVENTION AND TREATMENT OF DOMESTIC VIOLENCE.

PART 2. DEFINITIONS.

§48-27-202. Domestic violence defined.

1 "Domestic violence" or "abuse" means the occurrence
2 of one or more of the following acts between family or
3 household members, as that term is defined in section 27-
4 204:

5 (1) Attempting to cause or intentionally, knowingly or
6 recklessly causing physical harm to another with or
7 without dangerous or deadly weapons;

8 (2) Placing another in reasonable apprehension of
9 physical harm;

10 (3) Creating fear of physical harm by harassment,
11 psychological abuse or threatening acts;

12 (4) Committing either sexual assault or sexual abuse as
13 those terms are defined in articles eight-b and eight-d,
14 chapter sixty-one of this code; and

15 (5) Holding, confining, detaining or abducting another
16 person against that person's will.

§48-27-203. Emergency hearing defined.

1 "Emergency hearing" means the hearing before a
2 magistrate upon the filing of a petition for a protective
3 order. An emergency hearing may be held ex parte.

§48-27-204. Family or household members defined.

1 "Family or household members" means persons who:
2 (1) Are or were married to each other;
3 (2) Are or were living together as spouses;
4 (3) Are or were sexual or intimate partners;
5 (4) Are or were dating: *Provided*, That a casual acquaint-
6 tance or ordinary fraternization between persons in a
7 business or social context does not establish a dating
8 relationship;
9 (5) Are or were residing together in the same household;
10 (6) Have a child in common, regardless of whether they
11 have ever married or lived together; and
12 (7) Have the following relationships to another person:
13 (A) Parent;
14 (B) Step parent;
15 (C) Brother or sister;
16 (D) Half-brother or half-sister;
17 (E) Stepbrother or stepsister;
18 (F) Step father-in-law or step mother-in-law;
19 (G) Child or step child;
20 (H) Daughter-in-law or son-in-law;
21 (I) Step daughter-in-law or step son-in-law;
22 (J) Grandparent;

23 (K) Step grandparent;

24 (L) Aunt, aunt-in-law or step-aunt;

25 (M) Uncle, uncle-in-law or step-uncle;

26 (N) Niece or nephew;

27 (O) First or second cousin; or

28 (8) Persons who have the relationships set forth in
29 subparagraphs (A) through (o) subdivision (7) of this
30 section to a family or household member, as defined in
31 subdivisions (1) through (6) of this section.

§48-27-205. Final hearing defined.

1 “Final hearing” means the hearing before a family court
2 judge as may be requested by the respondent following the
3 entry of an order by a magistrate as a result of the emer-
4 gency hearing.

§48-27-206. Law-enforcement agency defined.

1 (a) “Law-enforcement agency” means and is limited to:

2 (1) The state police and its members;

3 (2) A county sheriff and his or her law-enforcement
4 deputies; and

5 (3) A police department in any municipality as defined
6 in section two, article one, chapter eight of this code.

7 (b) The term “law-enforcement agency” includes the
8 department of health and human resources in those
9 instances of child abuse reported to the department that
10 are not otherwise reported to any other law-enforcement
11 agency.

§48-27-207. Program for victims of domestic violence defined.

1 “Program for victims of domestic violence” means a
2 licensed program for victims of domestic violence and

- 3 their children, which program provides advocacy, shelter,
- 4 crisis intervention, social services, treatment, counseling,
- 5 education or training.

§48-27-208. Program of intervention for perpetrators defined.

1 “Program of intervention for perpetrators” means a
2 licensed program, where available, or if no licensed
3 program is available, a program that:

4 (1) Accepts perpetrators of domestic violence into
5 educational intervention groups or counseling pursuant to
6 a court order; or

7 (2) Offers educational intervention groups to perpetra-
8 tors of domestic violence.

§48-27-209. Protective order defined.

1 “Protective order” means an emergency protective order
2 issued by a magistrate as a result of the emergency hearing
3 or a final protective order issued by a family court judge
4 when the respondent has requested a hearing before the
5 family court judge following the entry of the emergency
6 protective order by the magistrate.

PART 3. PROCEDURE.

§48-27-301. Jurisdiction.

1 Circuit courts, family courts and magistrate courts, have
2 concurrent jurisdiction over domestic violence proceedings
3 as provided in this article.

§48-27-309. Priority of petitions.

1 Any petition filed under the provisions of this article
2 shall be given priority over any other civil action before
3 the court, except actions in which trial is in progress, and
4 shall be docketed immediately upon filing.

PART 4. COORDINATION WITH PENDING COURT ACTIONS.

§48-27-401. Proceedings when divorce action is pending.

1 (a) During the pendency of a divorce action, a person
2 may file for and be granted relief provided by this article,
3 until an order is entered in the divorce action pursuant to
4 part 5-501, *et seq.*

5 (b) If a person who has been granted relief under this
6 article should subsequently become a party to an action
7 for divorce, separate maintenance or annulment, such
8 person shall remain entitled to the relief provided under
9 this article including the right to file for and obtain any
10 further relief, so long as no temporary order has been
11 entered in the action for divorce, annulment and separate
12 maintenance, pursuant to part 5-501, *et seq.*

13 (c) Except as provided in section 5-509 of this chapter
14 and section 27-402 of this article for a petition and a
15 temporary emergency protective order, no person who is a
16 party to a pending action for divorce, separate mainte-
17 nance or annulment in which an order has been entered
18 pursuant to part 5-501, *et seq.* of this chapter, shall be
19 entitled to file for or obtain relief against another party to
20 that action under this article until after the entry of a final
21 order which grants or dismisses the action for divorce,
22 annulment or separate maintenance.

23 (d) Notwithstanding the provisions set forth in section
24 27-505, any order issued pursuant to this section where a
25 subsequent action is filed seeking a divorce, annulment or
26 separate maintenance, shall remain in full force and effect
27 by operation of this statute until a temporary or final
28 order is entered pursuant to part 5-501, *et seq.* of this
29 chapter, or a final order is entered granting or dismissing
30 the action for divorce, annulment or separate mainte-
31 nance.

**§48-27-402. Proceedings in magistrate court when temporary
divorce, annulment or separate maintenance
order is in effect.**

1 (a) The provisions of this section apply where a tempo-
2 rary order has been entered by a family court in an action

3 for divorce, annulment or separate maintenance, notwith-
4 standing the provisions of subsection 27-401(c) of this
5 article.

6 (b) A person who is a party to an action for divorce,
7 annulment or separate maintenance in which a tempor-
8 ary order has been entered pursuant to section 5-501
9 of this chapter may petition the magistrate court
10 for a temporary emergency protective order pur-
11 suant to this section for any violation of the pro-
12 visions of this article occurring after the date of entry of
13 the temporary order pursuant to section 5-501 of this
14 chapter.

15 (c) The only relief that a magistrate may award pursuant
16 to this section is a temporary emergency protective order:

17 (1) Directing the respondent to refrain from abusing the
18 petitioner or minor children, or both;

19 (2) Ordering the respondent to refrain from entering the
20 school, business or place of employment of the petitioner
21 or household members or family members for the purpose
22 of violating the protective order; and

23 (3) Ordering the respondent to refrain from contacting,
24 telephoning, communicating with, harassing or verbally
25 abusing the petitioner.

26 (d) A temporary emergency protective order may modify
27 an award of custody or visitation only upon a showing, by
28 clear and convincing evidence, of the respondent's abuse
29 of a child, as abuse is defined in section 27-202 of this
30 article. An order of modification shall clearly state which
31 party has custody and describe why custody or visitation
32 arrangements were modified.

33 (e) (1) The magistrate shall forthwith transmit a copy of
34 any temporary emergency protective order, together with
35 a copy of the petition, by mail or by facsimile machine to
36 the family court in which the action is pending and to

37 law-enforcement agencies. Upon receipt of the petition
38 and order, the family court shall examine its provisions.
39 Within ten days of the magistrate's issuance of the tempo-
40 rary emergency protective order, the family court shall
41 issue an order either to extend such emergency protection
42 for a time certain or to vacate the magistrate's order. The
43 family court shall forthwith give notice to all parties and
44 to the issuing magistrate court. The magistrate court clerk
45 shall forward a copy of the family court order to
46 law-enforcement agencies.

47 (2) If no temporary order has been entered in the
48 pending action for divorce, annulment or separate mainte-
49 nance the family court shall forthwith return the order
50 with such explanation to the issuing magistrate. The
51 magistrate who issued the order shall vacate the order,
52 noting thereon the reason for termination. The magistrate
53 court clerk shall transmit a copy of the vacated order to
54 the parties and law-enforcement agencies.

55 (f) Notwithstanding any other provision of this code, if
56 the family court extends the temporary emergency protec-
57 tive order entered by the magistrate or if, pursuant to the
58 provisions of section 5-509 the family court enters a
59 protective order as temporary relief in an action for
60 divorce, the family court order shall be treated and
61 enforced as a protective order issued under the provisions
62 of this article.

**§48-27-403. Emergency protective orders of court; hearings;
persons present.**

1 (a) Upon the filing of a verified petition under this
2 article, the court may enter an emergency protective order
3 as it may deem necessary to protect the petitioner or minor
4 children from domestic violence and, upon good cause
5 shown, may do so ex parte without the necessity of bond
6 being given by the petitioner. Clear and convincing
7 evidence of immediate and present danger of abuse to the
8 petitioner or minor children shall constitute good cause for

9 the issuance of an emergency protective order pursuant to
10 this section. If the respondent is not present at the pro-
11 ceeding, the petitioner or the petitioner's legal representa-
12 tive shall certify to the court, in writing, the efforts which
13 have been made to give notice to the respondent or just
14 cause why notice should not be required. Copies of
15 medical reports or records may be admitted into evidence
16 to the same extent as though the original thereof. The
17 custodian of such records shall not be required to be
18 present to authenticate such records for any proceeding
19 held pursuant to this subsection. If the court determines
20 to enter an emergency protective order, the order shall
21 prohibit the respondent from possessing firearms.

22 (b) Following the proceeding, the court shall order a
23 copy of the petition to be served immediately upon the
24 respondent, together with a copy of any emergency
25 protective order issued pursuant to the proceedings, and a
26 statement of the right of the respondent to request a final
27 hearing before the family court, as provided in subsection
28 (d) of this section. Copies of any order entered under the
29 provisions of this section and a statement of the right of
30 the petitioner to request a final hearing as provided in
31 subsection (d) of this section shall also be delivered to the
32 petitioner. Copies of any order entered shall also be
33 delivered to any law-enforcement agency having jurisdic-
34 tion to enforce the order, including municipal police, the
35 county sheriff's office and local office of the state police,
36 within twenty-four hours of the entry of the order. An
37 emergency protective order is effective for ninety days or
38 one hundred eighty days, in the discretion of the court,
39 unless modified by order of the family court upon hearing
40 as provided in this section. The order is in full force and
41 effect in every county in this state.

42 (c) Subsequent to the entry of the emergency protective
43 order and service on the respondent and the delivery to the
44 petitioner and law-enforcement officers, the court file
45 shall be transferred to the office of the clerk of the circuit

46 court for use by the family court, if necessary, under the
47 provisions of this section.

48 (d) After the respondent has been served with the
49 emergency protective order, the respondent may request a
50 final hearing on the domestic violence petition before the
51 family court. After the order has been delivered to the
52 petitioner, the petitioner may request a final hearing on
53 the domestic violence petition before the family court. The
54 request for hearing may be made in person, telephonically
55 or by written request to the office of the family court. If
56 the respondent's request for hearing is made within five
57 days from the date the order was served on the respondent
58 or if the petitioner's request for hearing is made within
59 five days from the date the order was delivered to the
60 petitioner, the hearing must be scheduled by the family
61 court within ten days. If the request is made more than
62 five days after the respondent was served with the order or
63 more than five days after the order was delivered to the
64 petitioner, the hearing must be scheduled on an expedited
65 basis. The statement advising the parties of the right to a
66 final hearing must include, clearly and concisely, all of the
67 information contained in this subsection and the name,
68 mailing address, physical location and telephone number
69 of the family court having jurisdiction over the proceed-
70 ings.

71 (e) If requested by the respondent or by the petitioner, as
72 provided in subsection (d) of this section, the family court
73 must hold, a final hearing at which the petitioner must
74 prove the allegation of domestic violence, or that he or she
75 reported or witnessed domestic violence against another
76 and has, as a result, been abused, threatened, harassed or
77 has been the subject of other actions to attempt to intimi-
78 date him or her, by a preponderance of the evidence, or
79 such petition shall be dismissed by the family court.
80 Copies of medical reports may be admitted into evidence
81 to the same extent as though the original thereof, upon
82 proper authentication, by the custodian of such records.

83 (f) No person requested by a party to be present during
84 a hearing held under the provisions of this article shall be
85 precluded from being present unless such person is to be a
86 witness in the proceeding and a motion for sequestration
87 has been made and such motion has been granted. A
88 person found by the court to be disruptive may be pre-
89 cluded from being present.

90 (g) Upon hearing, the family court may dismiss the
91 petition or enter a final protective order for a period of
92 ninety days or, in the discretion of the court, for a period
93 of one hundred eighty days. If a hearing is continued, the
94 family court may make or extend such temporary orders
95 as it deems necessary.

PART 5. PROTECTIVE ORDERS; VISITATION ORDERS.

§48-27-505. Time period a protective order is in effect; extension of order; notice of order or extension.

1 (a) Except as otherwise provided by subsection 27-401(d)
2 of this article, an emergency protective order issued by a
3 magistrate, family court or circuit judge pursuant to this
4 article, is effective for either ninety days, or one hundred
5 eighty days, in the discretion of the court. If the court
6 enters an order for a period of ninety days, upon receipt of
7 a written request from the petitioner prior to the expira-
8 tion of the ninety day period, the family or circuit court
9 shall extend its order for an additional ninety-day period.

10 (b) To be effective, a written request to extend an order
11 from ninety days to one hundred eighty days must be
12 submitted to the court prior to the expiration of the
13 original ninety-day period. A notice of the extension shall
14 be sent by the clerk of the court to the respondent by first
15 class mail, addressed to the last known address of the
16 respondent as indicated by the court's case filings. The
17 extension of time is effective upon mailing of the notice.

18 (c) Certified copies of any order entered or extension
19 notice made under the provisions of this section shall be

20 issued to the petitioner, the respondent and any
21 law-enforcement agency having jurisdiction to enforce the
22 order, including the city police, the county sheriff's office
23 or local office of the West Virginia state police within
24 twenty-four hours of the entry of the order. The protective
25 order shall be in full force and effect in every county of
26 this state.

27 (d) The family court may modify the terms of an emer-
28 gency or final protective order upon motion of either
29 party.

§48-27-510. Appeals.

1 (a) A petitioner who has been denied an emergency
2 protective order may file a petition for appeal of the
3 denial, within five days of the denial, to the family court.

4 (b) Any party to a final protective order may file a
5 petition for appeal, within ten days of the entry of the
6 order in family court, to the circuit court. The order shall
7 remain in effect pending an appeal unless stayed by the
8 circuit court. No bond shall be required for any appeal
9 under this section.

10 (c) A petition for appeal filed pursuant to this section,
11 shall be heard by the court within ten days from the filing
12 of the petition.

13 (d) The standard of review of findings of fact made by
14 the family court is clearly erroneous and the standard of
15 review of application of the law to the facts is an abuse of
16 discretion standard.

PART 9. SANCTIONS.

§48-27-901. Civil contempt; violation of protective orders; to show cause.

1 (a) Any party to a protective order or a legal guardian or
2 guardian ad litem may file a petition for civil contempt
3 alleging a violation of an order issued pursuant to the

4 provisions of this article. The petition shall be filed in the
5 family court, if a family court entered an order or in the
6 circuit court, if a circuit court entered the order, in the
7 county in which the violation occurred or the county in
8 which the order was issued.

9 (b) When a petition for an order to show cause is filed, a
10 hearing on the petition shall be held within five days from
11 the filing of the petition. Any order to show cause which
12 is issued shall be served upon the alleged violator.

13 (c) Upon a finding of contempt, the court may order the
14 violator to comply with specific provisions of the protec-
15 tive order and post a bond as surety for faithful compli-
16 ance with such order.

§48-27-902. Violations of protective orders; criminal complaints.

1 (a) When a respondent abuses the petitioner or minor
2 children, or both, or is physically present at any location
3 in knowing and willful violation of the terms of an emer-
4 gency or final protective order under the provisions of this
5 article or section 5-509 of this chapter granting the relief
6 pursuant to the provisions of this article, any person
7 authorized to file a petition pursuant to the provisions of
8 section 27-305 or the legal guardian or guardian ad litem
9 may file a petition for civil contempt as set forth in section
10 27-901.

11 (b) When any such violation of a valid order has oc-
12 curred, the petitioner may file a criminal complaint. If the
13 court finds probable cause upon the complaint, the court
14 shall issue a warrant for arrest of the person charged.

§48-27-903. Misdemeanor offenses for violation of protective order, repeat offenses, penalties.

1 (a) A respondent who abuses the petitioner or minor
2 children or who is physically present at any location in
3 knowing and willful violation of the terms of an emer-
4 gency or final protective order issued under the provisions

5 of this article or section 5-509 of this chapter granting the
6 relief pursuant to the provisions of this article, is guilty of
7 a misdemeanor and, upon conviction thereof, shall be
8 confined in the county or regional jail for a period of not
9 less than one day nor more than one year, which jail term
10 shall include actual confinement of not less than
11 twenty-four hours, and shall be fined not less than two
12 hundred fifty dollars nor more than two thousand dollars.

13 (b) When a respondent previously convicted of the
14 offense described in subsection (a) of this section abuses
15 the petitioner or minor children or is physically present at
16 any location in knowing and willful violation of the terms
17 of a temporary or final protective order issued under the
18 provisions of this article, the respondent is guilty of a
19 misdemeanor and, upon conviction thereof, shall be
20 confined in the county or regional jail for not less than
21 three months nor more than one year, which jail term shall
22 include actual confinement of not less than twenty-four
23 hours, and fined not less than five hundred dollars nor
24 more than three thousand dollars, or both.

PART 10. ARRESTS.

§48-27-1001. Arrest for violations of protective orders.

1 (a) When a law-enforcement officer observes any
2 respondent abuse the petitioner or minor children or the
3 respondent's physical presence at any location in knowing
4 and willful violation of the terms of an emergency or final
5 protective order issued under the provisions of this article
6 or section 5-509 of this chapter granting the relief pursu-
7 ant to the provisions of this article, he or she shall immedi-
8 ately arrest the respondent.

9 (b) When a family or household member is alleged to
10 have committed a violation of the provisions of section 27-
11 903, a law-enforcement officer may arrest the perpetrator
12 for said offense where:

13 (1) The law-enforcement officer has observed credible
14 corroborative evidence, as defined in subsection 27-
15 1002(b), that the offense has occurred; and

16 (2) The law-enforcement officer has received, from the
17 victim or a witness, a verbal or written allegation of the
18 facts constituting a violation of section 27-903; or

19 (3) The law-enforcement officer has observed credible
20 evidence that the accused committed the offense.

21 (c) Any person who observes a violation of a protective
22 order as described in this section, or the victim of such
23 abuse or unlawful presence, may call a local
24 law-enforcement agency, which shall verify the existence
25 of a current order, and shall direct a law-enforcement
26 officer to promptly investigate the alleged violation.

27 (d) Where there is an arrest, the officer shall take the
28 arrested person before a circuit court or a magistrate and,
29 upon a finding of probable cause to believe a violation of
30 an order as set forth in this section has occurred, the court
31 or magistrate shall set a time and place for a hearing in
32 accordance with the West Virginia rules of criminal
33 procedure.

PART 11. MISCELLANEOUS PROVISIONS.

§48-27-1101. Forms to be provided; operative date.

1 (a) The West Virginia supreme court of appeals shall
2 prescribe forms which are necessary and convenient for
3 proceedings pursuant to this article, and the court shall
4 distribute such forms to the clerk of the circuit court, the
5 secretary-clerk of the family court and the clerk of magis-
6 trate court of each county within the state.

7 (b) The amendment enacted to this article by the passage
8 of Engrossed Committee Substitute for Senate Bill No. 652
9 during the regular session of the Legislature in the year
10 two thousand one is effective the first day of September,
11 two thousand one.

§48-27-1104. Judicial education on domestic violence.

1 All circuit court judges may and magistrates and family
2 courts shall receive a minimum of three hours training
3 each year on domestic violence which shall include
4 training on the psychology of domestic violence, the
5 battered wife and child syndromes, sexual abuse, court-
6 room treatment of victims, offenders and witnesses,
7 available sanctions and treatment standards for offenders,
8 and available shelter and support services for victims. The
9 supreme court of appeals may provide such training in
10 conjunction with other judicial education programs
11 offered by the supreme court.

CHAPTER 52. JURIES.

ARTICLE 1. PETIT JURIES.

§52-1-17. Reimbursement of jurors.

1 (a) A juror shall be paid mileage, at the rate set by the
2 commissioner of finance and administration for state
3 employees, for travel expenses from the juror's residence
4 to the place of holding court and return and shall be
5 reimbursed for other expenses incurred as a result of
6 required attendance at sessions of the court at a rate of
7 between fifteen and forty dollars, set at the discretion of
8 the circuit court or the chief judge thereof, for each day of
9 required attendance. Such reimbursement shall be based
10 on vouchers submitted to the sheriff. Such mileage and
11 reimbursement shall be paid out of the state treasury.

12 (b) When a jury in any case is placed in the custody of
13 the sheriff, he or she shall provide for and furnish the jury
14 necessary meals and lodging while they are in the sheriff's
15 custody at a reasonable cost to be determined by an order
16 of the court; and the meals and lodging shall be paid for
17 out of the state treasury.

18 (c) Anytime a panel of prospective jurors has been
19 required to report to court for the selection of a petit jury
20 in any scheduled matter, the court shall, by specific

21 provision in a court order, assess a jury cost. In circuit
22 court cases the jury cost shall be the actual cost of the
23 jurors' service, and in magistrate court cases, the jury cost
24 assessed shall be two hundred dollars. Such costs shall be
25 assessed against the parties as follows:

26 (1) In every criminal case, against the defendant upon
27 conviction, whether by plea, by bench trial or by jury
28 verdict;

29 (2) In every civil case, against either party or prorated
30 against both parties, at the court's discretion, if the parties
31 settle the case or trial is to the bench; and

32 (3) In the discretion of the court, and only when fairness
33 and justice so require, a circuit court or magistrate court
34 may forego assessment of the jury fee, but shall set out the
35 reasons therefor in a written order: *Provided*, That a
36 waiver of the assessment of a jury fee in a case tried before
37 a jury in magistrate court may only be permitted after the
38 circuit court, or the chief judge thereof, has reviewed the
39 reasons set forth in the order by the magistrate and has
40 approved such waiver.

41 (d)(1) The circuit or magistrate court clerk shall by the
42 tenth day of the month following the month of collection
43 remit to the state treasurer for deposit as described in
44 subdivision (2) of this subsection all jury costs collected,
45 and the clerk and the clerk's surety are liable therefor on
46 the clerk's official bond as for other money coming into
47 the clerk's hands by virtue of the clerk's office.

48 (2) The jury costs described in subdivision (1) of this
49 subsection shall upon receipt by the state treasurer be
50 deposited as follows: (A) One-half shall be deposited into
51 the parent education and mediation fund created in
52 section six hundred four, article nine, chapter forty-eight
53 of this code; and (B) one-half shall be deposited into the
54 domestic violence legal services fund created in section six
55 hundred three, article twenty-six, chapter forty-eight of
56 this code.

57 (e) The sheriff shall pay into the state treasury all jury
58 costs received from the court clerks, and the sheriff shall
59 be held to account in the sheriff's annual settlement for all
60 such moneys.

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

ARTICLE 1. FEES AND ALLOWANCES.

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

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

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

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

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

18 (4) For petitioning for an expedited modification of a
19 child support order, thirty-five dollars.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

53 (d) No such clerk shall be required to handle or accept
54 for disbursement any fees, cost or amounts, of any other
55 officer or party not payable into the county treasury,

56 except it be on order of the court or in compliance with the
57 provisions of law governing such fees, costs or accounts.

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

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

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

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

24 (b) For each divorce action instituted in the circuit
25 court, the clerk of the court shall, at the end of each
26 month, report to the supreme court of appeals, the number
27 of actions filed by persons unable to pay, and pay into the
28 funds or accounts in this subsection an amount equal to
29 the amount set forth in this subsection of every filing fee
30 received for instituting the divorce action as follows:

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

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

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

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

46 (c) For each action for divorce, separate maintenance or
47 annulment instituted in the circuit court, the clerk of the
48 court shall, at the end of each month, pay into the funds or
49 accounts in this subsection an amount equal to the amount
50 set forth in this subsection of every filing fee received for
51 instituting the divorce action as follows:

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

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

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

63 (4) Into the court security fund in the state treasury,
64 established pursuant to the provisions of section fourteen,

65 article three, chapter fifty-one of this code, the amount of
66 five dollars.

67 (d) Notwithstanding any provision of subsection (a) or
68 (b) of this section to the contrary, the clerk of the court
69 shall, at the end of each month, pay into the family court
70 fund established under section four hundred three, article
71 thirty, chapter forty-eight of this code an amount equal to
72 the amount of every fee received for petitioning for the
73 modification of an order involving child custody, child
74 visitation, child support or spousal support as determined
75 by subdivision (3), subsection (a), section eleven of this
76 article and for petitioning for an expedited modification
77 of a child support order as provided in subdivision (4),
78 subsection (a), section eleven of this article.

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

86 (f) The clerk of each circuit court shall, at the end of
87 each month, pay into the regional jail and correctional
88 facility authority fund in the state treasury an amount
89 equal to forty dollars of every fee for service received in
90 any criminal case against any respondent convicted in
91 such court and shall pay an amount equal to five dollars of
92 every such fee into the court security fund in the state
93 treasury established pursuant to the provisions of section
94 fourteen, article three, chapter fifty-one of this code.

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

[Signature]
.....
Chairman Senate Committee

[Signature]
.....
Chairman House Committee

Originated in the Senate.

In effect from passage.

[Signature]
.....
Clerk of the Senate

[Signature]
.....
Clerk of the House of Delegates

[Signature]
.....
President of the Senate

[Signature]
.....
Speaker House of Delegates

The within *approved* this the *2nd*
Day of *May*, 2001.

[Signature]
.....
Governor

PRESENTED TO THE

GOVERNOR

Date 4/25/01

Time 5:20 pm