

# WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

**ENROLLED**

**Committee Substitute**

**for**

**House Bill 2363**

BY DELEGATES FOSTER, SUMMERS, STORCH, PHILLIPS,

STEELE, SYPOLT, PINSON, MCGEEHAN,

J. JEFFRIES, D. JEFFRIES AND ROWAN

[Passed April 10, 2021; in effect ninety days from passage.]

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

2021 APR 28 P 4: 18

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1 AN ACT to amend the Code of West Virginia, 1931, as amended by adding thereto five new  
2 sections, designated §48-1-239a, §48-1-239b, §48-1-241a, §48-1-241b, and §48-9-105;  
3 to amend and reenact §48-1-220, §48-1-239, §48-9-102, §48-9-203, §48-9-204, §48-9-  
4 206, §48-9-207, §48-9-209, §48-9-301, §48-9-403, §48-9-601, §48-9-603 of said code, all  
5 relating to domestic relations and child custody allocation; providing definitions; amending  
6 definitions; clarifying the authority of parents to make emergency and non-elective  
7 healthcare decisions; requiring the court to consider parenting functions in determining  
8 best interests of the child; adding meaningful contact between a child and his or her  
9 siblings, including half-siblings, as an objective of the best interests of the child; providing  
10 for venue of custody actions outside of divorce proceedings; requiring the court to consider  
11 parenting functions in temporary parenting plans and allocation of custody; adding a  
12 preference time allocated to the parent resulting in the child being under the care of that  
13 parent is preferred to the parent resulting in time allocated to the parent resulting in the  
14 child being under the care of a third party as an objective in allocation determinations;  
15 adding an objective for reasonable access to the child by telephone or other electronic  
16 contact as an objective in allocation determinations; requiring that, in the absence of  
17 agreement of the parents, a final allocation determination must be made pursuant to  
18 hearing which cannot be conducted exclusively by presentation of evidence by proffer;  
19 adding neglect and abandonment as criteria that may overcome presumption that joint  
20 decision-making responsibility is in the best interests of the child; clarifying criteria of  
21 interference with the other parent's relationship with the child; providing notice  
22 requirements during a court-ordered investigation; requires that a hearing cannot take  
23 place until after the investigation report is provided to the parties and completion of any  
24 requested discovery; allowing for continuance of a hearing following an investigation;  
25 providing a mechanism for the adjudication of requests for relocation of a parent with a  
26 child; providing circumstances for which relocation of a parent constitutes a substantial

27 change in the circumstances of the child; requiring the relocating parent to file a verified  
28 petition for the court for modification of the parenting plan; identifying consequences of  
29 failure to comply with the requirements of this section; requiring a copy of the petition to  
30 be served on the other parent and all other persons allocated custodial time with the child;  
31 establishing requirements for the petition for modification of the parenting plan; requiring  
32 a hearing to be held on the petition at least 30 days in advance of the proposed date of  
33 relocation; providing for an expedited hearing; authorizing the court to revise the parenting  
34 plan; authorizing the court to allocate costs between the parties; establishing the burden  
35 of proof for the relocating parent; defines when a relocation is for a legitimate purpose;  
36 establishing a move with a legitimate purpose is unreasonable unless the relocating parent  
37 proves that the purpose is not substantially achievable without moving and that moving to  
38 a location that is substantially less disruptive of the other parent's relationship to the child  
39 is not feasible; requiring the court to consider the best interests of the child when modifying  
40 the parenting plan; requiring the court to minimize impairment to a parent-child relationship  
41 caused by a parent's relocation through alternative arrangements; setting forth the  
42 opportunity for parties to file a modified parenting plan signed by all parties; conditionally  
43 requiring an initial permanent parenting plan to be established before a relocation is  
44 considered; requiring interviewing or questioning of the child to be conducted in  
45 accordance with Rule 17 of the Rules of Practice and Procedure for Family Court;  
46 providing for parental access to a child's vital records; requiring notice to the other party if  
47 the child is a victim of a crime unless the other party is the perpetrator; providing an  
48 effective date; and providing that existing orders remain in effect unless modified by a  
49 court of competent jurisdiction.

*Be it enacted by the Legislature of West Virginia:*

## **CHAPTER 48. DOMESTIC RELATIONS.**

**ARTICLE 1. GENERAL PROVISIONS, DEFINITIONS.**

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

1           “Decision-making responsibility” refers to authority for making significant life decisions on  
2 behalf of a child, including, but not limited to, the child’s education, spiritual guidance and health  
3 care: *Provided*, That with regard to healthcare, both parents in any shared parenting plan,  
4 regardless of the relative ratio of parenting time allocated between the parents, shall have the  
5 authority to make emergency or other non-elective healthcare decisions concerning their child  
6 necessary for the child’s health or welfare during such parent’s parenting time.

**§48-1-239. Shared parenting defined.**

1           (a) “Shared parenting” means either basic shared parenting or extended shared parenting.

2           (b) “Basic shared parenting” means an arrangement under which one parent keeps a child  
3 or children overnight for less than 35 percent of the year and under which both parents contribute  
4 to the expenses of the child or children in addition to the payment of child support.

5           (c) “Extended shared parenting” means an arrangement under which each parent keeps  
6 a child or children overnight for more than 35 percent of the year and under which both parents  
7 contribute to the expenses of the child or children in addition to the payment of child support.

8           (d) In any case where, in the absence of an agreement between the parents, a court orders  
9 shared parenting; the order shall be in writing and include specific findings of fact supporting the  
10 Court’s determination.

**§48-1-239a. Shared legal custody defined.**

1           “Shared legal custody” means a continued mutual responsibility and involvement by both  
2 parents in major decisions regarding the child’s welfare including matters of education, medical  
3 care, and emotional, moral, and religious development consistent with the provisions of §48-9-  
4 207 of this code.

**§48-1-239b. Sole legal custody defined.**

1 "Sole legal custody" means that one parent has the right and responsibility to make major  
2 decisions regarding the child's welfare including matters of education, non-emergency medical  
3 care, and emotional, moral, and religious development.

**§48-1-241a. Shared physical custody defined.**

1 "Shared physical custody" means a child has periods of residing with, and being under the  
2 supervision of, each parent consistent with the provisions of §48-9-206 of this code: *Provided,*  
3 That physical custody shall be shared by the parents in such a way as to assure a child has  
4 frequent and continuing contact with both parents. Such frequent and continuing contact with both  
5 parents is rebuttably presumed to be in the best interests of the child unless the evidence shows  
6 otherwise.

**§48-1-241b. Sole physical custody defined.**

1 "Sole physical custody" means a child resides with and is under the supervision of one  
2 parent, subject to reasonable visitation by the other parent, unless the court determines that the  
3 visitation would not be in the best interests of the child.

**ARTICLE 9. ALLOCATION OF CUSTODIAL RESPONSIBILITY AND DECISION-  
MAKING RESPONSIBILITY OF CHILDREN.**

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

- 1 (a) The primary objective of this article is to serve the child's best interests, by facilitating:  
2 (1) Stability of the child;  
3 (2) Parental planning and agreement about the child's custodial arrangements and  
4 upbringing;  
5 (3) Continuity of existing parent-child attachments;  
6 (4) Meaningful contact between a child and each parent;  
7 (5) Caretaking and parenting relationships by adults who love the child, know how to  
8 provide for the child's needs, and who place a high priority on doing so;

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

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

12 (8) Meaningful contact between a child and his or her siblings, including half-siblings.

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

**§48-9-105. Venue for custodial allocation actions independent of divorce.**

1 (a) Venue for the initial determination of custodial allocation or child custody determination  
2 within a divorce action shall be governed by §48-5-106 or §48-20-101 *et seq.* of this code, or both.

3 (b) Venue for the initial determination of custodial allocation or child custody determination  
4 as between parties who reside in separate states shall be governed by §48-20-101 *et seq.* of this  
5 code.

6 (c) Venue for modification of custodial allocation or modification of child custody  
7 determination which was previously determined in a tribunal of a state other than West Virginia  
8 shall be governed by §48-20-101 *et seq.* of this code.

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

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

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

10 (2) The performance by each parent during the last 12 months of the parenting functions  
11 relating to the daily needs of the child;

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

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

14 (5) Any of the circumstances set forth in §48-9-209 of this code that are likely to pose a  
15 serious risk to the child and that warrant limitation on the award to a parent of temporary residence  
16 or time with the child pending entry of a permanent parenting plan.

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

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

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

21 (3) Allocation of decision-making authority, if any. Absent allocation of decision-making  
22 authority consistent with §48-9-207 of this code, neither party shall make any decision for the child  
23 other than those relating to day-to-day or emergency care of the child, which shall be made by  
24 the party who is present with the child;

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

26 (5) Restraining orders, if applicable; and

27 (6) Specific findings of fact upon which the court bases its determinations.

28 (c) A parent may make a motion for an order to show cause and the court may enter a  
29 temporary order, including a temporary parenting plan, upon a showing of necessity.

30 (d) A parent may move for amendment of a temporary parenting plan, and the court may  
31 order amendment to the temporary parenting plan, if the amendment conforms to the limitations  
32 of §48-9-209 of this code and is in the best interest of the child. The court's order modifying the  
33 plan shall be in writing and contain specific findings of fact upon which the court bases its  
34 determinations.

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

1 (a) After considering the proposed temporary parenting plan filed pursuant to §48-9-203  
2 of this code and other relevant evidence presented, the court shall make a temporary parenting  
3 plan that is in the best interest of the child, which shall be in writing and contain specific findings



4 of fact upon which the court bases its determinations. In making this determination, the court  
5 shall give particular consideration to:

6 (1) Which parent has taken greater responsibility during the last 12 months for performing  
7 caretaking and/or parenting functions relating to the daily needs of the child; and

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

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

12 (c) Upon credible evidence of one or more of the circumstances set forth in §48-9-209(a)  
13 of this code, the court shall issue a temporary order limiting or denying access to the child as  
14 required by that section, in order to protect the child or the other party, pending adjudication of  
15 the underlying facts. The temporary order shall be in writing and include specific findings of fact  
16 supporting the court's determination.

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

**§48-9-206. Allocation of custodial responsibility.**

1 (a) Unless otherwise resolved by agreement of the parents under §48-9-201 of this code  
2 or unless harmful to the child, the court shall allocate custodial responsibility so that, except to  
3 the extent required under §48-9-209 of this code, the custodial time the child spends with each  
4 parent may be expected to achieve any of the following objectives:

5 (1) To permit the child to have a meaningful relationship with each parent who has  
6 performed a reasonable share of parenting functions;

7 (2) To accommodate, if the court determines it is in the best interests of the child, the firm  
8 and reasonable preferences of a child who is 14 years of age or older; and to accommodate, if  
9 the court determines it is in the best interests of the child, the firm and reasonable preferences of

10 a child under 14 years of age, but sufficiently matured that he or she can intelligently express a  
11 voluntary preference for one parent;

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

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

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

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

26 (7) To apply the principles set forth in §48-9-403(d) of this code if one parent relocates or  
27 proposes to relocate at a distance that will impair the ability of a parent to exercise the amount of  
28 custodial responsibility that would otherwise be ordered under this section;

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

30 (9) To consider which parent will encourage and accept a positive relationship between  
31 the child and the other parent, including which parent is more likely to keep the other parent  
32 involved in the child's life and activities;

33 (10) To take into account the preference that time allocated to the parent resulting in the  
34 child being under the care and custody of that parent is preferred to time allocated to the parent

35 resulting in the child being under the care or custody of a family member of that parent or a third  
36 party; and

37 (11) To allow reasonable access to the child by telephone or other electronic contact,  
38 which shall be defined in the parenting plan.

39 (b) The court may consider the allocation of custodial responsibility arising from temporary  
40 agreements made by the parties after separation if the court finds, by a preponderance of the  
41 evidence, that such agreements were consensual. The court shall afford those temporary  
42 consensual agreements the weight the court believes the agreements are entitled to receive,  
43 based upon the evidence. The court may not consider the temporary allocation of custodial  
44 responsibility imposed by a court order on the parties.

45 (c) If the court is unable to allocate custodial responsibility under §48-9-206(a) of this code  
46 because the allocation under §48-9-206(a) of this code would be harmful to the child, or because  
47 there is no history of past performance of caretaking functions, as in the case of a newborn, or  
48 because the history does not establish a pattern of caretaking sufficiently dispositive of the issues  
49 of the case, the court shall allocate custodial responsibility based on the child's best interest,  
50 taking into account the factors in considerations that are set forth in this section and in §48-9-209  
51 and §48-9-403(d) of this code and preserving to the extent possible this section's priority on the  
52 share of past caretaking functions each parent performed: *Provided*, That if either parent or both  
53 has demonstrated reasonable participation in parenting functions as defined in §48-1-235.2 of  
54 this code, the court cannot rely solely on caretaking functions, and shall consider the parents'  
55 participation in parenting functions.

56 (d) In determining how to schedule the custodial time allocated to each parent, the court  
57 shall take account of the economic, physical, and other practical circumstances such as those  
58 listed in §48-9-206(a)(6) of this code.

59 (e) In the absence of an agreement of the parents, the court's determination of allocation  
60 of custodial responsibility under this section shall be made pursuant to a hearing, which shall not

61 be conducted exclusively by the presentation of evidence by proffer. The court's order determining  
62 allocation of custodial responsibility shall be in writing, and include specific findings of fact  
63 supporting the determination.

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

1 (a) Unless otherwise resolved by agreement of the parents under §48-9-201 of this code,  
2 the court shall allocate responsibility for making significant life decisions on behalf of the child,  
3 including the child's education and health care, to one parent or to two parents jointly, in  
4 accordance with the child's best interest, in light of:

- 5 (1) The allocation of custodial responsibility under §48-9-206 of this code;
- 6 (2) The level of each parent's participation in past decision-making on behalf of the child;
- 7 (3) The wishes of the parents;
- 8 (4) The level of ability and cooperation the parents have demonstrated in decision-making  
9 on behalf of the child;
- 10 (5) Prior agreements of the parties; and
- 11 (6) The existence of any limiting factors, as set forth in section 9-209 of this article.

12 (b) If each of the child's legal parents has been exercising a reasonable share of parenting  
13 functions for the child, the court shall presume that an allocation of decision-making responsibility  
14 to both parents jointly is in the child's best interests. The presumption is overcome if there is a  
15 history of domestic abuse, neglect, or abandonment, or by a showing that joint allocation of  
16 decision-making responsibility is not in the child's best interest: *Provided*, That the court's  
17 determination shall be in writing and include specific findings of fact supporting any determination  
18 that joint allocation of decision-making responsibility is not in the child's best interest.

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

PART 2 – PARENTING PLANS

**§48-9-209. Parenting plan; limiting factors.**

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

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

5 (2) Has sexually assaulted or sexually abused a child as those terms are defined in §61-  
6 8B-1 *et seq.* and §61-8D-1 *et seq.* of this code;

7 (3) Has committed domestic violence, as defined in §48-27-202 of this code;

8 (4) Has overtly or covertly, persistently violated, interfered with, impaired, or impeded the  
9 rights of a parent or a child with respect to the exercise of shared authority, residence, visitation,  
10 or other contact with the child, except in the case of actions taken for the purpose of protecting  
11 the safety of the child or the interfering parent or another family member, pending adjudication of  
12 the facts underlying that belief; or

13 (5) Has made one or more fraudulent reports of domestic violence or child abuse:  
14 *Provided*, That a person's withdrawal of or failure to pursue a report of domestic violence or child  
15 support shall not alone be sufficient to consider that report fraudulent.

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

19 (1) An adjustment of the custodial responsibility of the parents, including but not limited to:

20 (A) Increased parenting time with the child to make up for any parenting time the other  
21 parent lost as a result of the proscribed activity;

22 (B) An additional allocation of parenting time in order to repair any adverse effect upon  
23 the relationship between the child and the other parent resulting from the proscribed activity; or

24 (C) The allocation of exclusive custodial responsibility to one of them;

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

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

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

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

33 (6) Denial of overnight custodial responsibility;

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

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

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

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

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

50 (d) If the court determines, based on the investigation described in part three of this article  
51 or other evidence presented to it, that an accusation of child abuse or neglect, or domestic  
52 violence made during a child custody proceeding is false and the parent making the accusation  
53 knew it to be false at the time the accusation was made, the court may order reimbursement to  
54 be paid by the person making the accusations of costs resulting from defending against the  
55 accusations. Such reimbursement may not exceed the actual reasonable costs incurred by the  
56 accused party as a result of defending against the accusation and reasonable attorney's fees  
57 incurred.

58 (e) (1) A parent who believes he or she is the subject of activities by the other parent  
59 described in subdivision (5) of subsection (a), may move the court pursuant to subdivision (4),  
60 subsection (b), section one hundred and one, article five, chapter forty-nine of this code for the  
61 Department of Health and Human Resources to disclose whether the other parent was the source  
62 of the allegation and, if so, whether the department found the report to be:

- 63 (A) Substantiated;
- 64 (B) Unsubstantiated;
- 65 (C) Inconclusive; or
- 66 (D) Still under investigation.

67 (2) If the court grants a motion pursuant to this subsection, disclosure by the Department  
68 of Health and Human Resources shall be in camera. The court may disclose to the parties  
69 information received from the department only if it has reason to believe a parent knowingly  
70 made a false report.

### PART 3. FACT FINDING.

#### **§48-9-301. Court-ordered investigation.**

1 (a) In its discretion, the court may order a written investigation and report to assist it in  
2 determining any issue relevant to proceedings under this article: *Provided*, That the court must  
3 serve notice to all parties of the court's order. The investigation and report may be made by the  
4 guardian ad litem, the staff of the court, or other professional social service organization

5 experienced in counseling children and families: *Provided*, That the court shall identify to all  
6 parties the identity of the assigned investigator, and the investigator shall be a compulsory witness  
7 and subject to full examination and cross-examination by both parties. The court shall specify the  
8 scope and objective of the investigation or evaluation and the authority of the investigator.

9 (b) In preparing the report concerning a child, the investigator may consult any person  
10 who may have information about the child and the potential parenting or custodian arrangements:  
11 *Provided*, That the person(s) consulted by the investigator shall be identified to the parties and  
12 shall be subject to complete discovery including but not limited to pre-hearing deposition. Upon  
13 order of the court, the investigator may refer the child to professional personnel for diagnosis. The  
14 investigator may consult with and obtain information from medical, psychiatric or other expert  
15 persons who have served the child in the past without obtaining the consent of the parent or the  
16 child's custodian; but the child's consent must be obtained if the child has reached the age of  
17 twelve, unless the court finds that the child lacks mental capacity to consent. If the requirements  
18 of subsection (c) of this section are fulfilled, the investigator's report may be received in evidence  
19 at the hearing.

20 (c) The investigator shall deliver the investigator's report to counsel and to any party not  
21 represented by counsel at least 10 days prior to the hearing unless a shorter time is ordered by  
22 the court for good cause shown: *Provided*, That in no event shall the hearing take place until after  
23 the report has been provided to the parties and the completion of any discovery requested  
24 thereupon. The court may grant a continuance, upon motion by a party showing good cause that  
25 discovery cannot be adequately completed within 10 days. The investigator shall make available  
26 to counsel and to any party not represented by counsel the investigator's file of underlying data  
27 and reports, records or documents reviewed or relied upon by the investigator, complete texts of  
28 diagnostic reports made to the investigator pursuant to the provisions of subsection (b) of this  
29 section, and the names and addresses of all persons whom the investigator has consulted. Any  
30 party to the proceeding may call as a hearing witness the investigator and any person whom the



31 investigator has consulted for cross-examination. A party may not waive the right of cross-  
32 examination prior to the hearing.

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

#### PART 4. MODIFICATION OF PARENTING PLAN.

##### **§48-9-403. Relocation of a parent.**

1 (a) The relocation of a parent constitutes a substantial change in the circumstances of the  
2 child under §48-9-401(a) of this code when it impairs either parent's ability to exercise  
3 responsibilities that the parent has been exercising, or when it impairs the schedule of custodial  
4 allocation that has been ordered by the court for a parent or any other person.

5 (b) A parent who has responsibility under a parenting plan who changes, or intends to  
6 change, residences must file a verified petition with the court for modification of the parenting  
7 plan, and cause a copy of the same to be served upon the other parent and upon all other persons  
8 who, pursuant to the court's order in effect at the time of the petition, have been allocated custodial  
9 time with the child. The petition shall be filed at least 90 days prior to any relocation, and the  
10 summons must be served at least 60 days in advance of any relocation, unless the relocating  
11 parent establishes that it was impracticable under the circumstances to provide such notice 90  
12 days in advance. The verified petition shall include:

13 (1) The proposed relocation date;

14 (2) The address of the intended new residence;

15 (3) The specific reasons for the proposed relocation;

16 (4) A proposal for how custodial responsibility shall be modified, in light of the intended  
17 move; and

18 (5) A request for a hearing.

19 Failure to comply with the requirements of this section may be a factor in the determination  
20 of whether the relocation is in good faith under subsection (d) of this section, and may also be a

21 basis for reallocation of the primary residence and custodial responsibility for the child and for an  
22 award of reasonable expenses and reasonable attorney's fees to another parent or another  
23 person exercising custodial responsibility for the child pursuant to an order of the court that are  
24 attributable to such failure.

25 (c) A hearing on the petition shall be held by the court at least 30 days in advance of the  
26 proposed date of relocation. A parent proposing to relocate may move for an expedited hearing  
27 upon the petition in circumstances under which the parent needs an answer expeditiously. If the  
28 hearing is held fewer than 30 days in advance of the proposed date of relocation, the court's order  
29 shall include findings of fact as to why the hearing was not held at least 30 days prior to the  
30 petition's proposed date of relocation. After a hearing upon a petition filed under this section, the  
31 court shall, if practical, revise the parenting plan so as to both accommodate the relocation and  
32 maintain the same proportion of custodial responsibility being exercised by each of the parents  
33 and all such other persons exercising custodial responsibility for the child pursuant to the order of  
34 the court. In making such revision, the court may consider the additional costs that a relocation  
35 imposes upon the respective parties for transportation and communication, and may equitably  
36 allocate such costs between the parties and may consider §48-13-702 of this code authorizing  
37 the court to disregard the child support formula relating to long distance visitation costs.

38 (d) (1) At the hearing held pursuant to this section, the relocating parent has the burden  
39 of proving that: (A) The reasons for the proposed relocation are legitimate and made in good faith;  
40 (B) that allowing relocation of the relocating parent with the child is in the best interests of the  
41 child as defined in §48-9-102 of this code; and (C) that there is no reasonable alternative, other  
42 than the proposed relocation, available to the relocating parent that would be in the child's best  
43 interests and less disruptive to the child.

44 (2) A relocation is for a legitimate purpose if it is to be close to immediate family members,  
45 for substantial health reasons, to protect the safety of the child or another member of the child's  
46 household from significant risk of harm, to pursue a significant employment or educational

47 opportunity, or to be with one's spouse or significant other with whom the relocating parent has  
48 cohabitated for at least a year, who is established, or who is pursuing a significant employment  
49 or educational opportunity, in another location.

50 (3) The relocating parent has the burden of proving the proposed relocation is for one of  
51 these legitimate purposes. The relocating parent has the burden of proving the legitimacy of any  
52 other purpose. A move with a legitimate purpose is unreasonable unless the relocating parent  
53 proves that the purpose is not substantially achievable without moving, and that moving to a  
54 location that is substantially less disruptive of the other parent's relationship to the child is not  
55 feasible.

56 (4) When the relocation is for a legitimate purpose, in good faith, and renders it impractical  
57 to maintain the same proportion of custodial responsibility as that being exercised by each parent  
58 and all other persons exercising custodial responsibility for the child pursuant to an order of the  
59 court, the court shall modify the parenting plan in accordance with the child's best interests.

60 (5) If the relocating parent does not establish that the purpose for that parent's relocation  
61 is made in good faith for a legitimate purpose to a location that is reasonable in light of the  
62 purpose, the court may modify the parenting plan in accordance with the child's best interests and  
63 the effects of the relocation on the child. Among the modifications the court may consider is a  
64 reallocation of primary custodial responsibility, to become effective if and when the parent's  
65 relocation occurs.

66 (6) The court shall attempt to minimize impairment to a parent-child relationship caused  
67 by a parent's relocation through alternative arrangements for the exercise of custodial  
68 responsibility appropriate to the parents' resources and circumstances and the developmental  
69 level of the child.

70 (e) If the parties file with the court a modified parenting plan signed by all the parties the  
71 court may enter an order modifying custodial responsibility in accordance with the parenting plan  
72 if the court determines that the parenting plan is in the best interest of the child to do so.

73 (f) Except in extraordinary circumstance articulated in the court's order, a relocation may  
74 not be considered until an initial permanent parenting plan is established.

75 (g) In determining the effect of the relocation or proposed relocation on a child, any  
76 interviewing or questioning of the child shall be conducted in accordance with the provisions of  
77 Rule 17 of the Rules of Practice and Procedure for Family Court as promulgated by the Supreme  
78 Court of Appeals.

## PART 6. MISCELLANEOUS PROVISIONS.

### **§48-9-601. Access to a child's records.**

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

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

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

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

24           (b)(1) Each parent has full and equal access to a child's medical records and vital records  
25 absent a court order to the contrary. Neither parent may veto the access requested by the other  
26 parent. If necessary, either parent is required to authorize medical providers to release to the  
27 other parent copies of any and all information concerning medical care provided to the child which  
28 would otherwise be properly released to either parent.

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

31           (3) Each parent is required to consult with the other parent prior to any elective surgery  
32 being performed on the child, and in the event emergency medical procedures are undertaken for  
33 the child which require the parental consent of either parent, if time permits, the other parent shall  
34 be consulted, or if time does not permit such consultation, the other parent shall be promptly  
35 informed of the emergency medical procedures: *Provided*, That nothing contained herein alters  
36 or amends the law of this state as it otherwise pertains to physicians or health care facilities  
37 obtaining parental consent prior to providing medical care or performing medical procedures.

38           (c)(1) Each parent has full and equal access to a child's juvenile court records, process  
39 and pleadings, absent a court order to the contrary. Neither parent may veto any access  
40 requested by the other parent. Juvenile court records are limited to those records which are  
41 normally available to a parent of a child who is a subject of the juvenile justice system.

42 (2) Each parent has the right to be notified by the other party if the minor child is the victim  
43 of an alleged crime, including the name of the investigating law-enforcement officer or agency, if  
44 known. There is no duty to notify if the party to be notified is the alleged perpetrator.

**§48-9-603. Effect of enactment; operative dates.**

45 (a) The enactment of this article, formerly enacted as article eleven of this chapter during  
46 the second extraordinary session of the 1999 Legislature, is prospective in operation unless  
47 otherwise expressly indicated.

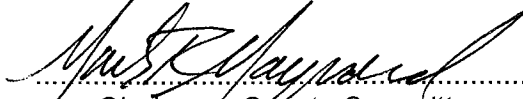
48 (b) The provisions of §48-9-202 of this code, insofar as they provide for parent education  
49 and mediation, became operative on January 1, 2000. Until that date, parent education and  
50 mediation with regard to custody issues were discretionary unless made mandatory under a  
51 particular program or pilot project by rule or direction of the Supreme Court of Appeals or a circuit  
52 court.

53 (c) The provisions of this article that authorize the court, in the absence of an agreement  
54 of the parents, to order an allocation of custodial responsibility and an allocation of significant  
55 decision-making responsibility became operative on January 1, 2000, at which time the primary  
56 caretaker doctrine was replaced with a system that allocates custodial and decision-making  
57 responsibility to the parents in accordance with this article. Any order entered prior to January 1,  
58 2000, based on the primary caretaker doctrine remains in full force and effect until modified by a  
59 court of competent jurisdiction.

60 (d) The amendments to this chapter made during the 2021 session of the Legislature shall  
61 become applicable upon the effective date of those amendments. Any order entered prior to the  
62 effective date of those amendments remains in full force and effect until modified by a court of  
63 competent jurisdiction.


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

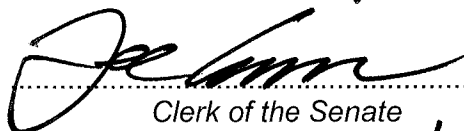
  
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Chairman, House Committee

  
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Chairman, Senate Committee

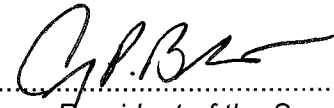
Originating in the House.

In effect ninety days from passage.

  
.....  
Clerk of the House of Delegates

  
.....  
Clerk of the Senate

  
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Speaker of the House of Delegates

  
.....  
President of the Senate

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

2021 APR 28 P 4: 18

FILED

The within is approved this the 28<sup>th</sup>  
day of April ..... 2021.

  
.....  
Governor

PRESENTED TO THE GOVERNOR

APR 22 2021

Time 2:53 pm