

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Committee Substitute

for

Senate Bill 243

BY SENATORS GAUNCH AND BOSO

[Originating in the Committee on the Judiciary;

reported on March 18, 2017]

1 A BILL to amend and reenact §48-6-301 of the Code of West Virginia, 1931, as amended; and to
2 amend and reenact §48-9-205 and §48-9-206 of said code, all relating to domestic
3 relations; removing language related to child support from code section governing the
4 awarding of spousal support and separate maintenance; directing court to consider certain
5 factors to decide amount and duration of spousal support and separate maintenance;
6 providing alimony guideline worksheet for calculating monthly payments; permitting court
7 to disregard or adjust guideline-based award for good cause shown; requiring court to
8 state reason for deviation on record and in writing; setting forth purpose of requiring court
9 to give reason for deviation; removing the 24-month timeframe for a description of the
10 allocation of caretaking and other parenting responsibilities performed from the matters
11 contained in permanent parenting plan; directing court to allocate custodial responsibility
12 so that custodial time spent with each parent achieves certain objectives; directing courts
13 to consider which parent will encourage and accept a positive relationship between child
14 and other parent and which parent is more likely to keep other parent involved in child's
15 life and activities; and eliminating language prohibiting court from considering divisions of
16 functions arising from temporary arrangements after separation in determining proportion
17 of caretaking functions each person previously performed for child.

Be it enacted by the Legislature of West Virginia:

1 That §48-6-301 of the Code of West Virginia, 1931, as amended, be amended and
2 reenacted; and that §48-9-205 and §48-9-206 of said code be amended and reenacted, all to
3 read as follows:

ARTICLE 6. PROPERTY SETTLEMENT OR SPARATION AGREEMENTS.

PART III. RELIEF IN ABSENCE OF AGREEMENT.

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

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

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

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

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

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

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

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

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

- 27 (7) The educational qualifications of each party;
- 28 (8) Whether either party has foregone or postponed economic, education or employment
29 opportunities during the course of the marriage;
- 30 (9) The standard of living established during the marriage;
- 31 (10) The likelihood that the party seeking spousal support, ~~child support or~~ and separate
32 maintenance can substantially increase his or her income-earning abilities within a reasonable
33 time by acquiring additional education or training;
- 34 (11) Any financial or other contribution made by either party to the education, training,
35 vocational skills, career or earning capacity of the other party;
- 36 (12) The anticipated expense of obtaining the education and training described in
37 subdivision (10) of this subsection;
- 38 (13) The costs of educating minor children;
- 39 (14) The costs of providing health care for each of the parties and their minor children;
- 40 (15) The tax consequences to each party;
- 41 (16) The extent to which it would be inappropriate for a party, because said party will be
42 the custodian of a minor child or children, to seek employment outside the home;
- 43 (17) The financial need of each party;
- 44 (18) The legal obligations of each party to support himself or herself and to support any
45 other person;
- 46 (19) Costs and care associated with a minor or adult child's physical or mental disabilities;
- 47 and
- 48 (20) Such other factors as the court deems necessary or appropriate to consider in order
49 to arrive at a fair and equitable grant of spousal support, ~~child support or~~ and separate
50 maintenance.
- 51 (c) The court shall calculate spousal support and separate maintenance based upon the
52 alimony guideline worksheet set out below:

Alimony Guideline Worksheet

Monthly Payment

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- 1. Payor's monthly adjusted gross income _____
- 2. Multiply Line 1 by 0.3 _____ X 0.3 = _____
- 3. Recipient's monthly adjusted gross income _____
- 4. Multiply Line 3 by 0.4 _____ X 0.4 = _____
- 5. Subtract Line 4 from Line 2 _____
- 6. Check a Box:

** Line 5 is positive number. Payor pays this monthly alimony amount.

** Line 5 is zero or negative. No monthly alimony is paid.

(d) If the court finds, for good cause shown, that the spousal support and separate maintenance calculated by the guidelines in subsection (c) of this section is inappropriate for a particular case, the court may either disregard the guideline-based award or adjust the guideline-based award based on the factors in subsection (b) of this section. In either case, the reason for the deviation and the amount of the calculated guidelines award must be stated on the record and in writing on the worksheet or in the order. Such findings clarify the basis of the order if appealed or modified in the future.

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

§48-9-205. Permanent parenting plan.

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

5 (1) The name, address and length of residence of any adults with whom the child has lived
6 for one year or more, or in the case of a child less than one year of age, any adults with whom

7 the child has lived since the child's birth;

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

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

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

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

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

19 (7) Required financial information; and

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

22 The court shall maintain the confidentiality of any information required to be filed under
23 this section when the person giving that information has a reasonable fear of domestic abuse and
24 disclosure of the information would increase that fear.

25 (b) The court shall develop a process to identify cases in which there is credible
26 information that child abuse or neglect as defined in section three, article one, chapter forty-nine
27 of this code or domestic violence as defined in section two hundred two, article twenty-seven of
28 this chapter has occurred. The process shall include assistance for possible victims of domestic
29 abuse in complying with subdivision (6), subsection (a) of this section and referral to appropriate
30 resources for safe shelter, counseling, safety planning, information regarding the potential impact
31 of domestic abuse on children and information regarding civil and criminal remedies for domestic
32 abuse. The process shall also include a system for ensuring that jointly submitted parenting plans

33 that are filed in cases in which there is credible information that child abuse or domestic abuse
34 has occurred receive the court review that is mandated by subsection (b), section two hundred
35 one of this article.

36 (c) Upon motion of a party and after consideration of the evidence, the court shall order a
37 parenting plan consistent with the provisions of sections two hundred six, two hundred seven, two
38 hundred eight and two hundred nine of this article, containing:

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

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

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

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

47 (3) A provision consistent with section two hundred two of this article for resolution of
48 disputes that arise under the plan, and remedies for violations of the plan; and

49 (4) A plan for the custody of the child should one or both of the parents as a member of
50 the National Guard, a reserve component or an active duty component be mobilized, deployed or
51 called to active duty.

52 (d) A parenting plan may, at the court's discretion, contain provisions that address matters
53 that are expected to arise in the event of a party's relocation or provide for future modifications in
54 the parenting plan if specified contingencies occur.

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

1 (a) Unless otherwise resolved by agreement of the parents under section two hundred
2 one of this article or unless manifestly harmful to the child, the court shall allocate custodial
3 responsibility so that, except to the extent required under section two hundred nine of this article,

4 ~~the proportion of custodial time the child spends with each parent approximates the proportion of~~
5 ~~time each parent spent performing caretaking functions for the child prior to the parents'~~
6 ~~separation or, if the parents never lived together, before the filing of the action, except to the~~
7 ~~extent required under section 9-209 may be expected or necessary to achieve any of the following~~
8 objectives:

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

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

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

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

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

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

29 (7) To apply the principles set forth in subsection (d), section four hundred three of this

30 article if one parent relocates or proposes to relocate at a distance that will impair the ability of a
31 parent to exercise the amount of custodial responsibility that would otherwise be ordered under
32 this section; ~~and~~

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

34 (9) To consider which parent will encourage and accept a positive relationship between
35 the child and the other parent, including which parent is more likely to keep the other parent
36 involved in the child's life and activities.

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

42 ~~(e)~~ (b) If the court is unable to allocate custodial responsibility under subsection (a) of this
43 section because the allocation under said subsection would be manifestly harmful to the child, or
44 because there is no history of past performance of caretaking functions, as in the case of a
45 newborn, or because the history does not establish a pattern of caretaking sufficiently dispositive
46 of the issues of the case, the court shall allocate custodial responsibility based on the child's best
47 interest, taking into account the factors in considerations that are set forth in this section and in
48 section two hundred nine and subsection (d), section four hundred three of this article and
49 preserving to the extent possible this section's priority on the share of past caretaking functions
50 each parent performed.

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

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.