

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

Senate Bill 243

BY SENATORS GAUNCH AND BOSO

[Introduced February 10, 2017; referred
to the Committee on the Judiciary]

1 A BILL to repeal §44-10-4 of the Code of West Virginia, 1931, as amended; to amend and reenact
 2 §48-6-301 of said code; and to amend and reenact §48-9-205, §48-9-206 and §48-9-402
 3 of said code, all relating to domestic relations; relief in absence of an agreement; repealing
 4 language authorizing a minor over the age of fourteen years to nominate a guardian;
 5 allocation of responsibilities of the parties in parenting plans; spousal support; providing
 6 an alimony guideline worksheet calculation for determining monthly payments; removing
 7 from the matters considered in a permanent parenting plan a description of the allocation
 8 of caretaking and other parenting responsibilities performed by each person during the
 9 twenty-four months preceding the filing of an action; and requiring a substantive,
 10 affirmative and independent analysis by the court as to which parent is more likely to keep
 11 the noncustodial parent involved in the child's life prospectively, and an evidentiary
 12 evaluation on the issue as to whether a parent has engaged in alienation of the affections
 13 of a child toward the other parent, either pre-or post-divorce when allocating custodial
 14 responsibility.

Be it enacted by the Legislature of West Virginia:

1 That §44-10-4 of the Code of West Virginia, 1931, as amended, be repealed; that §48-6-
 2 301 of said code be amended and reenacted; and that §48-9-205, §48-9-206 and §48-9-402 of
 3 said code be amended and reenacted, all to read as follows:

ARTICLE 6. APPENDICES.

PART 3. RELIEF IN ABSENCE OF AGREEMENT.

§48-6-301. Factors considered in awarding spousal support, child support or 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 of spousal
7 support, child support or separate maintenance, if any, to be ordered under the provisions of parts
8 5 and 6, article five of this chapter, as a supplement to or in lieu of the separation agreement:

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

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

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

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

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

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

26 (7) The educational qualifications of each party;

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

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

30 (10) The likelihood that the party seeking spousal support, child support or separate
31 maintenance can substantially increase his or her income-earning abilities within a reasonable
32 time by acquiring additional education or training;

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

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

37 (13) The costs of educating minor children;

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

39 (15) The tax consequences to each party;

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

42 (17) The financial need of each party;

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

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

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

49 (c) As an alternative to the provisions set forth in subsections (a) and (b), the court may
50 order spousal support based upon the Alimony Guideline Worksheet set out below:

51 Alimony Guideline Worksheet

52 Monthly payment

53 (Use Only One Box)

54

55 If there are no children for whom support is paid, then use lines 1 through 6.

- 56 1. Payor's Gross monthly income
- 57 2. Multiply Line 1 by 0.3 X 0.3 =
- 58 3. Recipient's Gross Monthly Income
- 59 4. Multiply Line 3 by 0.5 X 0.5 =
- 60 5. Subtract Line 4 from Line 2
- 61 6. Check a Box:
- 62 ** Line 5 is positive number. Payor pays this monthly alimony amount.
- 63 ** Line 5 is zero or negative. No monthly alimony is paid.
- 64 OR

65 If there are children for whom child support is paid, use Lines A through F.

- 66 A. Payor's Gross monthly Income
- 67 B. Multiply Line A by 0.28 = X 0.28 =
- 68 C. Recipient's Gross Monthly Income
- 69 D. Multiply Line C by 0.58 X0.58 =
- 70 E. Subtract Line D form Line B
- 71 F. Check a Box:
- 72 ** Line E is positive Number. Payor pays this monthly amount.
- 73 ** Line E is zero or negative. No monthly alimony is paid.

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)~~ (3) A description of the work and child-care schedules of any person seeking an
14 allocation of custodial responsibility, and any expected changes to these schedules in the near
15 future;

16 ~~(5)~~ (4) A description of the child's school and extracurricular activities;

17 ~~(6)~~ (5) A description of any of the limiting factors as described in section two hundred nine
18 of this article that are present, including any restraining orders against either parent to prevent
19 domestic or family violence, by case number and jurisdiction;

20 ~~(7)~~ (6) Required financial information; and

21 ~~(8)~~ (7) A description of the known areas of agreement and disagreement with any other
22 parenting plan submitted in the case.

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

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

33 abuse. The process shall also include a system for ensuring that jointly submitted parenting plans
34 that are filed in cases in which there is credible information that child abuse or domestic abuse
35 has occurred receive the court review that is mandated by subsection (b), section two hundred
36 one of this article.

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

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

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

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

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

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

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

53 (d) A parenting plan may, at the court's discretion, contain provisions that address matters
54 that are expected to arise in the event of a party's relocation, or provide for future modifications
55 in 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 9-201 or unless
2 manifestly harmful to the child, the court shall allocate custodial responsibility so that the

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

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

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

13 ~~(3) (2)~~ To keep siblings together when the court finds that doing so is necessary to their
14 welfare;

15 ~~(4) (3)~~ To protect the child's welfare when, under an otherwise appropriate allocation, the
16 child would be harmed because of a gross disparity in the quality of the emotional attachments
17 between each parent and the child or in each parent's demonstrated ability or availability to meet
18 a child's needs;

19 ~~(5) (4)~~ To take into account any prior agreement of the parents that, under the
20 circumstances as a whole including the reasonable expectations of the parents in the interest of
21 the child, would be appropriate to consider;

22 ~~(6) (5)~~ To avoid an allocation of custodial responsibility that would be extremely impractical
23 or that would interfere substantially with the child's need for stability in light of economic, physical
24 or other circumstances, including the distance between the parents' residences, the cost and
25 difficulty of transporting the child, the parents' and child's daily schedules, and the ability of the
26 parents to cooperate in the arrangement;

27 ~~(7) (6)~~ To apply the principles set forth in 9-403 (d) of this article if one parent relocates or
28 proposes to relocate at a distance that will impair the ability of a parent to exercise the amount of

29 custodial responsibility that would otherwise be ordered under this section; and

30 ~~(8)~~ (7) To consider the stage of a child's development.

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

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

44 (d) In determining how to schedule the custodial time allocated to each parent, the court
45 shall take account of the economic, physical and other practical circumstances such as those
46 listed in subdivision ~~(6)~~ (5), subsection (a) of this section.

47 (e) In addition to the matters considered by the court in subdivisions (1) through (7) of
48 subsection (a) of this section, the court, upon proper motion, shall consider:

49 (1) A substantive, affirmative and independent analysis as to which parent is more likely
50 to keep the noncustodial parent involved in the child's life prospectively; and

51 (2) An evidentiary evaluation on the issue as to whether a parent has engaged in alienation
52 of the affections of a child toward the other parent, either pre-or post-divorce.

§48-9-402. Modification without showing of changed circumstances.

1 (a) The court shall modify a parenting plan in accordance with a parenting agreement,

2 unless it finds that the agreement is not knowing and voluntary or that it would be harmful to the
3 child.

4 (b) The court may modify any provisions of the parenting plan without the showing of
5 change circumstances required by subsection 9-401(a) if the modification is in the child's best
6 interests, and the modification:

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

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

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

14 (c) Evidence of repeated filings of fraudulent reports of domestic violence or child abuse
15 is admissible in a domestic relations action between the involved parties when the allocation of
16 custodial responsibilities is in issue, and the fraudulent accusations may be a factor considered
17 by the court in making the allocation of custodial responsibilities.

NOTE: The purpose of this bill is to repeal statutory language authorizing a minor over age of fourteen years to nominate a guardian. In domestic relation matters, the bill deals with; allocation of responsibilities of the parties in parenting plans and spousal support. It provides an alimony guideline worksheet calculation for determining monthly payments. The bill removes from the matters considered in a permanent parenting plan a description of the allocation of care taking and other parenting responsibilities performed by each person during the twenty-four months preceding the filing of an action and requires a substantive, affirmative and independent analysis by the court as to which parent is more likely to keep the noncustodial parent involved in the child's life prospectively, and an evidentiary evaluation on the issue as to whether a parent has engaged in alienation of the affections of a child toward the other parent, either pre-or post-divorce when allocating custodial responsibility.

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