

# **WEST VIRGINIA LEGISLATURE**

**2018 REGULAR SESSION**

**Committee Substitute**

**for**

**Senate Bill 51**

BY SENATORS GAUNCH AND CLINE

[Originating in the Committee on the Judiciary;

reported on January 24, 2018]



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 removing the 24-month time frame for a description of the allocation of caretaking and  
7 other parenting responsibilities performed from the matters contained in permanent  
8 parenting plan; clarifying that the court may accommodate the preferences of a child 14  
9 years of age and older if the court determines it is in the best interests of the child; directing  
10 court to allocate custodial responsibility so that custodial time spent with each parent  
11 achieves certain objectives; directing courts to consider which parent will encourage and  
12 accept a positive relationship between child and other parent and which parent is more  
13 likely to keep other parent involved in child's life and activities; and eliminating language  
14 prohibiting court from considering divisions of functions arising from temporary  
15 arrangements after separation in determining proportion of caretaking functions each  
16 person previously performed for child.

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

**ARTICLE 6. PROPERTY SETTLEMENT OR SEPARATION 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 V and VI, §48-5-1 *et seq.* of this code 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 §48-7-6 *et seq.* of this code, 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 §48-6-  
37 301(b)(10) of this code;

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~~ that party will  
42 be 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~~ Any other factors as the court ~~deems~~ determines necessary or appropriate to  
49 consider in order to arrive at a fair and equitable grant of spousal support, ~~child support or~~ and  
50 separate maintenance.

**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  
6 lived for one year or more, or in the case of a child less than one year of age, any adults with  
7 whom 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 §48-9-103 of this code;

10 (3) A description of the allocation of caretaking and other parenting responsibilities  
11 performed by each person named in §48-9-205(a)(1) and §48-9-205(a)(2) of this code; ~~during the~~  
12 ~~twenty-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 §48-9-209 of this code that  
17 are present, including any restraining orders against either parent to prevent domestic or family  
18 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,  
24 and 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 §49-1-201 of this code or domestic violence  
27 as defined in §48-27-202 of this code has occurred. The process shall include assistance for  
28 possible victims of domestic abuse in complying with §48-9-205(a)(6) of this code and referral to

29 appropriate resources for safe shelter, counseling, safety planning, information regarding the  
30 potential impact of domestic abuse on children, and information regarding civil and criminal  
31 remedies for domestic abuse. The process shall also include a system for ensuring that jointly  
32 submitted parenting plans that are filed in cases in which there is credible information that child  
33 abuse or domestic abuse has occurred receive the court review that is mandated by §48-9-202(b)  
34 of this code.

35 (c) Upon motion of a party and after consideration of the evidence, the court shall order a  
36 parenting plan consistent with the provisions of §48-9-206 through §48-9-209 of this code,  
37 containing:

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

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

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

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

46 (3) A provision consistent with §48-9-202 of this code for resolution of disputes that arise  
47 under the plan and remedies for violations of the plan; and

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

51 (d) A parenting plan may, at the court's discretion, contain provisions that address matters  
52 that are expected to arise in the event of a party's relocation, or provide for future modifications  
53 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 §48-9-201 of this code  
2 or unless ~~manifestly~~ harmful to the child, the court shall allocate custodial responsibility so that,  
3 except to the extent required under §48-9-209 of this code, ~~the proportion of~~ custodial time the  
4 child spends with each parent ~~approximates the proportion of time each parent spent performing~~  
5 ~~caretaking functions for the child prior to the parents' separation or, if the parents never lived~~  
6 ~~together, before the filing of the action, except to the extent required under section 9-209~~ may be  
7 expected or necessary to achieve any of the following objectives:

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

10 (2) To accommodate, if the court determines it is in the best interests of the child, the firm  
11 and reasonable preferences of a child who is 14 years of age or older, and with regard to a child  
12 under 14 years of age, but sufficiently matured that he or she can intelligently express a voluntary  
13 preference for one parent, to give that preference ~~such~~ the weight as warranted by the  
14 ~~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 §48-9-403(d) of this code if one parent relocates or  
30 proposes to relocate at a distance that will impair the ability of a parent to exercise the amount of  
31 custodial responsibility that would otherwise be ordered under this section; ~~and~~

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

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

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

41 ~~(e)~~ (b) If the court is unable to allocate custodial responsibility under §48-9-206(a) of this  
42 code because the allocation under said §48-9-206(a) of this code would be manifestly harmful to  
43 the child, or because there is no history of past performance of caretaking functions, as in the  
44 case of a newborn, or because the history does not establish a pattern of caretaking sufficiently  
45 dispositive of the issues of the case, the court shall allocate custodial responsibility based on the  
46 child's best interest, taking into account the factors in considerations that are set forth in this  
47 section and in §48-9-209 and §48-9-403(d) of this code and preserving to the extent possible this  
48 section's priority on the share of past caretaking functions each parent performed.

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