

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Introduced

Senate Bill 463

BY SENATORS SMITH, RUCKER, GRADY, SYPOLT,
MAYNARD, AZINGER, PHILLIPS, TAKUBO, WOODRUM,
TARR, AND ROBERTS

[Introduced January 21, 2022; referred to
the Committee on the Judiciary]

1 A BILL amend and reenact §48-1-239 and §48-1-241a of the Code of West Virginia, 1931, as
 2 amended; and to amend and reenact §48-9-102, §48-9-203, and §48-9-205 of said code,
 3 all relating to Best Interests of the Child Protection Act of 2022; establishing the
 4 presumption that co-equal shared legal and physical custody of children in cases of
 5 divorce to be in the best interests of the children and families; requiring that temporary
 6 parenting plans and permanent parenting plans consider the presumption of co-equal
 7 shared legal and physical custody is in the best interests of a child; and relating generally
 8 to the public policy recognition and preservation of the fundamental constitutional rights of
 9 all parents to raise their own children and that it is presumptively in the best interest of
 10 children to be raised by both of their parents equally.

Be it enacted by the Legislature of West Virginia:

CHAPTER 48. DOMESTIC RELATIONS.

ARTICLE 1. GENERAL PROVISIONS; DEFINITIONS.

11 §48-1-239. Shared parenting defined.

12 (a) "Shared parenting" means ~~either basic shared parenting or extended shared parenting.~~

13 ~~(b) "Basic shared parenting" means an arrangement under which one parent keeps a child~~
 14 ~~or children overnight for less than 35 percent of the year and under which both parents contribute~~
 15 ~~to the expenses of the child or children in addition to the payment of child support.~~

16 ~~(c) "Extended shared parenting" means an arrangement under which each parent keeps~~
 17 ~~a child or children overnight for more than 35 percent of the year, with a presumption in favor of~~
 18 ~~co-equal joint custody and equally divided parenting time, and under which both parents~~
 19 ~~contribute to the expenses of the child or children in addition to the payment of child support:~~
 20 ~~Provided, That physical custody shall be shared by the parents in such a way as to assure a child~~
 21 ~~frequent and continued contact with both parents.~~

22 ~~(b) It is the public policy of the state of West Virginia to recognize the presumption,~~

23 overwhelmingly supported by social science research, that co-equal joint custody and equally
24 divided parenting time is in the best interest of children.

25 (d) (c) In any case where, in the absence of an agreement between the parents, a court
26 does not orders shared parenting; the order shall be in writing and include specific findings of fact
27 supporting the Court’s determination.

§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. For the purposes of this section, and any other provision within Chapter 48 of the Code
7 of West Virginia, the terms “frequent and continuing contact with both parents” shall be presumed
8 to mean co-equal joint physical and legal custody and further presumed to be in the best interest
9 of the child or children, such presumption being rebuttable as set forth in §48-9-203 and §48-9-
10 205 of this code.

§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, with a presumption in favor of
- 7 co-equal joint custody and equally divided parenting time;
- 8 (5) Caretaking and parenting relationships by adults who love the child, know how to
- 9 provide for the child’s needs, and who place a high priority on doing so;

- 10 (6) Security from exposure to physical or emotional harm;
- 11 (7) Expeditious, predictable decision-making and avoidance of prolonged uncertainty
12 respecting arrangements for the child's care and control; and
- 13 (8) Meaningful contact between a child and his or her siblings, including half-siblings.
- 14 (b) A secondary objective of article is to achieve fairness between the parents.
- 15 (c) It is the public policy of the state of West Virginia to recognize the presumption,
16 overwhelmingly supported by social science research, that co-equal joint custody and equally
17 divided parenting time is in the best interest of children.

§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~~ Provided, That with
20 regard to establishing temporary child custody and parenting time, there is a rebuttable
21 presumption that co-equal joint custody is in the best interest of the child or children.

22 (A) The presumption that co-equal joint custody is in the best interest of the child or
23 children may be rebutted:

24 (i) If the court finds by clear and convincing evidence that co-equal joint custody is not in
25 the best interest of the child or children;

26 (ii) If the parties have consensually reached an agreement on all issues related to the
27 physical and legal custody of the child and parenting time allocation;

28 (iii) If one of the parties does not request sole, primary, or joint custody; or

29 (iv) If one of the parties has committed an act of domestic violence against the party
30 making the allegation or a family or household member of either party and such allegations are
31 or have been proven in an adversarial evidentiary hearing on the record by a preponderance of
32 the evidence;

33 (v) If one of the parties is a convicted sex offender who is required to register under any
34 state or federal sex offender statute;

35 (vi) The establishment of any of the limiting factors set forth in §48-9-209 of the Code of
36 West Virginia proven in an adversarial evidentiary hearing on the record by a preponderance of
37 the evidence.

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

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

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

44 (5) Restraining orders, if applicable; and

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

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

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

53 (e) So long as the parties have not consensually agreed otherwise, nor that any of the
54 issues set forth in §§48-9-203(b)(1)(A)(iv), 48-9-203(b)(1)(A)(v), or 48-9-203(b)(1)(A)(vi) of this
55 code have been established, the court shall to the maximum extent possible establish a temporary
56 parenting plan granting the parent with less than co-equal joint custody the maximum amount of
57 parenting time possible, including, but not limited to, the child or children residing with the less
58 than co-equal joint custody parent and any siblings/half-siblings during school summer vacation
59 months and on other extended holidays and scheduled vacations.

60 (f) Modifications of temporary parenting plans under §§48-9-401, 48-9-402, or 48-9-403
61 of this code, shall all be subject to the presumptions and goals set forth in this §48-9-203 of this
62 code.

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

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

15 (6) A description of any of the limiting factors as described in §48-9-209 of this code that
16 are present, including any restraining orders against either parent to prevent domestic or family
17 violence, by case number and jurisdiction;

18 (7) Required financial information; and

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

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

24 (b) The court shall develop a process to identify cases in which there is credible
25 information that child abuse or neglect as defined in §49-1-201 of this code or domestic violence
26 as defined in §48-27-202 of this code has occurred. The process shall include assistance for
27 possible victims of domestic abuse in complying with §48-9-205(a)(6) of this code and referral to
28 appropriate resources for safe shelter, counseling, safety planning, information regarding the
29 potential impact of domestic abuse on children, and information regarding civil and criminal
30 remedies for domestic abuse. The process shall also include a system for ensuring that jointly
31 submitted parenting plans that are filed in cases in which there is credible information that child

32 abuse or domestic abuse has occurred receive the court review that is mandated by §48-9-202(b)
33 of this code.

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

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

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

41 (B) A formula or method for determining a schedule in sufficient detail that, if necessary,
42 the schedule can be enforced in subsequent proceedings by the court: Provided, That with regard
43 to establishing permanent child custody and parenting time, there is a rebuttable presumption that
44 co-equal joint custody is in the best interest of the child or children.

45 (i) The presumption that co-equal joint custody is in the best interest of the child or children
46 may be rebutted:

47 (I) If the court finds by clear and convincing evidence that co-equal joint custody is not in
48 the best interest of the child or children;

49 (II) If the parties have consensually reached an agreement on all issues related to the
50 physical and legal custody of the child and parenting time allocation;

51 (III) If one of the parties does not request sole, primary, or joint custody; or

52 (IV) If one of the parties has committed an act of domestic violence against the party
53 making the allegation or a family or household member of either party and such allegations are
54 or have been proven in an adversarial evidentiary hearing on the record by a preponderance of
55 the evidence;

56 (V) If one of the parties is a convicted sex offender who is required to register under any
57 state or federal sex offender statute;

58 (VI) The establishment of any of the limiting factors set forth in §48-9-209 of the Code of
59 West Virginia proven in an adversarial evidentiary hearing on the record by a preponderance of
60 the evidence.

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

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

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

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

71 (e) So long as the parties have not consensually agreed otherwise, nor that any of the
72 issues set forth in §§48-9-205(c)(1)(C)(i)(IV), 48-9-205(c)(1)(C)(i)(V), or 48-9-205(c)(1)(C)(i)(VI)
73 of this code have been established, the court shall to the maximum extent possible establish a
74 permanent parenting plan granting the parent with less than co-equal joint custody the maximum
75 amount of parenting time possible, including, but not limited to, the child or children residing with
76 the less than co-equal joint custody parent and any siblings/half-siblings during school summer
77 vacation months and on other extended holidays and scheduled vacations.

78 (f) Modifications of permanent parenting plans under §§48-9-401, 48-9-402, or 48-9-403
79 of this code, shall all be subject to the presumptions and goals set forth in this §48-9-203 of this
80 code.

NOTE: The purpose of this bill, The Best Interests of the Child Protection Act of 2022, is to establish a presumption that co-equal shared legal and physical custody of children, in cases of divorce is presumed to be in the best interests of the child and to establish the public policy recognition and preservation of the fundamental constitutional rights of all parents to raise their own children and that it is presumptively in the best interest of children

to be raised by both of their parents equally.

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