

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 3139

By Delegate C. Pritt

[Introduced January 30, 2023; Referred to the
Committee on Senior, Children, and Family Issues
then the Judiciary]

1 A BILL to amend and reenact §48-9-401 of the Code of West Virginia, 1931, as amended, relating
2 to modifications of a parenting plan order for substance abuse.

Be it enacted by the Legislature of West Virginia:

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

§48-9-401. Modification upon showing of changed circumstances or harm.

1 (a) Except as provided in §48-9-402 or §48-9-403 of this code, a court shall modify a
2 parenting plan order if it finds, on the basis of facts that were not known or have arisen since the
3 entry of the prior order and were not anticipated in the prior order, that a substantial change has
4 occurred in the circumstances of the child or of one or both parents and a modification is
5 necessary to serve the best interests of the child.

6 (b) In exceptional circumstances, a court may modify a parenting plan if it finds that the
7 plan is not working as contemplated and in some specific way is manifestly harmful to the child,
8 even if a substantial change of circumstances has not occurred: Provided, That the parenting plan
9 modified due to a parent's substance use disorder must be fully restored upon that parent's
10 successful completion of a substance abuse rehabilitation program.

11 (c) Unless the parents have agreed otherwise, the following circumstances do not justify a
12 significant modification of a parenting plan except where harm to the child is shown:

13 (1) Circumstances resulting in an involuntary loss of income, by loss of employment or
14 otherwise, affecting the parent's economic status;

15 (2) A parent's remarriage or cohabitation, except under the circumstances set forth in §48-
16 9-209(f) of this code; and

17 (3) Choice of reasonable caretaking arrangements for the child by a legal parent, including
18 the child's placement in day care.

19 (d) For purposes of subsection (a) of this section, the occurrence or worsening of a limiting

20 factor, as defined in §48-9-209(a) of this code, after a parenting plan has been ordered by the court
21 constitutes a substantial change of circumstances and measures shall be ordered pursuant to
22 §48-9-209 of this code to protect the child or the child's parent.

NOTE: The purpose of this bill relates to modifications of a parenting plan order for substance abuse.

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