

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

House Bill 4252

BY DELEGATES CAMPBELL, LONGSTRETH, ELDRIDGE,
TRECOST, WAGNER, R. SMITH, ZATEZALO AND IHLE

[Introduced January 25, 2016; Referred
to the Committee on the Judiciary.]

1 A BILL to amend and reenact §48-9-206 of the Code of West Virginia, 1931, as amended, relating
2 to custodial orders in suits affecting the parent-child relationship; requiring the courts to
3 allocate custodial time equally between parents, unless doing so is inconsistent with the
4 best interests of the child.

Be it enacted by the Legislature of West Virginia:

1 That §48-9-206 of the Code of West Virginia, 1931, as amended, be amended and
2 reenacted, to read as follows:

ARTICLE 9. ALLOCATION OF RESPONSIBILITIES.

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

1 (a) Equal Parenting Order.-- Unless otherwise resolved by agreement of the parents under
2 section 201 of this article, or unless inconsistent with the best interests of the child, the court shall
3 enter an order providing each parent with equal periods of custodial time.

4 (b) Periods of Custody Under Equal Parenting Order.-- A court may enter an order under
5 this section providing that each parent has the right to custody of the child under one of the
6 following arrangements:

7 (1) An arrangement under which each parent has custody of the child for one week at a
8 time, alternating weeks of custody with the other parent, with no modification based on holidays
9 that occur during each week, but subject to modification based on agreement by each parent; or

10 (2) An arrangement under which each parent has custody of the child for two weeks at a
11 time, alternating two-week periods of custody with the other parent, with one weeknight of custody
12 exercised during each week of the period by the parent not otherwise in custody during that
13 period, and subject to modification based on agreement by each parent; or

14 (3) An arrangement under which each parent has custody of the child for four weeks at a
15 time, alternating four-week periods of custody with the other parent, with one weeknight of custody
16 exercised during each week of the period by the parent not otherwise in custody during that
17 period, and subject to modification based on agreement by each parent; or

18 (4) An arrangement under which each parent has custody of the child under a schedule
19 specified by the court: *Provided, That:*

20 (A) The schedule may not grant custody to a parent for a number of days each year that
21 exceeds the number of days of custody granted to the other parent for that year by more than five
22 days; and

23 (B) The schedule must alternate on a yearly basis the parent who is granted custody for
24 a number of days for the year that exceeds the number of days granted to the other parent.

25 (c) A court shall provide parents with the opportunity to select by agreement one of the
26 arrangements described by subdivisions (1), (2), or (3) of subsection b, subject to the court's
27 determination that the selected arrangement is in the best interest of the child. If the parents do
28 not agree, the court may order any arrangement described in those subsections.

29 ~~(a) (d) Unless otherwise resolved by agreement of the parents under section 9-201 or~~
30 ~~unless manifestly harmful to the child, the court shall allocate custodial responsibility so that the~~
31 ~~proportion of custodial time the child spends with each parent approximates the proportion of time~~
32 ~~each parent spent performing caretaking functions for the child prior to the parents' separation or,~~
33 ~~if the parents never lived together, before the filing of the action, except to the extent required~~
34 ~~under section 9-209 or necessary to achieve any of the following objectives: If the court~~
35 ~~determines that an equal parenting arrangement is not in the best interests of the child, the court~~
36 ~~shall enter an order allocating custodial responsibility that the court determines is in the best~~
37 ~~interest of the child, based on the following objectives:~~

38 (1) To permit the child to have a relationship with each parent who has performed a
39 reasonable share of parenting functions, taking into account the proportion of custodial time each
40 parent spent performing caretaking functions for the child prior to the parents' separation;

41 (2) To accommodate the firm and reasonable preferences of a child who is fourteen years

42 of age or older, and with regard to a child under fourteen years of age, but sufficiently matured
43 that he or she can intelligently express a voluntary preference for one parent, to give that
44 preference such weight as circumstances warrant;

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

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

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

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

59 (7) To apply the principles set forth in 9-403(d) of this article if one parent relocates or
60 proposes to relocate at a distance that will impair the ability of a parent to exercise the amount of
61 custodial responsibility that would otherwise be ordered under this section; and

62 (8) To consider the stage of a child's development.

63 ~~(b) In determining the proportion of caretaking functions each parent previously performed~~
64 ~~for the child under subsection (a) of this section, the court shall not consider the divisions of~~
65 ~~functions arising from temporary arrangements after separation, whether those arrangements are~~

66 consensual or by court order. The court may take into account information relating to the
67 temporary arrangements in determining other issues under this section.

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

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

NOTE: The purpose of this bill is to require the courts to allocate custodial time equally between parents, in suits affecting the parent-child relationship, unless doing so is inconsistent with the best interest of the child.

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