

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Introduced

House Bill 4569

BY DELEGATES WILLIAMS, FLEISCHAUER, FLUHARTY,

DISERIO, PUSHKIN, CANESTRARO AND ISNER

[Introduced February 13, 2018; Referred
to the Committee on the Judiciary.]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
 2 designated §48-10A-101, §48-10A-102, §48-10A-201, §48-10A-202, §48-10A-203, §48-
 3 10A-204, §48-10A-301, §48-10A-401, §48-10A-402, §48-10A-403, §48-10A-501, §48-
 4 10A-502, §48-10A-601, §48-10A-602, §48-10A-701, §48-10A-702, §48-10A-801, §48-
 5 10A-802, §48-10A-901, §48-10A-902, §48-10A-1001, §48-10A-1002, §48-10A-1101, and
 6 §48-10A-1201; and to amend and reenact §51-2A-2 of said code, all relating to the
 7 creation of a statutory right to petition circuit and family courts in West Virginia for sibling
 8 visitation with minor children.

Be it enacted by the Legislature of West Virginia:

CHAPTER 48. DOMESTIC RELATIONS.

ARTICLE 10A. SIBLING VISITATION.

§48-10A-101. Legislative findings.

1 The Legislature finds that circumstances arise where it is appropriate for circuit courts or
 2 family courts of this state to order that siblings of minor children may exercise visitation with those
 3 minor children. The Legislature further finds that in those situations, as in all situations involving
 4 minor children, the best interests of the minor child or children are the paramount consideration.

§48-10A-102. Legislative intent.

1 It is the express intent of the Legislature that the provisions for sibling visitation that are
 2 set forth in this article are exclusive.

§48-10A-201. Applicability of definitions.

1 For the purposes of this article the words or terms defined in this article, and any variation
 2 of those words or terms required by the context, have the meanings ascribed to them in this
 3 article. These definitions are applicable unless a different meaning clearly appears from the
 4 context.

§48-10A-202. Child defined.

1 “Child” means a person under the age of 18 years who has not been married or otherwise

2 emancipated.

§48-10A-203. Sibling defined.

1 “Sibling” means a blood brother or sister, a half brother or sister, a step brother or sister,
2 or an adoptive brother or sister who is petitioning the court for sibling visitation rights and is at
3 least 18 years of age.

§48-10A-204. Ancillary definitions.

1 “Blood brother or sister” means a male or female that have both a biological mother and
2 a biological father in common with another person.

3 “Half brother or sister” means a male or female that have the same biological father or the
4 same biological mother, but not both biological parents in common with another person.

5 “Step brother or sister” means a male or female that is the son or daughter of one’s
6 stepparent.

7 “Adoptive brother or sister” means a male or female who has become the son or daughter
8 of a parent by virtue of legal adoption.

9 “Stepparent” means the spouse of one’s mother or father by a later marriage.

§48-10A-301. Persons who may apply for sibling visitation; venue.

1 A sibling of a minor child residing in this state may, by motion or petition, make application
2 to the circuit court or family court of the county in which that minor child resides for an order
3 granting visitation with his or her sibling.

§48-10A-401. Motion for sibling visitation when action for divorce, custody, legal separation, annulment or establishment of paternity is pending.

1 (a) The provisions of this section apply to any pending actions for divorce, custody, legal
2 separation, annulment or establishment of paternity.

3 (b) After the commencement of the action, a sibling seeking visitation with the minor child
4 may, by motion, apply to the family court for an order granting visitation. A sibling moving for an
5 order of visitation may not be afforded party status, but may be called as a witness by the court,

6 and is subject to cross-examination by the parties.

7 (c) Motions or petitions for sibling visitation shall be filed and heard in the family court
8 except when an abuse or neglect proceeding involving the minor child or children is pending
9 before the circuit court, in which case the motion or petition shall be filed and heard in the circuit
10 court.

§48-10A-402. Petition for sibling visitation when action for divorce, custody, legal separation, annulment or establishment of paternity is not pending.

1 (a) The provisions of this section apply when no proceeding for divorce, custody, legal
2 separation, annulment or establishment of paternity is pending.

3 (b) A sibling may petition the family court for an order granting visitation with the minor
4 child, regardless of whether the parents of the minor child are married. If the sibling filed a motion
5 for visitation in a previous proceeding for divorce, custody, legal separation, annulment or
6 establishment of paternity, and a decree or final order has issued in that earlier action, the sibling
7 may petition for visitation if the circumstances have materially changed since the entry of the
8 earlier order or decree.

9 (c) When a petition under this section is filed, the matter shall be styled “In re sibling
10 visitation of [petitioner's(s') name(s)]”.

11 (d) Motions or petitions for sibling visitation shall be filed and heard in the family court
12 except when an abuse or neglect proceeding involving the minor child or children is pending
13 before the circuit court, in which case the motion or petition shall be filed and heard in the circuit
14 court.

§48-10A-403. Appointment of guardian ad litem for the minor child.

1 When a motion or petition is filed seeking sibling visitation, the court, on its own motion or
2 upon the motion of a party or sibling, may appoint a guardian ad litem for the minor child or
3 children to assist the court in determining the best interests of the minor child or children regarding
4 sibling visitation.

§48-10A-501. Necessary findings for grant of reasonable visitation to a sibling.

1 The circuit court or family court shall grant reasonable visitation to a sibling upon a finding
2 that visitation would be in the best interests of the minor child or children and would not
3 substantially interfere with the parent-child relationship.

§48-10A-502. Factors to be considered in making a determination as to a grant of visitation
to a sibling.

1 In making a determination on a motion or petition the court shall consider the following
2 factors:

3 (1) The age of the minor child;

4 (2) The relationship between the minor child and the sibling;

5 (3) The relationship between each of the minor child's parents or the person with whom
6 the minor child is residing and the sibling;

7 (4) The time which has elapsed since the minor child last had contact with the sibling;

8 (5) The effect that visitation will have on the relationship between the minor child and the
9 minor child's parents or the person with whom the minor child is residing;

10 (6) If the parents are divorced or separated, the custody and visitation arrangement which
11 exists between the parents with regard to the minor child;

12 (7) The time available to the minor child and his or her parents, giving consideration to
13 each parent's employment schedule, the minor child's schedule for home, school and community
14 activities, and the minor child's and parents' holiday and vacation schedule;

15 (8) The good faith of the sibling in filing the motion or petition;

16 (9) Any history of physical, emotional or sexual abuse or neglect being performed,
17 procured, assisted, or condoned by the sibling;

18 (10) Whether the minor child has, in the past, resided with the sibling for a significant time,
19 with or without the minor child's parent or parents;

20 (11) Whether the sibling has, in the past, been a significant caretaker for the minor child,

21 regardless of whether the minor child resided inside or outside of the sibling's residence;

22 (12) The preference of the parents with regard to the requested visitation; and

23 (13) Any other factor relevant to the best interests of the minor child.

§48-10A-601. Interview of minor child in chambers.

1 In considering the factors listed in §48-10A-502 of this code for purposes of determining
2 whether to grant visitation, establishing a specific visitation schedule, and resolving any issues
3 related to the making of any determination with respect to visitation or the establishment of any
4 specific visitation schedule, the court, in its discretion, may interview in chambers any or all
5 involved minor children regarding their wishes and concerns. No person may be present other
6 than the court, the minor child, the minor child's attorney or guardian ad litem, if any, and any
7 necessary court personnel.

§48-10A-602. Prohibitions on use of minor child's written or recorded statement or affidavit; minor child not to be called as a witness.

1 (a) No person may obtain or attempt to obtain from a minor child a written or recorded
2 statement or affidavit setting forth the wishes and concerns of the minor child regarding sibling
3 visitation matters. The court, in considering the factors listed in §48-10A-502 of this code for
4 purposes of determining whether to grant any visitation, establishing a visitation schedule, or
5 resolving any issues related to the making of any determination with respect to visitation or the
6 establishment of any specific visitation schedule, may not accept or consider such a written or
7 recorded statement or affidavit.

8 (b) A minor child may not be called as a witness in any proceeding to determine whether
9 sibling visitation should be awarded.

§48-10A-701. Proof required when action is pending for divorce, custody, legal separation, annulment or establishment of paternity.

1 If a motion for sibling visitation is filed in a pending action for divorce, custody, legal
2 separation, annulment or establishment of paternity pursuant to §48-10A-401 of this code, the

3 sibling shall be granted visitation if a preponderance of the evidence shows that visitation is in the
4 best interest of the minor child and that:

5 (1) The party to the divorce through which the sibling is related to the minor child has failed
6 to answer or otherwise appear and defend the cause of action; or

7 (2) The location of the party through which the sibling is related to the minor child is
8 unknown to the party bringing the action and to the sibling who filed the motion for visitation.

**§48-10A-702. Proof required when action is not pending for divorce, custody, legal
separation, annulment or establishment of paternity.**

1 (a) If a petition is filed pursuant to §48-10A-402 of this code when the parent through
2 whom the sibling is related to the minor child does not: (1) Have custody of the minor child; (2)
3 share custody of the minor child; or (3) exercise visitation privileges with the minor child that would
4 allow participation in the visitation by the sibling if the parent so chooses, the sibling shall be
5 granted visitation if a preponderance of the evidence shows that visitation is in the best interest
6 of the minor child.

7 (b) If a petition is filed pursuant to §48-10A-402 of this code, there is a presumption that
8 visitation privileges need not be extended to the sibling if the parent through whom the sibling is
9 related to the minor child has custody of the minor child, shares custody of the minor child, or
10 exercises visitation privileges with the minor child that would allow participation in the visitation
11 by the sibling if the parent so chooses. This presumption may be rebutted by clear and convincing
12 evidence that an award of sibling visitation is in the best interest of the minor child.

**§48-10A-801. Order granting or refusing sibling visitation must state findings of fact and
conclusions of law.**

1 An order granting or refusing the sibling's motion or petition for visitation must state in
2 writing the court's findings of fact and conclusions of law.

§48-10A-802. Supervised visitation; conditions on visitation.

1 In the court's discretion, an order granting visitation privileges to a sibling may require

2 supervised visitation or the court may place conditions on visitation that it finds are in the best
3 interests of the minor child, including, but not limited to, the following:

4 (1) That the sibling not attempt to influence any religious beliefs or practices of the minor
5 children in a manner contrary to the preferences of the minor child's parents;

6 (2) That the sibling not engage in, permit or encourage activities, or expose the minor child
7 to conditions or circumstances, that are contrary to the preferences of the minor child's parents;

8 or

9 (3) That the sibling not otherwise act in a manner to contradict or interfere with child-
10 rearing decisions made by the minor child's parents.

§48-10A-901. Effect of remarriage of the custodial parent.

1 The remarriage of the custodial parent of a minor child does not affect the authority of a
2 circuit court or family court to grant reasonable visitation to any sibling.

§48-10A-902. Effect of adoption of the minor child.

1 If a minor child who is subject to a sibling visitation order under this article is later adopted,
2 the order for sibling visitation is automatically vacated when the order for adoption is entered,
3 unless the adopting parent is a stepparent, grandparent, or other relative of the minor child;
4 however, once the order for adoption is entered, the sibling may re-petition the court seeking
5 sibling visitation with the minor child.

§48-10A-1001. Continuing jurisdiction of circuit court or family court.

1 Any circuit court or family court that grants visitation rights to a sibling retains jurisdiction
2 throughout the minority of the minor child with whom visitation is granted to modify or terminate
3 the rights as dictated by the best interests of the minor child.

§48-10A-1002. Termination of sibling visitation.

1 A circuit court or family court shall, based upon a petition brought by an interested person,
2 terminate any grant of the right of sibling visitation upon presentation of a preponderance of the
3 evidence that a sibling granted visitation has materially violated the terms and conditions of the

4 order of visitation.

§48-10A-1101. Attorney's fees; reasonable costs.

1 In an action brought under the provisions of this article, a circuit court or family court may
2 order payment of reasonable attorney's fees and costs based upon the equities of the positions
3 asserted by the parties to pay the fees and costs.

§48-10A-1201. Misdemeanor offense for allowing contact between minor child and person
who has been precluded visitation rights; penalties.

1 Any sibling who knowingly allows contact between a minor child and a parent or other
2 person who has been precluded visitation rights with the minor child by court order is guilty of a
3 misdemeanor and, upon conviction thereof, shall be confined in jail not more than 30 days or fined
4 not less than \$100 nor more than \$1,000.

CHAPTER 51. COURTS AND THEIR OFFICERS.

ARTICLE 2A. FAMILY COURTS.

§51-2A-2. Family court jurisdiction; exceptions; limitations.

1 (a) The family court shall exercise jurisdiction over the following matters:

2 (1) All actions for divorce, annulment or separate maintenance brought under the
3 provisions of §48-3-101 *et seq.*, §48-4-101 *et seq.*, or §48-5-101 *et seq.* of this code except as
4 provided in subsections (b) and (c) of this section;

5 (2) All actions to obtain orders of child support brought under the provisions of §48-11-101
6 *et seq.*, §48-12-101 *et seq.* and §48-14-101 *et seq.* of this code;

7 (3) All actions to establish paternity brought under the provisions of §48-24-101 *et seq.* of
8 this code and any dependent claims related to such actions regarding child support, parenting
9 plans or other allocation of custodial responsibility or decision-making responsibility for a child;

10 (4) All actions for grandparent visitation brought under the provisions of §48-10-101 *et*
11 *seq.* of this code;

12 (5) All actions for the interstate enforcement of family support brought under §48-16-101

13 *et seq.* of this code and for the interstate enforcement of child custody brought under the
14 provisions of §48-20-101 *et seq.* of this code;

15 (6) All actions for the establishment of a parenting plan or other allocation of custodial
16 responsibility or decision-making responsibility for a child, including actions brought under the
17 Uniform Child Custody Jurisdiction and Enforcement Act, as provided in §48-20-101 *et seq.* of
18 this code;

19 (7) All petitions for writs of habeas corpus wherein the issue contested is custodial
20 responsibility for a child;

21 (8) All motions for temporary relief affecting parenting plans or other allocation of custodial
22 responsibility or decision-making responsibility for a child, child support, spousal support or
23 domestic violence;

24 (9) All motions for modification of an order providing for a parenting plan or other allocation
25 of custodial responsibility or decision-making responsibility for a child or for child support or
26 spousal support;

27 (10) All actions brought, including civil contempt proceedings, to enforce an order of
28 spousal or child support or to enforce an order for a parenting plan or other allocation of custodial
29 responsibility or decision-making responsibility for a child;

30 (11) All actions brought by an obligor to contest the enforcement of an order of support
31 through the withholding from income of amounts payable as support or to contest an affidavit of
32 accrued support, filed with the circuit clerk, which seeks to collect an arrearage;

33 (12) All final hearings in domestic violence proceedings;

34 (13) Petitions for a change of name, exercising concurrent jurisdiction with the circuit court;

35 (14) All proceedings for payment of attorney fees if the family court judge has jurisdiction
36 of the underlying action;

37 (15) All proceedings for property distribution brought under §48-7-101 *et seq.* of this code;

38 (16) All proceedings to obtain spousal support brought under §48-8-101 *et seq.* of this

39 code;

40 (17) All proceedings relating to the appointment of guardians or curators of minor children
41 brought pursuant to §44-10-3, §44-10-4, and §44-10-6 of this code, exercising concurrent
42 jurisdiction with the circuit court; ~~and~~

43 (18) All proceedings relating to petitions for sibling visitation; and

44 (19) All actions for sibling visitation brought under the provisions of §48-10A-101 et seq.
45 of this code.

46 (b) If an action for divorce, annulment or separate maintenance does not require the
47 establishment of a parenting plan or other allocation of custodial responsibility or decision-making
48 responsibility for a child and does not require an award or any payment of child support, the circuit
49 court has concurrent jurisdiction with the family court over the action if, at the time of the filing of
50 the action, the parties also file a written property settlement agreement executed by both parties.

51 (c) If an action for divorce, annulment or separate maintenance is pending and a petition
52 is filed pursuant to the provisions of §49-6-101 et seq. of this code alleging abuse or neglect of a
53 child by either of the parties to the divorce, annulment or separate maintenance action, the orders
54 of the circuit court in which the abuse or neglect petition is filed shall supersede and take
55 precedence over an order of the family court respecting the allocation of custodial and decision-
56 making responsibility for the child between the parents. If no order for the allocation of custodial
57 and decision-making responsibility for the child between the parents has been entered by the
58 family court in the pending action for divorce, annulment or separate maintenance, the family
59 court shall stay any further proceedings concerning the allocation of custodial and decision-
60 making responsibility for the child between the parents and defer to the orders of the circuit court
61 in the abuse or neglect proceedings.

62 (d) If a family court judge is assigned as a judicial officer of a domestic violence court then
63 jurisdiction of all proceedings relating to criminal misdemeanor crimes of domestic violence as
64 referenced in §48-27-301 of this code involving a family or household member as referenced in

65 §48-27-204 subdivisions (1) through (6), inclusive, and paragraphs (A), (B), and (H), subdivision
66 (7), of this code ~~shall be~~ is concurrent with the circuit and magistrate courts.

67 (e) A family court is a court of limited jurisdiction. A family court is a court of record only
68 for the purpose of exercising jurisdiction in the matters for which the jurisdiction of the family court
69 is specifically authorized in this section and in chapter 48 of this code. A family court may not
70 exercise the powers given courts of record in §51-5-1 of this code or exercise any other powers
71 provided for courts of record in this code unless specifically authorized by the Legislature. A family
72 court judge is not a “judge of any court of record” or a “judge of a court of record” as the terms are
73 defined and used in §51-9-1 *et seq.* of this code.

NOTE: The purpose of this bill is to create a statutory right for siblings to petition a circuit or family court for visitation with their minor child siblings.

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