

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

Senate Bill 474

BY SENATOR AZINGER

[Introduced January 30, 2019; Referred to the Committee
on the Judiciary]

1 A BILL to repeal §48-1-210 of the Code of West Virginia, 1931, as amended; to amend said code
 2 by adding thereto four new sections, designated §48-1-239a, §48-1-239b, §48-1-239c,
 3 and §48-1-239d; to amend and reenact §48-9-102, §48-9-203, §48-9-204, §48-9-206,
 4 §48-9-207, §48-9-209, §48-9-403, and §48-9-601 of said code; and to amend said code
 5 by adding thereto a new section, designated §48-9-204a, all relating to establishing that
 6 shared legal and physical custody of a child in cases of divorce is presumed to be in the
 7 best interests of the child.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. GENERAL PROVISIONS; DEFINITIONS.

§48-1-210. Caretaker and caretaking functions defined.

1 [Repealed.]

§48-1-239a. Shared legal custody defined.

1 “Shared legal custody” means a continued mutual responsibility and involvement by both
 2 parents in major decisions regarding the child’s welfare including matters of education, medical
 3 care and emotional, moral and religious development.

§48-1-239b. 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: *Provided*, That physical custody shall be shared by the parents in
 3 such a way as to assure a child frequent and continued contact with both parents.

§48-1-239c. Sole legal custody defined.

1 “Sole legal custody” means one parent has the right and responsibility to make major
 2 decisions regarding the child’s welfare including matters of education, medical care and emotional
 3 moral and religious development.

§48-1-239d. Sole physical custody defined.

1 “Sole physical custody” means a child resides with and is under the supervision of one
 2 parent, subject to reasonable visitation by the other parent, unless the court determines that such

3 visitation would not be in the best interest of the child.

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

§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) Rebuttable presumption that shared custody is in the best interest of the child;

4 ~~(2)~~ (3) Parental planning and agreement about the child's custodial arrangements and
5 upbringing;

6 ~~(3)~~ (4) Continuity of existing parent-child attachments;

7 ~~(4)~~ (5) Meaningful contact between a child and each parent;

8 ~~(5)~~ (6) Caretaking relationships by adults who love the child, know how to provide for the
9 child's needs, and who place a high priority on doing so;

10 ~~(6)~~ (7) Security from exposure to physical or emotional harm; and

11 ~~(7)~~ (8) Expedient, predictable decision-making and avoidance of prolonged uncertainty
12 respecting arrangements for the child's care and control.

13 (b) A secondary objective of article is to achieve fairness between the parents.

PART 2. PARENTING PLANS.

**§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 twelve months of the parenting~~
11 ~~functions relating to the daily needs of the child~~

12 ~~(3)~~ (2) The parents' work and child-care schedules for the preceding twelve months;

13 ~~(4)~~ (3) The parents' current work and child-care schedules; and

14 ~~(5)~~ (4) Any of the circumstances set forth in §48-9-209 of this code that are likely to pose
15 a serious risk to the child and that warrant limitation on the award to a parent of temporary
16 residence 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;

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

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

25 (4) Provisions for temporary support for the child; and

26 (5) Restraining orders, if applicable.

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

29 (d) A parent may move for amendment of a temporary parenting plan, and the court may
30 order amendment to the temporary parenting plan, if the amendment conforms to the limitations
31 of §48-9-209 of this code and is in the best interest of the child.

§48-9-204. Criteria for temporary parenting plan.

1 (a) After considering the proposed temporary parenting plan filed pursuant to §48-9-203
 2 of this code and other relevant evidence presented, the court shall make a temporary parenting
 3 plan that is in the best interest of the child. The court shall consider granting shared physical and
 4 shared legal custody in cases where the parents do not agree to shared custody. If the court does
 5 not grant shared custody under this subsection, the court shall cite clear and convincing evidence
 6 that shared custody is unreasonable and not in the best interest of the child to the extent that the
 7 legal custodial relationship between the child and a parent should be severed. In making this
 8 determination the court shall give particular consideration to:

9 ~~(1) Which parent has taken greater responsibility during the last twelve months for~~
 10 ~~performing caretaking functions relating to the daily needs of the child; and~~

11 ~~(2) Which parenting arrangements will cause the least disruption to the child's emotional~~
 12 ~~stability while the action is pending~~

13 (b) The factors used to determine residential provisions in the permanent parenting plan.

14 (c) Upon credible evidence of one or more of the circumstances set forth in §48-9-209(a)
 15 of this code, the court shall issue a temporary order limiting or denying access to the child as
 16 required by that section, in order to protect the child or the other party, pending adjudication of
 17 the underlying facts.

18 (d) Expedited procedures shall be instituted to facilitate the prompt issuance of a parenting
 19 plan.

§48-9-204a. Model parenting schedules.

1 The Supreme Court of Appeals shall adopt advisory model parenting schedules for use in
 2 determining schedules which most effectively promote the best interests of the child or children.
 3 Such schedules shall reflect the differing needs of the child based upon age. Schedules shall be
 4 adjusted for each child as it grows older and its needs and ability to adjust to its circumstances
 5 change including expanded parenting time for the parent who initially spends less time with the

6 child.

§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 harmful to the child, the court shall allocate custodial responsibility ~~so that, except to~~
3 ~~the extent required under §48-9-209 of this code, the custodial time the child spends with each~~
4 ~~parent may be expected to achieve any of the following objectives~~ based upon a rebuttable
5 presumption that shared custody is in the best interest of the child or children, except in instances
6 where a judicial officer has found by a preponderance of the evidence of neglect or abuse. If the
7 court denies the request for shared physical custody, the determination shall be accompanied by
8 specific findings of fact and conclusions of law that the awarding of shared physical custody is not
9 in the best interests of the child. The court must document clear and convincing evidence that it
10 would endanger the child's physical, mental or emotional health:

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

13 (2) To accommodate, if the court determines it is in the best interests of the child, the firm
14 and reasonable preferences of a child who is 14 years of age or older, and with regard to a child
15 under 14 years of age, but sufficiently matured that he or she can intelligently express a voluntary
16 preference for one parent, to give that preference the weight warranted by the circumstances;

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

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

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

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

31 (7) To apply the principles set forth in §48-9-403(d) of this code if one parent relocates or
32 proposes to relocate at a distance that will impair the ability of a parent to exercise the amount of
33 custodial responsibility that would otherwise be ordered under this section;

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

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

38 (b) The court may consider the allocation of custodial responsibility arising from temporary
39 agreements made by the parties after separation if the court finds, by a preponderance of the
40 evidence, that such agreements were consensual. The court shall afford those temporary
41 consensual agreements the weight the court believes the agreements are entitled to receive,
42 based upon the evidence. The court may not consider the temporary allocation of custodial
43 responsibility imposed by a court order on the parties.

44 (c) If the court is unable to allocate custodial responsibility under §48-9-206(a) of this code
45 because the allocation under §48-9-206(a) of this code would be harmful to the child, or because
46 there is no history of past performance of caretaking functions, as in the case of a newborn or
47 ~~because the history does not establish a pattern of caretaking sufficiently dispositive of the issues~~
48 ~~of the case~~ the court shall allocate custodial responsibility based on the child's best interest, taking

49 into account the factors in considerations that are set forth in this section and in §48-9-209 and
50 §48-9-403(d) of this code. ~~and preserving to the extent possible this section's priority on the share~~
51 ~~of past caretaking functions each parent performed~~

52 (d) In determining how to schedule the custodial time allocated to each parent, the court
53 shall take account of the economic, physical, and other practical circumstances such as those
54 listed in §48-9-206(a)(6) of this code. The court shall also consider the willingness and ability of
55 each parent to facilitate and encourage a close and continuing relationship between the other
56 parent and the child.

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

57 (a) Unless otherwise resolved by agreement of the parents under §48-9-201 of this code
58 or unless manifestly harmful to the child, the court shall allocate custodial responsibility ~~so that~~
59 ~~the proportion of custodial time the child spends with each parent approximates the proportion of~~
60 ~~time each parent spent performing caretaking functions for the child prior to the parents'~~
61 ~~separation or, if the parents never lived together, before the filing of the action, except to the~~
62 ~~extent required under section 9-209 or necessary to achieve any of the following objectives based~~
63 upon a rebuttable presumption that shared custody is in the best interest of the child or children,
64 except in instances where a judicial officer has found by a preponderance of the evidence of
65 neglect or abuse. If the court denies the request for shared physical custody, the determination
66 shall be accompanied by specific findings of fact and conclusions of law that the awarding of
67 shared physical custody is not in the best interests of the child. The court must document clear
68 and convincing evidence that it would endanger the child's physical, mental or emotional health.

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

71 (2) To accommodate the firm and reasonable preferences of a child who is fourteen years
72 of age or older, and with regard to a child under fourteen years of age, but sufficiently matured
73 that he or she can intelligently express a voluntary preference for one parent, to give that

74 preference such weight as circumstances warrant;

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

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

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

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

89 (7) To apply the principles set forth in §48-9-403(d) of this code if one parent relocates or
90 proposes to relocate at a distance that will impair the ability of a parent to exercise the amount of
91 custodial responsibility that would otherwise be ordered under this section; and

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

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

98 (c) If the court is unable to allocate custodial responsibility under §48-9-206(a) of this code
99 because the allocation under that subsection would be manifestly harmful to the child, or because

100 there is no history of past performance of caretaking functions, as in the case of a newborn, or
 101 ~~because the history does not establish a pattern of caretaking sufficiently dispositive of the issues~~
 102 ~~of the case~~ the court shall allocate custodial responsibility based on the child's best interest, taking
 103 into account the factors in considerations that are set forth in this section and in §48-9-209 and
 104 §48-9-403(d) of this code. ~~and preserving to the extent possible this section's priority on the share~~
 105 ~~of past caretaking functions each parent performed~~

106 (d) In determining how to schedule the custodial time allocated to each parent, the court
 107 shall take account of the economic, physical and other practical circumstances such as those
 108 listed in §48-9-206(a)(6) of this code. The court shall also consider the willingness and ability of
 109 each parent to facilitate and encourage a close and continuing relationship between the other
 110 parent and the child.

§48-9-207. Allocation of significant decision-making responsibility.

1 (a) Unless otherwise resolved by agreement of the parents under §48-9-201 of this code,
 2 the court shall allocate responsibility for making significant life decisions on behalf of the child,
 3 including the child's education and health care, to one parent or to two parents jointly, in
 4 accordance with the child's best interest, in light of:

5 (1) The court shall presume that the maximum involvement and cooperation of both
 6 parents regarding the physical, mental, moral, and emotional well-being of their child is in the best
 7 interest of the child. This shall be accomplished, to the extent feasible, through the ordering of
 8 shared physical and legal custody;

9 ~~(1)~~ (2) The allocation of custodial responsibility under §48-9-206 of this code;

10 ~~(2)~~ (3) The level of each parent's participation in past decision-making on behalf of the
 11 child;

12 ~~(3)~~ (4) The wishes of the parents;

13 ~~(4)~~ (5) The level of ability and cooperation the parents have demonstrated in decision-
 14 making on behalf of the child;

15 ~~(5)~~ (6) Prior agreements of the parties; and

16 ~~(6)~~ (7) The existence of any limiting factors, as set forth in §48-9-209 of this code.

17 (b) If each of the child's legal parents has been exercising a reasonable share of parenting
 18 functions for the child, the court shall presume that an allocation of decision-making responsibility
 19 to both parents jointly is in the child's best interests. The presumption is overcome if there is a
 20 history of domestic abuse, or by a showing that joint allocation of decision-making responsibility
 21 is not in the child's best interest.

22 (c) Unless otherwise provided or agreed by the parents, each parent who is exercising
 23 custodial responsibility shall be given sole responsibility for day-to-day decisions for the child,
 24 while the child is in that parent's care and control, including emergency decisions affecting the
 25 health and safety of the child.

§48-9-209. Parenting plan; limiting factors.

1 (a) If either of the parents so requests, or upon receipt of credible information thereof, the
 2 court shall determine whether a parent who would otherwise be allocated responsibility under a
 3 parenting plan:

4 (1) Has abused, neglected or abandoned a child, as defined by state law;

5 (2) Has sexually assaulted or sexually abused a child as those terms are defined in §61-
 6 8B-1 *et seq.* and §61-8D-1 *et seq.* of this code;

7 (3) Has committed domestic violence, as defined in §48-27-202 of this code.

8 (4) Has ~~interfered persistently with the other parent's access to the child~~ persistently
 9 violated, interfered with, impaired or impeded the rights of a parent or a child with respect to the
 10 exercise of shared or sole custodial authority, residence, visitation or other contact with the child,
 11 except in the case of actions taken for the purpose of protecting the safety of the child or the
 12 interfering parent or another family member, pending adjudication of the facts underlying that
 13 belief; or

14 (5) Has made one or more fraudulent reports of domestic violence or child abuse:

15 *Provided*, That a person's withdrawal of or failure to pursue a report of domestic violence or child
16 support shall not alone be sufficient to consider that report fraudulent.

17 (b) If a parent is found to have engaged in any activity specified by §48-9-209(a) of this
18 code, the court shall impose limits that are reasonably calculated to protect the child or child's
19 parent from harm. The limitations that the court shall consider include, but are not limited to:

20 (1) An adjustment of the custodial responsibility of the parents, including but not limited to:

21 (A) Increased parenting time with the child to make up for any parenting time the other
22 parent lost as a result of the proscribed activity;

23 (B) An additional allocation of parenting time in order to repair any adverse effect upon
24 the relationship between the child and the other parent resulting from the proscribed activity; or

25 (C) The allocation of exclusive custodial responsibility to one of them;

26 (2) Supervision of the custodial time between a parent and the child;

27 (3) Exchange of the child between parents through an intermediary, or in a protected
28 setting;

29 (4) Restraints on the parent from communication with or proximity to the other parent or
30 the child;

31 (5) A requirement that the parent abstain from possession or consumption of alcohol or
32 nonprescribed drugs while exercising custodial responsibility and in the 24-hour period
33 immediately preceding such exercise;

34 (6) Denial of overnight custodial responsibility;

35 (7) Restrictions on the presence of specific persons while the parent is with the child;

36 (8) A requirement that the parent post a bond to secure return of the child following a
37 period in which the parent is exercising custodial responsibility or to secure other performance
38 required by the court;

39 (9) A requirement that the parent complete a program of intervention for perpetrators of
40 domestic violence, for drug or alcohol abuse, or a program designed to correct another factor; or

41 (10) Any other constraints or conditions that the court deems necessary to provide for the
42 safety of the child, a child's parent or any person whose safety immediately affects the child's
43 welfare.

44 (c) If a parent is found to have engaged in any activity specified in §48-9-209(a) of this
45 code, the court may not allocate custodial responsibility or decision-making responsibility to that
46 parent without making special written findings that the child and other parent can be adequately
47 protected from harm by such limits as it may impose under §48-9-209(b) of this code. The parent
48 found to have engaged in the behavior specified in §48-9-209(a) of this code has the burden of
49 proving that an allocation of custodial responsibility or decision-making responsibility to that
50 parent will not endanger the child or the other parent.

51 (d) If the court determines, based on the investigation described in part three of this article
52 or other evidence presented to it, that an accusation of child abuse or neglect, or domestic
53 violence made during a child custody proceeding is false and the parent making the accusation
54 knew it to be false at the time the accusation was made, the court may order reimbursement to
55 be paid by the person making the accusations of costs resulting from defending against the
56 accusations. Such reimbursement may not exceed the actual reasonable costs incurred by the
57 accused party as a result of defending against the accusation and reasonable attorney's fees
58 incurred.

59 (e) (1) A parent who believes he or she is the subject of activities by the other parent
60 described in §48-9-209(a)(5) of this code, may move the court pursuant to §49-5-101(b)(4) of this
61 code for the Department of Health and Human Resources to disclose whether the other parent
62 was the source of the allegation and, if so, whether the department found the report to be:

63 (A) Substantiated;

64 (B) Unsubstantiated;

65 (C) Inconclusive; or

66 (D) Still under investigation.

67 (2) If the court grants a motion pursuant to this subsection, disclosure by the Department
68 of Health and Human Resources shall be in camera. The court may disclose to the parties
69 information received from the department only if it has reason to believe a parent knowingly made
70 a false report.

PART 4. MODIFICATION OF PARENTING PLAN.

§48-9-403. Relocation of a parent.

1 (a) The relocation of a parent constitutes a substantial change in the circumstances, under
2 §48-9-401(a) of this code, of the child only when it significantly impairs either parent's ability to
3 exercise responsibilities that the parent has been exercising.

4 (b) Unless otherwise ordered by the court, a parent who has responsibility under a
5 parenting plan who changes, or intends to change, residences for more than 90 days must give
6 a minimum of 60 days' advance notice, or the most notice practicable under the circumstances,
7 to any other parent with responsibility under the same parenting plan. Notice shall include:

8 (1) The relocation date;

9 (2) The address of the intended new residence;

10 (3) The specific reasons for the proposed relocation;

11 (4) A proposal for how custodial responsibility shall be modified, in light of the intended
12 move; and

13 (5) Information for the other parent as to how he or she may respond to the proposed
14 relocation or modification of custodial responsibility.

15 Failure to comply with the notice requirements of this section without good cause may be
16 a factor in the determination of whether the relocation is in good faith under §48-9-403(d) of this
17 code and is a basis for an award of reasonable expenses and reasonable attorney's fees to
18 another parent that are attributable to such failure.

19 The Supreme Court of Appeals shall make available through the offices of the circuit clerks
20 and the secretary-clerks of the family courts a form notice that complies with the provisions of this

21 subsection. The Supreme Court of Appeals shall promulgate procedural rules that provide for an
22 expedited hearing process to resolve issues arising from a relocation or proposed relocation.

23 (c) When changed circumstances are shown under §48-9-403(a) of this code, the court
24 shall, if practical, revise the parenting plan so as to both accommodate the relocation and maintain
25 the same proportion of custodial responsibility being exercised by each of the parents. In making
26 such revision, the court may consider the additional costs that a relocation imposes upon the
27 respective parties for transportation and communication, and may equitably allocate such costs
28 between the parties.

29 (d) When the relocation constituting changed circumstances under §48-9-403(a) of this
30 code renders it impractical to maintain the same proportion of custodial responsibility as that being
31 exercised by each parent, the court shall modify the parenting plan in accordance with the child's
32 best interests and in accordance with the following principles:

33 (1) A parent who has been exercising a significant majority of the custodial responsibility
34 for the child should be allowed to relocate with the child so long as that parent shows that the
35 relocation is in good faith for a legitimate purpose and to a location that is reasonable in light of
36 the purpose. The percentage of custodial responsibility that constitutes a significant majority of
37 custodial responsibility is seventy percent or more. A relocation is for a legitimate purpose if it is
38 to be close to significant family or other support networks, for significant health reasons, to protect
39 the safety of the child or another member of the child's household from significant risk of harm, to
40 pursue a significant employment or educational opportunity or to be with one's spouse who is
41 established, or who is pursuing a significant employment or educational opportunity, in another
42 location. The relocating parent has the burden of proving of the legitimacy of any other purpose.
43 A move with a legitimate purpose is reasonable unless its purpose is shown to be substantially
44 achievable without moving or by moving to a location that is substantially less disruptive of the
45 other parent's relationship to the child.

46 (2) If a relocation of the parent is in good faith for legitimate purpose and to a location that

47 is reasonable in light of the purpose and if neither has been exercising a significant majority of
48 custodial responsibility for the child, the court shall reallocate custodial responsibility based on
49 the best interest of the child, taking into account all relevant factors including the effects of the
50 relocation on the child.

51 (3) If a parent does not establish that the purpose for that parent's relocation is in good
52 faith for a legitimate purpose into a location that is reasonable in light of the purpose, the court
53 may modify the parenting plan in accordance with the child's best interests and the effects of the
54 relocation on the child. Among the modifications the court may consider is a reallocation of primary
55 custodial responsibility, effective if and when the relocation occurs, but such a reallocation shall
56 not be ordered if the relocating parent demonstrates that the child's best interests would be served
57 by the relocation.

58 (4) The court shall attempt to minimize impairment to a parent-child relationship caused
59 by a parent's relocation through alternative arrangements for the exercise of custodial
60 responsibility appropriate to the parents' resources and circumstances and the developmental
61 level of the child.

62 (5) If the parents are exercising a basic shared parenting schedule and all of their children
63 are under six years of age, the court shall consider this a factor against the approval of the
64 relocation of the custodial parent unless the relocation has been agreed to by both parties.

65 (e) In determining the proportion of caretaking functions each parent previously performed
66 for the child under the parenting plan before relocation, the court may not consider a division of
67 functions arising from any arrangements made after a relocation but before a modification hearing
68 on the issues related to relocation.

69 (f) In determining the effect of the relocation or proposed relocation on a child, any
70 interviewing or questioning of the child shall be conducted in accordance with the provisions of
71 rule 17 of the rules of practice and procedure for family law as promulgated by the Supreme Court
72 of Appeals.

PART 6. MISCELLANEOUS PROVISIONS.

§48-9-601. Access to a child's records Parental Rights.

1 (a)(1) Each parent has the right to full and equal access to a child's educational records
2 absent a court order to the contrary. Neither parent may veto the access requested by the other
3 parent. Educational records are academic, attendance and disciplinary records of public and
4 private schools in all grades kindergarten through twelve and any form of alternative school.
5 Educational records are any and all school records concerning the child that would otherwise be
6 properly released to the primary custodial parent, including, but not limited to, report cards and
7 progress reports, attendance records, disciplinary reports, results of the child's performance on
8 standardized tests and statewide tests and information on the performance of the school that the
9 child attends on standardized statewide tests; curriculum materials of the class or classes in which
10 the child is enrolled; names of the appropriate school personnel to contact if problems arise with
11 the child; information concerning the academic performance standards, proficiencies, or skills the
12 child is expected to accomplish; school rules, attendance policies, dress codes and procedures
13 for visiting the school; and information about any psychological testing the school does involving
14 the child.

15 (2) In addition to the right to receive school records, the nonresidential parent has the right
16 to participate as a member of a parent advisory committee or any other organization comprised
17 of parents of children at the school that the child attends.

18 (3) The nonresidential parent or noncustodial parent has the right to question anything in
19 the child's record that the parent feels is inaccurate or misleading or is an invasion of privacy and
20 to receive a response from the school.

21 (4) Each parent has a right to arrange appointments for parent-teacher conferences
22 absent a court order to the contrary. Neither parent can be compelled against their will to exercise
23 this right by attending conferences jointly with the other parent.

24 (b)(1) Each parent has the right to full and equal access to a child's medical records absent

25 a court order to the contrary. Neither parent may veto the access requested by the other parent.
26 If necessary, either parent is required to authorize medical providers to release to the other parent
27 copies of any and all information concerning medical care provided to the child which would
28 otherwise be properly released to either parent.

29 (2) If the child is in the actual physical custody of one parent, that parent is required to
30 promptly inform the other parent of any illness of the child which requires medical attention.

31 (3) Each parent is required to consult with the other parent prior to any elective surgery
32 being performed on the child, and in the event emergency medical procedures are undertaken for
33 the child which require the parental consent of either parent, if time permits, the other parent shall
34 be consulted, or if time does not permit such consultation, the other parent shall be promptly
35 informed of the emergency medical procedures: *Provided*, That nothing contained herein alters
36 or amends the law of this state as it otherwise pertains to physicians or health care facilities
37 obtaining parental consent prior to providing medical care or performing medical procedures.

38 (c) (1) Each parent has full and equal access to a child's juvenile court records, process
39 and pleadings, absent a court order to the contrary. Neither parent may veto any access
40 requested by the other parent. Juvenile court records are limited to those records which are
41 normally available to a parent of a child who is a subject of the juvenile justice system.

42 (2) Each parent has the right to be notified by the other party if the minor child is the victim
43 of an alleged crime, including the name of the investigating law-enforcement officer or agency.
44 There is no duty to notify if the party to be notified is the alleged perpetrator.

45 (d) Each parent has the right to reasonable access and telephone or other electronic
46 contact with the minor children, which shall be defined in the parenting plan.

NOTE: The purpose of this bill is to establish that shared legal and physical custody of a child in cases of divorce is presumed to be in the best interests of the child.

§48-1-210 is replead.

Strike-throughs indicate language that would be stricken from a heading or the present law

and underscoring indicates new language that would be added.