

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

House Bill 3039

BY DELEGATES FOSTER, PHILLIPS, MALCOLM AND D. JEFFRIES

[Introduced February 12, 2019; Referred
to the Committee on the Judiciary.]

1 A BILL to amend and reenact §48-9-206 and §48-9-402 of the Code of West Virginia, 1931, as
2 amended, all relating to a court's consideration of the expression of a preference by a child
3 in certain child custody matters; and removing language giving priority to the preference
4 of a 14-year-old.

Be it enacted by the Legislature of West Virginia:

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

§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:

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

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

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

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

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

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

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

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

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

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

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

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

47 (d) In determining how to schedule the custodial time allocated to each parent, the court
48 shall take account of the economic, physical, and other practical circumstances such as those
49 listed in §48-9-206(a)(6) of this code.

§48-9-402. Modification without showing of changed circumstances.

1 (a) The court shall modify a parenting plan in accordance with a parenting agreement,
2 unless it finds that the agreement is not knowing and voluntary or that it would be harmful to the
3 child.

4 (b) The court may modify any provisions of the parenting plan without the showing of
5 change circumstances required by §48-9-401(a) of this code if the modification is in the child's
6 best interests, and the modification:

7 (1) Reflects the de facto arrangements under which the child has been receiving care from
8 the petitioner, without objection, in substantial deviation from the parenting plan, for the preceding
9 six months before the petition for modification is filed, provided the arrangement is not the result
10 of a parent's acquiescence resulting from the other parent's domestic abuse;

11 (2) Constitutes a minor modification in the plan; or

12 (3) Is necessary to accommodate the reasonable and firm preferences of a child who, ~~has~~
13 attained the age of fourteen in the discretion of the court, is sufficiently matured that he or she
14 can intelligently express a voluntary preference.

15 (c) Evidence of repeated filings of fraudulent reports of domestic violence or child abuse
16 is admissible in a domestic relations action between the involved parties when the allocation of
17 custodial responsibilities is in issue, and the fraudulent accusations may be a factor considered
18 by the court in making the allocation of custodial responsibilities.

NOTE: The purpose of this bill is to expand the court's consideration of the expression of a preference by children in certain child custody matters by removing language giving priority to preferences of 14-year-old children.

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