

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

Senate Bill 79

BY SENATORS TRUMP AND WOELFEL

[Introduced February 10, 2021; referred
to the Committee on the Judiciary]

1 A BILL to amend and reenact §48-9-403 of the Code of West Virginia, 1931, as amended, all
 2 relating to providing a fair mechanism for the adjudication of requests for relocation of a
 3 parent with a child.

Be it enacted by the Legislature of West Virginia:

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

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 ~~subsection 9-401(a) of the child only when it significantly impairs either parent's ability to exercise~~
 3 ~~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 ninety days must~~
 6 ~~give a minimum of sixty days' advance notice, or the most notice practicable under the~~
 7 ~~circumstances, to any other parent with responsibility under the same parenting plan. Notice shall~~
 8 ~~include:~~

9 ~~(1) The relocation date;~~

10 ~~(2) The address of the intended new residence;~~

11 ~~(3) The specific reasons for the proposed relocation;~~

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

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

16 ~~Failure to comply with the notice requirements of this section without good cause may be~~
 17 ~~a factor in the determination of whether the relocation is in good faith under subsection (d) of this~~

18 ~~section and is a basis for an award of reasonable expenses and reasonable attorney's fees to~~
19 ~~another parent that are attributable to such failure.~~

20 ~~The Supreme Court of Appeals shall make available through the offices of the circuit clerks~~
21 ~~and the secretary-clerks of the family courts a form notice that complies with the provisions of this~~
22 ~~subsection. The Supreme Court of Appeals shall promulgate procedural rules that provide for an~~
23 ~~expedited hearing process to resolve issues arising from a relocation or proposed relocation.~~

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

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

34 ~~(1) A parent who has been exercising a significant majority of the custodial responsibility~~
35 ~~for the child should be allowed to relocate with the child so long as that parent shows that the~~
36 ~~relocation is in good faith for a legitimate purpose and to a location that is reasonable in light of~~
37 ~~the purpose. The percentage of custodial responsibility that constitutes a significant majority of~~
38 ~~custodial responsibility is seventy percent or more. A relocation is for a legitimate purpose if it is~~
39 ~~to be close to significant family or other support networks, for significant health reasons, to protect~~
40 ~~the safety of the child or another member of the child's household from significant risk of harm, to~~
41 ~~pursue a significant employment or educational opportunity or to be with one's spouse who is~~
42 ~~established, or who is pursuing a significant employment or educational opportunity, in another~~
43 ~~location. The relocating parent has the burden of proving of the legitimacy of any other purpose.~~

44 ~~A move with a legitimate purpose is reasonable unless its purpose is shown to be substantially~~
45 ~~achievable without moving or by moving to a location that is substantially less disruptive of the~~
46 ~~other parent's relationship to the child.~~

47 ~~(2) If a relocation of the parent is in good faith for legitimate purpose and to a location that~~
48 ~~is reasonable in light of the purpose and if neither has been exercising a significant majority of~~
49 ~~custodial responsibility for the child, the court shall reallocate custodial responsibility based on~~
50 ~~the best interest of the child, taking into account all relevant factors including the effects of the~~
51 ~~relocation on the child.~~

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

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

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

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

70 of Appeals

71 (a) The relocation of a parent constitutes a substantial change in the circumstances under
72 subsection 9-401(a) of this code for the child only when it significantly impairs either parent's
73 ability to exercise responsibilities that the parent has been exercising.

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

78 (1) The relocation date;

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

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

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

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

85 Failure to comply with the notice requirements of this section without good cause may be
86 a factor in the determination of whether the relocation is in good faith under subsection (d) of this
87 section and is a basis for an award of reasonable expenses and reasonable attorney's fees to
88 another parent that are attributable to such failure.

89 The Supreme Court of Appeals shall make available through the offices of the circuit clerks
90 and the secretary-clerks of the family courts a form notice that complies with the provisions of this
91 subsection. The Supreme Court of Appeals shall promulgate procedural rules that provide for an
92 expedited hearing process to resolve issues arising from a relocation or proposed relocation.

93 (c) When changed circumstances are shown under subsection (a) of this section, the court
94 shall, if practical, revise the parenting plan so as to both accommodate the relocation and maintain
95 the same proportion of custodial responsibility being exercised by each of the parents. In making

96 such revision, the court may consider the additional costs that a relocation imposes upon the
97 respective parties for transportation and communication, and may equitably allocate such costs
98 between the parties.

99 (d) When the relocation constituting changed circumstances under subsection (a) of this
100 section renders it impractical to maintain the same proportion of custodial responsibility as that
101 being exercised by each parent, the court shall modify the parenting plan in accordance with the
102 child's best interests and in accordance with the following principles:

103 (1) A parent who has been exercising a significant majority of the custodial responsibility
104 for the child should be allowed to relocate with the child so long as that parent shows that the
105 relocation is in good faith for a legitimate purpose and to a location that is reasonable in light of
106 the purpose. The percentage of custodial responsibility that constitutes a significant majority of
107 custodial responsibility is 70 percent or more. A relocation is for a legitimate purpose if it is to be
108 close to significant family or other support networks, for significant health reasons, to protect the
109 safety of the child or another member of the child's household from significant risk of harm, to
110 pursue a significant employment or educational opportunity or to be with one's spouse who is
111 established, or who is pursuing a significant employment or educational opportunity, in another
112 location. The relocating parent has the burden of proving of the legitimacy of any other purpose.
113 A move with a legitimate purpose is reasonable unless its purpose is shown to be substantially
114 achievable without moving or by moving to a location that is substantially less disruptive of the
115 other parent's relationship to the child.

116 (2) If a relocation of the parent is in good faith for legitimate purpose and to a location that
117 is reasonable in light of the purpose and if neither has been exercising a significant majority of
118 custodial responsibility for the child, the court shall reallocate custodial responsibility based on
119 the best interest of the child, taking into account all relevant factors including the effects of the
120 relocation on the child.

121 (3) If a parent does not establish that the purpose for that parent's relocation is in good

122 faith for a legitimate purpose into a location that is reasonable in light of the purpose, the court
123 may modify the parenting plan in accordance with the child's best interests and the effects of the
124 relocation on the child. Among the modifications the court may consider is a reallocation of primary
125 custodial responsibility, effective if and when the relocation occurs, but such a reallocation shall
126 not be ordered if the relocating parent demonstrates that the child's best interests would be served
127 by the relocation.

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

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

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

NOTE: The purpose of this bill is to provide a fair mechanism, that comports with due process, for the adjudication of requests for relocation of a parent with a child. The bill eliminates the following presumption in favor of relocation which was recognized in Syllabus Point 2 of *Stacey J. v. Henry A.*, 842 S.E.2d 703 (2020), and Syllabus Point 3 of *Nicole L. v. Steven W.*, 241 W.Va. 466, 825 S.E.2d 794 (2019): "Pursuant to West Virginia Code § 48-9-403(d)(1), if a parent who is exercising a significant majority of the custodial responsibility for a child proves that a proposed relocation is in good faith for a legitimate purpose, the location of the proposed move will be presumed to be reasonable. To overcome this presumption, the opposing parent must prove that the purpose of the move is substantially achievable without moving or by moving to a location that is substantially less disruptive of the opposing parent's relationship to 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.