

# **WEST VIRGINIA LEGISLATURE**

**2021 REGULAR SESSION**

**Committee Substitute**

**for**

**Senate Bill 79**

BY SENATORS TRUMP AND WOELFEL

[Originating in the Committee on the Judiciary;

reported on February 19, 2021]



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 IV. 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 of the  
72 child under §48-9-401(a) of this code when it impairs either parent's ability to exercise  
73 responsibilities that the parent has been exercising, or when it impairs the schedule of custodial  
74 allocation that has been ordered by the court for a parent or any other person.

75 (b) A parent who has responsibility under a parenting plan who changes, or intends to  
76 change, residences must file a verified petition with the court for modification of the parenting  
77 plan, and cause a copy of the same to be served upon the other parent and upon all other persons  
78 who, pursuant to the court's order in effect at the time of the petition, have been allocated custodial  
79 time with the child. The petition shall be filed at least 75 days prior to any relocation, and the  
80 summons must be served at least 45 days in advance of any relocation, unless the relocating  
81 parent establishes that it was impracticable under the circumstances to provide such notice 75  
82 days in advance. The verified petition shall include:

83 (1) The proposed relocation date;

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

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

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

88 (5) A request for a hearing.

89 Failure to comply with the requirements of this section may be a factor in the determination  
90 of whether the relocation is in good faith under subsection (d) of this section, and may also be a  
91 basis for reallocation of the primary residence and custodial responsibility for the child and for an  
92 award of reasonable expenses and reasonable attorney's fees to another parent or another  
93 person exercising custodial responsibility for the child pursuant to an order of the court that are  
94 attributable to such failure.

95 (c) A hearing on the petition shall be held by the court at least 30 days in advance of the  
96 proposed date of relocation. A parent proposing to relocate may move for an expedited hearing  
97 upon the petition in circumstances under which the parent needs an answer expeditiously. If the  
98 hearing is held fewer than 30 days in advance of the proposed date of relocation, the court's order  
99 shall include findings of fact as to why the hearing was not held at least 30 days prior to the  
100 petition's proposed date of relocation. After a hearing upon a petition filed under this section, the  
101 court shall, if practical, revise the parenting plan so as to both accommodate the relocation and  
102 maintain the same proportion of custodial responsibility being exercised by each of the parents  
103 and all such other persons exercising custodial responsibility for the child pursuant to the order of  
104 the court. In making such revision, the court may consider the additional costs that a relocation  
105 imposes upon the respective parties for transportation and communication, and may equitably  
106 allocate such costs between the parties and may consider §48-13-702 of this code authorizing  
107 the court to disregard the child support formula relating to long distance visitation costs.

108 (d) (1) At the hearing held pursuant to this section, the relocating parent has the burden  
109 of proving that: (A) The reasons for the proposed relocation are legitimate and made in good faith;  
110 (B) that allowing relocation of the relocating parent with the child is in the best interests of the  
111 child as defined in §48-9-102 of this code; and (C) that there is no reasonable alternative, other  
112 than the proposed relocation, available to the relocating parent that would be in the child's best  
113 interests and less disruptive to the child.

114 (2) A relocation is for a legitimate purpose if it is to be close to immediate family members,  
115 for substantial health reasons, to protect the safety of the child or another member of the child's  
116 household from significant risk of harm, to pursue a significant employment or educational  
117 opportunity, or to be with one's spouse or significant other with whom the relocating parent has  
118 cohabitated for at least a year, who is established, or who is pursuing a significant employment  
119 or educational opportunity, in another location.

120 (3) The relocating parent has the burden of proving the proposed relocation is for one of  
121 these legitimate purposes. The relocating parent has the burden of proving the legitimacy of any  
122 other purpose. A move with a legitimate purpose is unreasonable unless the relocating parent  
123 proves that the purpose is not substantially achievable without moving, and that moving to a  
124 location that is substantially less disruptive of the other parent's relationship to the child is not  
125 feasible.

126 (4) When the relocation is for a legitimate purpose, in good faith, and renders it impractical  
127 to maintain the same proportion of custodial responsibility as that being exercised by each parent  
128 and all other persons exercising custodial responsibility for the child pursuant to an order of the  
129 court, the court shall modify the parenting plan in accordance with the child's best interests.

130 (5) If the relocating parent does not establish that the purpose for that parent's relocation  
131 is made in good faith for a legitimate purpose to a location that is reasonable in light of the  
132 purpose, the court may modify the parenting plan in accordance with the child's best interests and  
133 the effects of the relocation on the child. Among the modifications the court may consider is a  
134 reallocation of primary custodial responsibility, to become effective if and when the parent's  
135 relocation occurs.

136 (6) The court shall attempt to minimize impairment to a parent-child relationship caused  
137 by a parent's relocation through alternative arrangements for the exercise of custodial  
138 responsibility appropriate to the parents' resources and circumstances and the developmental  
139 level of the child.

140 (e) If the parties file with the court a modified parenting plan signed by all the parties the  
141 court may enter an order modifying custodial responsibility in accordance with the parenting plan  
142 if the court determines that the parenting plan is in the best interest of the child to do so.

143 (f) Except in extraordinary circumstance articulated in the court's order, a relocation may  
144 not be considered until an initial permanent parenting plan is established.



145           (g) In determining the effect of the relocation or proposed relocation on a child, any  
146 interviewing or questioning of the child shall be conducted in accordance with the provisions of  
147 Rule 17 of the Rules of Practice and Procedure for Family Court as promulgated by the Supreme  
148 Court of Appeals.