

# **WEST VIRGINIA LEGISLATURE**

## **2022 REGULAR SESSION**

**Enrolled**

**Committee Substitute**

**for**

**Senate Bill 463**

BY SENATORS SMITH, RUCKER, GRADY, SYPOLT,  
MAYNARD, AZINGER, PHILLIPS, TAKUBO, WOODRUM,  
TARR, AND ROBERTS

[Passed March 12, 2022; in effect 90 days from passage]



1 AN ACT to amend and reenact §48-9-102 of the Code of West Virginia, 1931, as amended; to  
2 amend said code by adding thereto a new section, designated § 48-9-102a; and to amend  
3 and reenact §48-9-203, §48-9-204, §48-9-205, §48-9-206, §48-9-207, §48-9-208, §48-9-  
4 209, §48-9-401, §48-9-402, §48-9-602, and §48-9-603 of said code, all relating generally  
5 to domestic relations matters; modifying allocation of legal custody and parenting time in  
6 domestic relations matters; establishing collaborative parenting as a goal in allocation of  
7 custodial responsibility and decisionmaking; creating a rebuttable presumption that equal  
8 custodial allocation is in a child's best interest; requiring specific findings and legal  
9 conclusions by the court if equal parenting is not granted; establishing criteria for diverging  
10 from equal custodial allocation when it is sought; authorizing interlocutory appeals to the  
11 Intermediate Court of Appeals if the family court refuses all physical custody to a parent  
12 or denies equal custody when sought; precluding the family court from entering a stay  
13 during an interlocutory appeal; requiring consideration of certain factors in developing a  
14 temporary parenting plan; ensuring that permanent parenting plans include provisions for  
15 financial support of children; requiring court not to consider temporary allocation of  
16 physical custody in final order unless parties agreed on temporary terms; removing  
17 provisions requiring consideration of terms in temporary orders when drafting final orders;  
18 requiring consideration of parents' ability or inability to work together in allocating  
19 significant decision-making responsibilities; clarifying considerations for courts in  
20 developing or approving parenting plans; setting forth optional considerations for a court  
21 in allocating physical custody of a child; authorizing family court to designate which parent  
22 is entitled to tax deductions and exemptions equitably on a year to year basis when equal  
23 custody is ordered; clarifying that amendments made during regular session of the  
24 Legislature, 2022, are prospective; and declaring custodial orders entered prior to the  
25 effective date of the amendments to chapter 48 during the regular session of the  
26 Legislature, 2022, remain in full force and effect until judicially modified.

*Be it enacted by the Legislature of West Virginia:*

**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) Collaborative parental planning and agreement about the child's custodial  
4 arrangements and upbringing;

5 (3) Continuity of existing parent-child attachments;

6 (4) Meaningful contact between a child and each parent, and which is rebuttably presumed  
7 to be equal (50-50) custodial allocation of the child;

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

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

11 (7) Expedient, predictable decisionmaking and avoidance of prolonged uncertainty  
12 respecting arrangements for the child's care and control; and

13 (8) Meaningful contact between a child and his or her siblings, including half-siblings.

14 (b) A secondary objective of this article is to achieve fairness between the parents  
15 consistent with the rebuttable presumption of equal (50-50) custodial allocation.

**§48-9-102a Presumption in favor of equal (50-50) custodial allocation.**

1 There shall be a presumption, rebuttable by a preponderance of the evidence, that equal  
2 (50-50) custodial allocation is in the best interest of the child. If the presumption is rebutted, the  
3 court shall, absent an agreement between the parents as to all matters related to custodial  
4 allocation, construct a parenting time schedule which maximizes the time each parent has with  
5 the child and is consistent with ensuring the child's welfare.

**§48-9-203. Proposed temporary parenting plan; temporary order; amendment.**

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 12 months;

10 (2) The performance by each parent during the last 12 months of the parenting functions  
11 relating to the daily needs of the child;

12 (3) The parents' current work and child-care schedules; and

13 (4) Any of the criteria set forth in §48-9-209 of this code that are likely to pose a serious  
14 risk to the child or that otherwise warrant limitation on the award to a parent of temporary  
15 residence or time with the child pending entry of a permanent parenting plan.

16 (b) At the hearing, the court shall enter a temporary parenting order incorporating a  
17 temporary parenting plan which includes:

18 (1) A schedule for the child's time with each parent when appropriate;

19 (2) Designation of a temporary residence or residences for the child;

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

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

25 (5) Restraining orders, if applicable.

26 (c) If the parents have not agreed upon the allocation of physical custody of the child, then  
27 the allocation shall be made by the court upon the evidence presented at the hearing unless the  
28 parties have agreed to proceed by proffer.

29 (d) Upon request of either parent for an equal (50-50) allocation of physical custody, the  
30 presumption provided in §48-1-102a of this code applies.

31 (e) If the temporary allocation of physical custody is not on an equal (50-50) basis, it must  
32 contain specific findings of fact by the court, based upon evidence presented at a hearing, as to  
33 the reasons under §48-9-209 of this code that the court ordered the custodial allocation, along  
34 with the court's legal conclusions supporting its decision.

35 (f) A parent who has sought and been denied equal (50-50) physical custody, or who has  
36 been denied any physical custody, may file an interlocutory appeal with the West Virginia  
37 Intermediate Court of Appeals as to the temporary custodial allocation of the child or children, and  
38 the Intermediate Court of Appeals shall provide an expedited review of the order: *Provided*, That  
39 no stay shall be granted pending resolution of the appeal, and the filing of an interlocutory appeal  
40 shall not be the basis of a continuance of any subsequent or final hearing.

41 (g) A parent may move for amendment of a temporary parenting plan, and the court may  
42 order amendment to the temporary parenting plan, if the amendment conforms to the limitations  
43 of and considerations required by §48-9-209 of this code and is in the best interest of the child.  
44 The court's order modifying the plan shall be in writing and contain specific findings of fact upon  
45 which the court bases its determinations.

**§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, which shall be in writing and contain specific findings  
4 of fact upon which the court bases its determinations. In making this determination, the court shall  
5 give particular consideration to:

6 (1) Which parent has taken greater responsibility during the last 12 months for performing  
7 parenting functions relating to the daily needs of the child; and

8 (2) Which parenting arrangements will cause the least disruption to the child's emotional  
9 stability while the action is pending.

10 (b) The court shall also consider the factors used to determine residential provisions in the  
11 permanent parenting plan.

12 (c) Upon credible evidence of one or more of the circumstances set forth in §48-9-209(a)  
13 of this code, the court shall issue a temporary order limiting or denying access to the child as  
14 required by that section, in order to protect the child or the other party, pending adjudication of  
15 the underlying facts. The temporary order shall be in writing and include specific findings of fact  
16 supporting the court's determination.

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

19 (e) In establishing a temporary parenting plan, there shall be a presumption in favor of  
20 equal (50-50) physical custody which is rebuttable by a preponderance of the evidence, to be  
21 evaluated and considered in accordance with the criteria set forth in §48-9-209 of this code.

**§48-9-205. Permanent parenting plan.**

1 (a) A party seeking a judicial allocation of custodial responsibility or decision-making  
2 responsibility under this article shall file a proposed parenting plan with the court. Parties may file  
3 a joint plan. A proposed plan shall be verified and shall state, to the extent known or reasonably  
4 discoverable by the filing party or parties:

5 (1) The name, address, and length of residence of any adults with whom the child has  
6 lived for one year or more, or in the case of a child less than one year of age, any adults with  
7 whom the child has lived since the child's birth;

8 (2) The name and address of each of the child's parents and any other individuals with  
9 standing to participate in the action under §48-9-103 of this code;

10 (3) A description of the allocation of caretaking and other parenting responsibilities  
11 performed by each person named in §48-9-205(a)(1) and §48-9-205(a)(2) of this code;

12 (4) A description of the work and child-care schedules of any person seeking an allocation  
13 of custodial responsibility and any expected changes to these schedules in the near future;

14 (5) A description of the child's school and extracurricular activities;

15 (6) A description of any of the criteria described in §48-9-209 of this code that are present,  
16 including any restraining orders against either parent to prevent domestic or family violence, by  
17 case number and jurisdiction;

18 (7) Required financial information; and

19 (8) A description of the known areas of agreement and disagreement with any other  
20 parenting plan submitted in the case.

21 The court shall maintain the confidentiality of any information required to be filed under  
22 this section when the person giving that information has a reasonable fear of domestic abuse,  
23 and disclosure of the information would increase that fear.

24 (b) The court shall develop a process to identify cases in which there is credible  
25 information that child abuse or neglect as defined in §49-1-201 of this code or domestic violence  
26 as defined in §48-27-202 of this code has occurred. The process shall include assistance for  
27 possible victims of domestic abuse in complying with §48-9-205(a)(6) of this code and referral to  
28 appropriate resources for safe shelter, counseling, safety planning, information regarding the  
29 potential impact of domestic abuse on children, and information regarding civil and criminal  
30 remedies for domestic abuse. The process shall also include a system for ensuring that jointly  
31 submitted parenting plans that are filed in cases in which there is credible information that child  
32 abuse or domestic abuse has occurred receive the court review that is mandated by §48-9-202(b)  
33 of this code.



34 (c) Upon motion of a party and after consideration of the evidence, the court shall order a  
35 parenting plan consistent with the provisions of §48-9-206 through §48-9-209 of this code,  
36 containing:

37 (1) A provision for the child's living arrangements and each parent's custodial  
38 responsibility, which shall include either:

39 (A) A custodial schedule that designates in which parent's home each minor child will  
40 reside on given days of the year; or

41 (B) A formula or method for determining a schedule in sufficient detail that, if necessary,  
42 the schedule can be enforced in subsequent proceedings by the court;

43 (2) An allocation of decision-making responsibility as to significant matters reasonably  
44 likely to arise with respect to the child;

45 (3) A provision consistent with §48-9-202 of this code for resolution of disputes that arise  
46 under the plan and remedies for violations of the plan;

47 (4) Provisions for the financial support of the child or children; and

48 (5) A plan for the custody of the child if one or both of the parents as a member of the  
49 National Guard, a reserve component, or an active duty component are mobilized, deployed, or  
50 called to active duty.

51 (d) A parenting plan may, at the court's discretion, contain provisions that address matters  
52 that are expected to arise in the event of a party's relocation, or provide for future modifications  
53 in the parenting plan if specified contingencies occur.

**§48-9-206. Allocation of custodial responsibility at final hearing.**

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 shall be equal (50-50).

5 (b) The court shall apply the principles set forth in §48-9-403 of this code if one parent  
6 relocates or proposes to relocate at a distance that will impair the ability of a parent to exercise  
7 the amount of custodial responsibility that would otherwise be ordered under this section.

8 (c) The court may consider the allocation of custodial responsibility arising from temporary  
9 agreements made by the parties after separation if the court finds, by a preponderance of the  
10 evidence, that such agreements were consensual. The court shall afford those temporary  
11 consensual agreements the weight the court believes the agreements are entitled to receive,  
12 based upon the evidence. The court may not consider the temporary allocation of custodial  
13 responsibility imposed by a court order on the parties unless both parties agreed to the allocation  
14 provided for in the temporary order.

15 (d) In the absence of an agreement of the parents, the court's determination of allocation  
16 of custodial responsibility under this section shall be made pursuant to a final hearing, which shall  
17 be conducted by the presentation of evidence. The court's order determining allocation of  
18 custodial responsibility shall be in writing, and include specific findings of fact and conclusions of  
19 law supporting the determination.

**§48-9-207. Allocation of significant decision-making responsibility at temporary or final hearing.**

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 both parents jointly, in  
4 accordance with the child's best interest, in light of the ability or inability of the parents, based  
5 upon the evidence before the court, to work collaboratively and in cooperation with each other in  
6 decisionmaking on behalf of the child, and the existence of any criteria as set forth in §48-9-209  
7 of this code.

- 8 (1) The level of each parent's participation in past decision making on behalf of the child;  
9 (2) The wishes of the parents; and

10 (3) The level of ability and cooperation the parents have demonstrated in decisionmaking  
11 on behalf of the child.

12 (b) If each of the child's parents has been exercising a reasonable share of the parenting  
13 functions for the child, there shall be a rebuttable presumption that an allocation of decision-  
14 making responsibility to both parents jointly is in the child's best interests. The presumption may  
15 be rebutted by a showing that joint allocation of decision-making responsibility is not in the child's  
16 best interest upon proof by a preponderance of the evidence of relevant factors under §48-9-209  
17 of this code. The court's determination shall be in writing and include specific findings of fact  
18 supporting any determination that joint allocation of decision-making responsibility is not in the  
19 child's best interest.

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

**§48-9-208. Parental dispute resolution.**

1 (a) If provisions for resolving parental disputes are not ordered by the court pursuant to a  
2 parenting agreement in §48-9-201 of this code, the court shall order a method of resolving  
3 disputes that serves the child's best interest in light of:

- 4 (1) The parents' wishes and the stability of the child;
- 5 (2) Circumstances, including, but not limited to, financial circumstances, that may affect  
6 the parents' ability to participate in a prescribed dispute resolution process; and
- 7 (3) The existence of any factor set forth in §48-9-209 of this code.

8 (b) The court may order a non-judicial process of dispute resolution by designating with  
9 particularity the person or agency to conduct the process or the method for selecting a person or  
10 agency. The disposition of a dispute through a non-judicial method of dispute resolution that has  
11 been ordered by the court without prior parental agreement is subject to de novo judicial review.

12 If the parents have agreed in a parenting plan or by agreement thereafter to a binding resolution  
13 of their dispute by non-judicial means, a decision by such means is binding upon the parents and  
14 must be enforced by the court, unless it is shown to be contrary to the best interests of the child,  
15 beyond the scope of the parents' agreement, or the result of fraud, misconduct, corruption, or  
16 other serious irregularity.

17 (c) This section is subject to the limitations imposed by §48-9-202 of this code.

**§48-9-209. Parenting plan; considerations.**

1 When entering an order approving or implementing a temporary or permanent  
2 parenting plan order, including custodial allocation, the court shall consider whether a parent:

- 3 (1) Has abused, neglected, or abandoned a child, as defined by state law;
- 4 (2) Has sexually assaulted or sexually abused a child as those terms are defined in §61-  
5 8B-1 *et seq.* and §61-8D-1 *et seq.* of this code;
- 6 (3) Has committed domestic violence, as defined in §48-27-202 of this code;
- 7 (4) Has overtly or covertly, persistently violated, interfered with, impaired, or impeded the  
8 rights of a parent or a child with respect to the exercise of shared authority, residence, visitation,  
9 or other contact with the child, except in the case of actions taken for the purpose of protecting  
10 the safety of the child or the interfering parent or another family member, pending adjudication of  
11 the facts underlying that belief; or
- 12 (5) Has made one or more fraudulent reports of domestic violence or child abuse:  
13 *Provided*, That a person's withdrawal of or failure to pursue a report of domestic violence or child  
14 support shall not alone be sufficient to consider that report fraudulent.
- 15 (b) If a parent or another person regularly in the household of the parent is found to have  
16 engaged in any activity specified by subsection (a) of this section, the court shall impose limits  
17 that are reasonably calculated to protect the child or child's parent from harm. The limitations that  
18 the court shall consider include, but are not limited to:
  - 19 (1) An adjustment of the custodial responsibility of the parents, including but not limited to:

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

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

24 (C) The allocation of exclusive custodial responsibility to one of the parents;

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

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

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

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

33 (6) Denial of overnight custodial responsibility;

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

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

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

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

43 (c) If a parent or a person regularly in the home of the parent is found to have engaged in  
44 any activity specified in subsection (a) of this section, the court may not allocate custodial  
45 responsibility or decision-making responsibility to that parent without making special written

46 findings that the child and other parent can be adequately protected from harm by such limits as  
47 it may impose under subsection (b) of this section. The parent found to have engaged in the  
48 behavior specified in subsection (a) of this section has the burden of proving that an allocation of  
49 custodial responsibility or decision-making responsibility to that parent will not endanger the child  
50 or the other parent.

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

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

71 (f) In determining whether the presumption for an equal (50-50) allocation of physical  
72 custody has been rebutted, a court shall consider all relevant factors including any of the following:

73 (1) The factors set forth in subsection (a) of this section;

74 (2) Whether the child:

75 (A) Was conceived as a result of sexual assault or sexual abuse by a parent as set forth  
76 in §48-9-209a of this code;

77 (B) Has special needs, a chronic illness, or other serious medical condition and would  
78 receive more appropriate care under another custodial allocation;

79 (C) Is a nursing child less than six months of age, or less than one year of age if the child  
80 receives substantial nutrition through nursing: *Provided*, That the child reaching one year of age  
81 shall qualify as a substantial change in circumstances per §48-9-401 of this code; or

82 (D) Will be separated from his or her siblings or the arrangement would otherwise disrupt  
83 the child's opportunities to bond with his or her siblings;

84 (3) Whether a parent:

85 (A) Is willfully noncompliant with a previous order of the court regarding payment of child  
86 support payments for a child or children of the parties;

87 (B) Is unwilling to seek necessary medical intervention for the child who has a serious  
88 medical condition;

89 (C) Has a chronic illness or other condition that renders him or her unable to provide proper  
90 care for the child;

91 (D) Has intentionally avoided or refused involvement or not been significantly involved in  
92 the child's life prior to the hearing, except when the lack of involvement is the result of actions on  
93 the part of the other parent which were, without good cause, designed to deprive the parent of  
94 contact and involvement with his or her child or children without good cause;

95 (E) Repeatedly causes the child or children to be in the care of a third party rather than  
96 the other parent when he or she is available;

97 (F) Does not have a stable housing situation: *Provided*, That a parent's temporary  
98 residence with a child in a domestic violence shelter shall not constitute an unsafe housing  
99 situation; or

100 (G) Is unwilling or unable to perform caretaking functions for the child as required by §48-  
101 1-210 of this code;

102 (4) Whether a parent, partner, or other person living, or regularly in that parent's  
103 household:

104 (A) Has been adjudicated in an abuse and neglect proceeding to have abused or  
105 neglected a child, or has a pending abuse and neglect case;

106 (B) Has been judicially determined to have committed domestic violence or has a pending  
107 domestic violence case;

108 (C) Has a felony criminal record;

109 (D) Is addicted to a controlled substance or alcohol;

110 (E) Has threatened or has actually detained the child with the intent to retain or conceal  
111 the child from the other parent or from a third person who has legal custody: *Provided*, That a  
112 parent's temporary residence with the child in a domestic violence shelter shall not be construed  
113 as evidence of the parent's intent to retain or conceal the child from the other parent; or

114 (F) Has been involuntarily committed to a mental health facility, or suffers from a serious  
115 mental illness;

116 (5) Whether an equal (50-50) physical allocation is:

117 (A) Impractical because of the physical distance between the parents' residences;

118 (B) Impractical due to the cost and difficulty of transporting the child;

119 (C) Impractical due to each parent's and the child's daily schedules;

120 (D) Would disrupt the education of the child; or

121 (E) Contrary to the firm and reasonable preferences of a child who is 14 years of age or  
122 older; and to accommodate, if the court determines it is in the best interests of the child, the firm



123 and reasonable preferences of a child under 14 years of age, but sufficiently matured that he or  
124 she can intelligently express a voluntary preference for one parent;(6) Whether the parents cannot  
125 work cooperatively and collaboratively in the best interest of the child; or

126 (7) Whether a parent will encourage and accept a positive relationship between the child  
127 and the other parent, including which parent is more likely to keep the other parent involved in the  
128 child's life and activities.

**§48-9-401. Modification upon showing of changed circumstances or harm.**

1 (a) Except as provided in §48-9-402 or §48-9-403 of this code, a court shall modify a  
2 parenting plan order if it finds, on the basis of facts that were not known or have arisen since the  
3 entry of the prior order and were not anticipated in the prior order, that a substantial change has  
4 occurred in the circumstances of the child or of one or both parents and a modification is  
5 necessary to serve the best interests of the child.

6 (b) In exceptional circumstances, a court may modify a parenting plan if it finds that the  
7 plan is not working as contemplated and in some specific way is manifestly harmful to the child,  
8 even if a substantial change of circumstances has not occurred.

9 (c) Unless the parents have agreed otherwise, the following circumstances do not justify  
10 a significant modification of a parenting plan except where harm to the child is shown:

11 (1) Circumstances resulting in an involuntary loss of income, by loss of employment or  
12 otherwise, affecting the parent's economic status;

13 (2) A parent's remarriage or cohabitation, except under the circumstances set forth in §48-  
14 9-209(f) of this code; and

15 (3) Choice of reasonable caretaking arrangements for the child by a legal parent, including  
16 the child's placement in day care.

17 (d) For purposes of subsection (a) of this section, the occurrence or worsening of a limiting  
18 factor, as defined in §48-9-209(a) of this code, after a parenting plan has been ordered by the

19 court constitutes a substantial change of circumstances and measures shall be ordered pursuant  
20 to §48-9-209 of this code to protect the child or the child's parent.

**§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 the  
5 changed 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;

12 (3) Is necessary to accommodate the reasonable and firm preferences of a child who, has  
13 attained the age of 14; or

14 (4) Is necessary to accommodate the reasonable and firm preferences of a child who is  
15 under the age of 14 and, in the discretion of the court, is sufficiently matured that he or she can  
16 intelligently express a voluntary preference;

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

**§48-9-602. Designation of custody for the purpose of other state and federal statutes.**

1 Solely for the purposes of all other state and federal statutes which require a designation  
2 or determination of custody, a parenting plan shall designate the parent with whom the child is

3 scheduled to reside the majority of the time as the custodian of the child. However, this  
4 designation shall not affect either parent's rights and responsibilities under a parenting plan. In  
5 the absence of such a designation, the parent with whom the child is scheduled to reside the  
6 majority of the time is considered to be the custodian of the child for the purposes of such federal  
7 and state statutes. When a court orders that custodial allocation shall be on an equal (50-50)  
8 basis, the court shall also specify in its order which parent may claim state and federal income  
9 tax deductions and exemptions for the child or children: *Provided*, That such claims to state and  
10 federal income tax deductions and exemptions for the child or children may be divided equitably  
11 between the parents, year to year.

**§48-9-603. Effect of enactment; operative dates.**

1 (a) The amendments to this chapter enacted during the 2022 regular session of the  
2 Legislature shall become applicable upon the effective date of those amendments. Any order  
3 entered prior to the effective date of those amendments remains in full force and effect until  
4 modified by a court of competent jurisdiction.

5 (b) The amendments to this chapter enacted during the 2022 regular legislative session  
6 do not constitute a change in circumstances or other basis for modification under §48-9-401 or  
7 §48-9-402 of this code.

8 (c) The amendments to this chapter enacted during the 2022 regular legislative session  
9 shall become applicable upon the effective date of those amendments. Any order entered prior  
10 to the effective date of those amendments remains in full force and effect until modified by a court  
11 of competent jurisdiction.

12 (d) The amendments to this chapter enacted during the 2022 regular legislative session  
13 shall be known as the 2022 Best Interest of the Child Act.



The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

.....  
*Chairman, Senate Committee*

.....  
*Chairman, House Committee*

Originated in the Senate.

In effect 90 days from passage.

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*Clerk of the Senate*

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*Clerk of the House of Delegates*

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*President of the Senate*

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*Speaker of the House of Delegates*

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The within ..... this the.....  
Day of ....., 2022.

.....  
*Governor*