

# **WEST VIRGINIA LEGISLATURE**

**2022 REGULAR SESSION**

**Committee Substitute**

**for**

**Senate Bill 463**

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

[Originating in the Committee on the Judiciary;  
reported on February 21, 2022]

1 A BILL 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 §48-1-102a; to amend and  
3 reenact §48-9-203, §48-9-204, §48-9-205, §48-9-206, §48-9-207, §48-9-208, §48-9-209,  
4 §48-9-401, §48-9-402, §48-9-602, and §48-9-603 of said code, all relating generally to  
5 allocation of legal custody and parenting time in domestic relations matters; establishing  
6 collaborative parenting as a goal in allocation of custodial responsibility and decision-  
7 making; creating a rebuttable presumption that equal (50-50) custodial allocation is in a  
8 child's best interest; requiring specific findings and legal conclusions by the court if equal  
9 (50-50) parenting is not granted; establishing criteria for diverging from equal (50-50)  
10 custodial allocation when it is sought; authorizing interlocutory appeals to the Intermediate  
11 Court of Appeals if the family court refuses all physical custody to a parent or denies equal  
12 (50-50) custody when sought; requiring consideration of certain factors in developing a  
13 temporary parenting plan; ensuring that permanent parenting plans include provisions for  
14 financial support of children; requiring court not to consider temporary allocation of  
15 physical custody in final order unless parties agreed on temporary terms; removing  
16 provisions requiring consideration of terms in temporary orders when drafting final orders;  
17 requiring consideration of parents' ability or inability to work together in allocating  
18 significant decision-making responsibilities; clarifying consideration for courts in  
19 developing or approving parenting plans; setting forth optional considerations for a court  
20 in allocating physical custody of a child; requiring court to designate which parent is  
21 entitled to tax deductions and exemptions when equal (50-50) custody is ordered;  
22 clarifying that amendments made during regular session of the Legislature, 2022, are  
23 prospective; and declaring custodial orders entered prior to the effective date of the  
24 amendments to chapter 48 during the regular session of the Legislature, 2022, remain in  
25 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.**

(a) The primary objective of this article is to serve the child's best interests, by facilitating:

- 1 (1) Stability of the child;
- 2 (2) Collaborative Parental ~~parental~~ planning and agreement about the child's custodial
- 3 arrangements and upbringing;
- 4 (3) Continuity of existing parent-child attachments;
- 5 (4) Meaningful contact between a child and each parent, and which is rebuttably presumed
- 6 to be equal (50-50) custodial allocation of the child;
- 7 (5) Caretaking and parenting relationships by adults who love the child, know how to
- 8 provide for the child's needs, and who place a high priority on doing so;
- 9 (6) Security from exposure to physical or emotional harm;
- 10 (7) Expeditious, predictable decision-making and avoidance of prolonged uncertainty
- 11 respecting arrangements for the child's care and control; and
- 12 (8) Meaningful contact between a child and his or her siblings, including half-siblings.

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

14 consistent with the rebuttable presumption of equal (50-50) custodial allocation.

**§48-1-102a Presumption in favor of equal (50-50) custodial allocation.**

15 There shall be a presumption, rebuttable by a preponderance of the evidence, that equal

16 (50-50) custodial allocation is in the best interest of the child. If the presumption is rebutted, the

17 court shall, absent an agreement between the parents as to all matters related to custodial

18 allocation, construct a parenting time schedule which maximizes the time each parent has with

19 the child and is consistent with ensuring the child's welfare.

**§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~~ 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' work and child-care schedules for the preceding ~~twelve~~ 12 months;

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

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

27 ~~(6) Specific findings of fact upon which the court bases its determinations.~~

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

30 (c) If the parents have not agreed upon the allocation of physical custody of the child, then  
31 the allocation shall be made by the court upon the sworn testimony of the parents and their  
32 witnesses at a hearing.

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

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

39 (f) A parent who has sought and been denied equal (50-50) physical custody, or who has  
40 been denied any physical custody, may file an interlocutory appeal with the West Virginia  
41 Intermediate Court of Appeals as to the temporary custodial allocation of the child or children, and  
42 the Intermediate Court of Appeals shall provide an expedited review of the order.

43 ~~(d)~~ (g) A parent may move for amendment of a temporary parenting plan, and the court  
44 may order amendment to the temporary parenting plan, if the amendment conforms to the  
45 limitations of and considerations required by §48-9-209 of this code and is in the best interest of  
46 the child. The court's order modifying the plan shall be in writing and contain specific findings of  
47 fact upon 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  
5 shall give particular consideration to:

6 (1) Which parent has taken greater responsibility during the last 12 months for performing  
7 caretaking and/or 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 ~~limiting factors as~~ criteria described in §48-9-209 of this  
16 code that are present, including any restraining orders against either parent to prevent domestic  
17 or family violence, by 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; and

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

48 ~~(4)~~ (5) A plan for the custody of the child should if one or both of the parents as a member  
49 of the National Guard, a reserve component, or an active duty component ~~be~~ are mobilized,  
50 deployed, or 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 ~~may be expected to achieve any of the following objectives:~~ shall be equal ("50-50").

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 to accommodate, if~~  
9 ~~the court determines it is in the best interests of the child, the firm and reasonable preferences of~~  
10 ~~a child under 14 years of age, but sufficiently matured that he or she can intelligently express a~~  
11 ~~voluntary preference for one parent;~~

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

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

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 ~~(10) To take into account the preference that time allocated to the parent resulting in the~~  
34 ~~child being under the care and custody of that parent is preferred to time allocated to the parent~~  
35 ~~resulting in the child being under the care or custody of a family member of that parent or a third~~  
36 ~~party; and~~

37 ~~(11) To allow reasonable access to the child by telephone or other electronic contact,~~  
38 ~~which shall be defined in the parenting plan;~~

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

46 ~~(c) If the court is unable to allocate custodial responsibility under §48-9-206(a) of this code~~  
47 ~~because the allocation under §48-9-206(a) of this code would be harmful to the child, or because~~  
48 ~~there is no history of past performance of caretaking functions, as in the case of a newborn, or~~  
49 ~~because the history does not establish a pattern of caretaking sufficiently dispositive of the issues~~  
50 ~~of the case, the court shall allocate custodial responsibility based on the child's best interest,~~  
51 ~~taking into account the factors in considerations that are set forth in this section and in §48-9-209~~  
52 ~~and §48-9-403(d) of this code. and preserving to the extent possible this section's priority on the~~  
53 ~~share of past caretaking functions each parent performed: *Provided*, That if either parent or both~~  
54 ~~has demonstrated reasonable participation in parenting functions as defined in §48-1-235.2 of~~  
55 ~~this code, the court cannot rely solely on caretaking functions, and shall consider the parents'~~  
56 ~~participation in parenting functions.~~

57 (d) In determining how to schedule the custodial time allocated to each parent, the court

58 shall take account of the economic, physical, and other practical circumstances such as those  
59 listed in §48-9-206(a)(6) of this code.

60 (e) (d) In the absence of an agreement of the parents, the court's determination of  
61 allocation of custodial responsibility under this section shall be made pursuant to a final hearing,  
62 which shall not be conducted exclusively by the presentation of evidence. ~~by proffer.~~ The court's  
63 order determining allocation of custodial responsibility shall be in writing, and include specific  
64 findings of fact and conclusions of 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 ~~two~~ 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 decision-making on behalf of the child, and the existence of any considerations as set forth in  
7 §48-9-209 of this code.

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

9 ~~(2) (1) The level of each parent's participation in past decision making on behalf of the~~  
10 ~~child;~~

11 ~~(3) (2) The wishes of the parents; and~~

12 ~~(4) (3) The level of ability and cooperation the parents have demonstrated in decision-~~  
13 ~~making on behalf of the child.~~

14 ~~(5) Prior agreements of the parties; and~~

15 ~~(6) The existence of any limiting factors, as set forth in section 9-209 of this article.~~

16 (b) If each of the child's legal parents has been exercising a reasonable share of the  
17 parenting functions for the child, there shall be a rebuttable presumption the court shall presume

18 that an allocation of decision-making responsibility to both parents jointly is in the child's best  
19 interests. The presumption may be rebutted ~~is overcome if there is a history of domestic abuse,~~  
20 ~~neglect, or abandonment,~~ or by a showing that joint allocation of decision-making responsibility is  
21 not in the child's best interest upon proof by a preponderance of the evidence of relevant factors  
22 under §48-9-209 of this code. ~~Provided, That the~~ The court's determination shall be in writing and  
23 include specific findings of fact supporting any determination that joint allocation of decision-  
24 making responsibility is not in the child's best interest.

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

**§48-9-208. Criteria for parenting plan; Parental dispute resolution.**

1 (a) If provisions for resolving parental disputes are not ordered by the court pursuant to a  
2 parenting agreement ~~under section 9-201,~~ in §48-9-201 of this code, the court shall order a  
3 method of resolving 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 ~~limiting factor as set forth in section 209 of this article.~~ §48-9-209  
8 of this code.

9 (b) The court may order a non-judicial process of dispute resolution by designating with  
10 particularity the person or agency to conduct the process or the method for selecting ~~such~~ a  
11 person or agency. The disposition of a dispute through a non-judicial method of dispute resolution  
12 that has been ordered by the court without prior parental agreement is subject to de novo judicial  
13 review. If the parents have agreed in a parenting plan or by agreement thereafter to a binding  
14 resolution of their dispute by non-judicial means, a decision by such means is binding upon the

15 parents and must be enforced by the court, unless it is shown to be contrary to the best interests  
16 of the child, beyond the scope of the parents' agreement, or the result of fraud, misconduct,  
17 corruption, or other serious irregularity.

18 (c) This section is subject to the limitations imposed by ~~section two hundred two of this~~  
19 ~~article.~~ §48-9-202 of this code.

**§48-9-209. Parenting plan; ~~limiting factors.~~ considerations.**

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

- 5 (1) Has abused, neglected, or abandoned a child, as defined by state law;
- 6 (2) Has sexually assaulted or sexually abused a child as those terms are defined in §61-  
7 8B-1 *et seq.* and §61-8D-1 *et seq.* of this code;
- 8 (3) Has committed domestic violence, as defined in §48-27-202 of this code;
- 9 (4) Has overtly or covertly, persistently violated, interfered with, impaired, or impeded the  
10 rights of a parent or a child with respect to the exercise of shared authority, residence, visitation,  
11 or other contact with the child, except in the case of actions taken for the purpose of protecting  
12 the safety of the child or the interfering parent or another family member, pending adjudication of  
13 the facts underlying that 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 subsection (a) of this  
18 section, 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~~ the parents;

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 ~~twenty-four~~ 24-hour  
33 period 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~~ determines to be necessary  
42 to provide for the safety of the child, a child's parent, or any person whose safety immediately  
43 affects the child's welfare.

44 (c) If a parent is found to have engaged in any activity specified in subsection (a) of this  
45 section, the court may not allocate custodial responsibility or decision-making responsibility to  
46 that parent without making special written findings that the child and other parent can be

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

51 (d) If the court determines, based on the investigation described in part ~~three~~ III of this  
52 article 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~~ The reimbursement may not exceed the actual reasonable costs incurred by  
57 the 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 subdivision (5), ~~of~~ subsection (a) of this section, may move the court pursuant to  
61 ~~subdivision (4), subsection (b), section one hundred and one, article five, chapter forty-nine §49-~~  
62 5-101(b)(4) of this code for the Department of Health and Human Resources to disclose whether  
63 the other parent was the source of the allegation and, if so, whether the department found the  
64 report to be:

- 65 (A) Substantiated;
- 66 (B) Unsubstantiated;
- 67 (C) Inconclusive; or
- 68 (D) Still under investigation.

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

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

75 (1) The factors set forth in subdivision (a) of this section;

76 (2) Whether the child:

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

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

81 (C) Is a nursing child less than six months of age, or less than one year of age if the child  
82 receives substantial nutrition through nursing; or

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

85 (3) Whether a parent:

86 (A) Is in arrears or currently noncompliant with a previous order of the court regarding  
87 payment of child support payments for another child;

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

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

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

96 (E) Has professional responsibilities which render him or her unable to devote adequate  
97 time to the child;

98 (F) Has a work schedule that causes the child or children to be in the care of a third party  
99 rather than the other available parent;

100 (G) Does not have a stable housing situation: *Provided*, That a parent's temporary  
101 residence with a child in a domestic violation shelter shall not constitute an unsafe housing  
102 situation; or

103 (H) Is unwilling or unable to perform caretaking functions for the child as required by §48-  
104 1-210 of this code;

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

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

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

110 (C) Has a felony criminal record;

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

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

116 (E) Has been involuntarily committed to a mental health facility, or suffers from a serious  
117 mental illness;

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

119 (A) Impractical due to the physical distance between the parents' residences;

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

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

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

123 (E) Contrary to the firm and reasonable preferences of a child who is 14 years of age or

124 older; and to accommodate, if the court determines it is in the best interests of the child, the firm  
125 and reasonable preferences of a child under 14 years of age, but sufficiently matured that he or  
126 she can intelligently express a voluntary preference for one parent;

127 (6) Whether the parents cannot work cooperatively and collaboratively in the best interest  
128 of the child; or

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

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

1 (a) Except as provided in ~~section 9-402 or 9-403~~, §48-9-402 or §48-9-403 of this code, a  
2 court shall modify a parenting plan order if it finds, on the basis of facts that were not known or  
3 have arisen since the entry of the prior order and were not anticipated ~~therein~~ in the prior order,  
4 that a substantial change has occurred in the circumstances of the child or of one or both parents  
5 and a modification is 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 ~~subsection (a), section 9-209, §48-9-209(a) of this code,~~ after a parenting  
19 plan has been ordered by the court, constitutes a substantial change of circumstances and  
20 measures shall be ordered pursuant to ~~section 9-209 §48-9-209 of this code,~~ to protect the child  
21 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  
5 ~~change~~ the changed circumstances required by §48-9-401(a) of this code, if the modification is in  
6 the child's 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~~ 14; or

14 (4) Is necessary to accommodate the reasonable and firm preferences of a child who, is  
15 under the age of ~~fourteen~~ 14 and, in the discretion of the court, is sufficiently matured that he or  
16 she can 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 ~~deemed~~ considered to be the custodian of the child for the purposes of such  
7 federal and state statutes. When a court orders that custodial allocation shall be on an equal (50-  
8 50) 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.

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

1 ~~(a) The enactment of this article, formerly enacted as article eleven of this chapter during~~  
2 ~~the second extraordinary session of the 1999 Legislature, is prospective in operation unless~~  
3 ~~otherwise expressly indicated.~~

4 ~~(b) The provisions of §48-9-202 of this code, insofar as they provide for parent education~~  
5 ~~and mediation, became operative on January 1, 2000. Until that date, parent education and~~  
6 ~~mediation with regard to custody issues were discretionary unless made mandatory under a~~  
7 ~~particular program or pilot project by rule or direction of the Supreme Court of Appeals or a circuit~~  
8 ~~court.~~

9 ~~(c) The provisions of this article that authorize the court, in the absence of an agreement~~  
10 ~~of the parents, to order an allocation of custodial responsibility and an allocation of significant~~  
11 ~~decision-making responsibility became operative on January 1, 2000, at which time the primary~~  
12 ~~caretaker doctrine was replaced with a system that allocates custodial and decision-making~~  
13 ~~responsibility to the parents in accordance with this article. Any order entered prior to January 1,~~  
14 ~~2000, based on the primary caretaker doctrine remains in full force and effect until modified by a~~  
15 ~~court of competent jurisdiction.~~

16 ~~(d) (a) The amendments to this chapter made~~ enacted during the 2021 session of the

17 Legislature shall become applicable upon the effective date of those amendments. Any order  
18 entered prior to the effective date of those amendments remains in full force and effect until  
19 modified by a court of competent jurisdiction.

20 (b) The amendments to this chapter enacted during the regular session of the Legislature,  
21 2022, do not constitute a change in circumstances or other basis for modification under §48-9-  
22 401 or §48-9-402 of this code.

23 (e) (c) The amendments to this chapter enacted during the regular session of the  
24 Legislature, 2022, shall become applicable upon the effective date of those amendments. Any  
25 order entered prior to the effective date of those amendments remains in full force and effect until  
26 modified by a court of competent jurisdiction.

27 (d) The amendments to this chapter enacted during the regular session of the Legislature,  
28 2022, shall be known as the 2022 Best Interest of the Child Act.