

1999

Family Court Legislation

SB 2003

Note: This is the final language of the third version of this legislation. The third version was passed by the Legislature on May 20, 1999, and signed into law by the Governor. Two earlier versions (both designated H.B. 2678) were vetoed by the Governor.

Where existing Code sections were changed, this production of SB 2003 shows changes from current Code using ~~strike through~~ of deleted language and underlining of new language.

However, two new articles were inserted into the Code. They are not underlined. The two new articles are article 48-11-1 et seq. (which now provides for "allocation of custodial and decision making for children"), and 51-2A-1 et seq. (which sets up the new family court system).

This particular production of the SB 2003 has been copied electronically and perhaps re-copied during e-mail etc. The pages and line numbering will not correspond to any other production, so use section numbers when communicating with others about the bill. If fonts etc. can be adjusted to make your copy of this production equal 118 pages, it will approximate the page numbers of the printed "enrolled" bill.

Changes are in the order they appear in the Code.

This production used the "Senate Floor Amendment" which shows the strikethrough and underline, so there may have been small changes made by the Clerk in the enrolled bill doing technical "clean up" of citations etc.

Produced by David B. McMahon
May 28, 1999

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1 respective property rights of the parties during the marriage, or in the event of the death of either or
2 both of the parties, and may provide for the disposition of marital property upon an annulment of the
3 marriage or a divorce or separation of the parties. A prenuptial agreement is void if at the time it is
4 made either of the parties is a minor.

5 (4) “Caretaking functions” means tasks that involve interaction with the child or care of the
6 child, including the direction of interaction and care by others. Caretaking functions include the
7 following:

8 (A) Feeding, bedtime and wake-up routines, care of the child when sick or hurt, bathing,
9 grooming, personal hygiene, dressing, recreation and play, physical safety, transportation, and other
10 functions that meet the daily physical needs of the child;

11 (B) Direction of the child's various developmental needs, including the acquisition of motor
12 and language skills, toilet training, self-confidence, and maturation;

13 (C) Discipline, instruction in manners, assignment and supervision of chores, and other tasks
14 that attend to the child's needs for behavioral control and self-restraint;

15 (D) Arrangements for the child's education, including remedial or special services
16 appropriate to the child's needs and interests, communication with teachers and counselors, and
17 supervision of homework;

18 (E) The development and maintenance of appropriate interpersonal relationships with peers,
19 siblings, and adults;

20 (F) Arrangements for health care, including making appointments, communication with
21 health-care providers, medical follow-up, and home health care;

22 (G) Moral guidance; and

1 (H) Arrangement of alternative care by a family member, baby-sitter, or other child-care
2 provider or facility, including investigation of alternatives, communication with providers, and
3 supervision.

4 (5) "Custodial responsibility" refers to physical custodianship and supervision of a child. It
5 usually includes, but does not necessarily require, the exercise of residential or overnight
6 responsibility.

7 (6) "Decision-making responsibility" refers to authority for making significant life decisions
8 on behalf of a child, including, but not limited to, the child's education, spiritual guidance, and health
9 care.

10 ~~(c)~~ (7) "Earnings" means compensation paid or payable for personal services, whether
11 denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments
12 pursuant to a pension or retirement program. "Disposable earnings" means that part of the earnings
13 of any individual remaining after the deduction from those earnings of any amounts required by law
14 to be withheld.

15 (8) "Family law master" means a commissioner of the circuit court appointed or elected and
16 authorized to hear certain domestic relations actions under section ten, article two-a, chapter fifty-one
17 of this code.

18 ~~(d)~~ (9) "Income" includes, but is not limited to, the following:

19 ~~(1)~~ (A) Commissions, earnings, salaries, wages, and other income due or to be due in the
20 future to an individual from his employer and successor employers;

21 ~~(2)~~ (B) Any payment due or to be due in the future to an individual from a profit-sharing
22 plan, a pension plan, an insurance contract, an annuity, social security, unemployment compensation,

1 supplemental employment benefits, workers' compensation benefits, state lottery winnings and
2 prizes, and overtime pay;

3 ~~(3)~~ (C) Any amount of money which is owing to an individual as a debt from an individual,
4 partnership, association, public or private corporation, the United States or any federal agency, this
5 state or any political subdivision of this state, any other state or a political subdivision of another
6 state, or any other legal entity which is indebted to the obligor.

7 (10) "Legal parent" means an individual defined as a parent, by law, on the basis of
8 biological relationship, presumed biological relationship, legal adoption, or other recognized grounds.

9 ~~(e)~~ (11) "Marital property" means:

10 ~~(H)~~ (A) All property and earnings acquired by either spouse during a marriage, including
11 every valuable right and interest, corporeal or incorporeal, tangible or intangible, real or personal,
12 regardless of the form of ownership, whether legal or beneficial, whether individually held, held in
13 trust by a third party, or whether held by the parties to the marriage in some form of co-ownership
14 such as joint tenancy or tenancy in common, joint tenancy with the right of survivorship, or any other
15 form of shared ownership recognized in other jurisdictions without this state, except that marital
16 property shall not include separate property as defined in ~~subsection (f)~~ subdivision (16) of this
17 section; and

18 ~~(2)~~ (B) The amount of any increase in value in the separate property of either of the parties to
19 a marriage, which increase results from ~~(A)~~ (I) an expenditure of funds which are marital property,
20 including an expenditure of such funds which reduces indebtedness against separate property,
21 extinguishes liens, or otherwise increases the net value of separate property, or ~~(B)~~ (ii) work
22 performed by either or both of the parties during the marriage.

1 The definitions of "marital property" contained in this subsection and "separate property"
2 contained in ~~subsection (f)~~ this section shall have no application outside of the provisions of this
3 article, and the common law as to the ownership of the respective property and earnings of a husband
4 and wife, as altered by the provisions of article three of this chapter and other provisions of this code,
5 are not abrogated by implication or otherwise, except as expressly provided for by the provisions of
6 this article as such provisions are applied in actions brought under this article or for the enforcement
7 of rights under this article.

8 (12) "Mediation" means a method of alternative dispute resolution in which a neutral third
9 person helps resolve a dispute. Mediation is an informal, non-adversarial process whereby the
10 neutral third person, the mediator, assists parties to a dispute to resolve, by agreement, some or all of
11 the differences between them. The mediator has no authority to render a judgment on any issue of
12 the dispute.

13 (13) "Mediator" means a neutral third person who interposes between two contending
14 parties, with their consent, for the purpose of assisting them in settling their differences.

15 (14) "Parent" means a legal parent as defined in subdivision (10) of this section, unless
16 otherwise specified.

17 (15) "Parenting functions" means tasks that serve the needs of the child or the child's
18 residential family. Parenting functions include caretaking functions, as defined in subdivision (4) of
19 this section. Parenting functions also include functions that are not caretaking functions, including:

20 (A) Provision of economic support;

21 (B) Participation in decision-making regarding the child's welfare;

22 (C) Maintenance or improvement of the family residence, home or furniture repair, home-

1 improvement projects, yard work, and house cleaning;

2 (D) Financial planning and organization, car repair and maintenance, food and clothing
3 purchasing, cleaning and maintenance of clothing, and other tasks supporting the consumption and
4 savings needs of the family; and

5 (E) Other functions usually performed by a parent or guardian that are important to the
6 child's welfare and development.

7 (16) "Parenting plan" means a temporary parenting plan as defined in subdivision (22) of this
8 section or a permanent parenting plan as defined in subdivision (17) of this section.

9 (17) "Permanent parenting plan" means a plan for parenting a child that is incorporated into a
10 final order or subsequent modification order in a domestic relations action. The plan principally
11 establishes, but is not limited to, the allocation of custodial responsibility and significant
12 decisionmaking responsibility and provisions for resolution of subsequent disputes between the
13 parents.

14 (18) "Rehabilitative alimony" means alimony payable for a specific and determinable period
15 of time, designed to cease when the payee is, after the exercise of reasonable efforts, in a position of
16 self-support.

17 ~~(f)~~ (19) "Separate property" means:

18 ~~(H)~~ (A) Property acquired by a person before marriage; or

19 ~~(Z)~~ (B) Property acquired by a person during marriage in exchange for separate property
20 which was acquired before the marriage; or

21 ~~(Z)~~ (C) Property acquired by a person during marriage, but excluded from treatment as
22 marital property by a valid agreement of the parties entered into before or during the marriage; or

1 ~~(4)~~ (D) Property acquired by a party during marriage by gift, bequest, devise, descent or
2 distribution; or

3 ~~(5)~~ (E) Property acquired by a party during a marriage but after the separation of the parties
4 and before the granting of a divorce, annulment or decree of separate maintenance; or

5 ~~(6)~~ (F) Any increase in the value of separate property as defined in ~~subdivision (1), (2), (3),~~
6 ~~(4) or (5)~~ paragraph (A), (B), (C), (D) or (E) of this subsection subdivision which is due to inflation
7 or to a change in market value resulting from conditions outside the control of the parties.

8 ~~(g)~~ (20) "Separation" or "separation of the parties" means the separation of the parties next
9 preceding the filing of an action under the provisions of this article, which separation continues,
10 without the parties cohabiting or otherwise living together as husband and wife, and without
11 interruption.

12 ~~(h)~~ (21) "Separation agreement" means a written agreement entered into by a husband and
13 wife whereby they agree to live separate and apart from each other and, in connection therewith,
14 agree to settle their property rights; or to provide for the custody and support of their minor child or
15 children, if any; or to provide for the payment or waiver of alimony by either party to the other; or to
16 otherwise settle and compromise issues arising out of their marital rights and obligations. Insofar as
17 an antenuptial agreement as defined in ~~subsection (b)~~ subdivision (3) of this section affects the
18 property rights of the parties or the disposition of property upon an annulment of the marriage, or a
19 divorce or separation of the parties, such antenuptial agreement shall be regarded as a separation
20 agreement under the provisions of this article.

21 (22) "Temporary parenting plan" means a plan incorporated into a temporary or interlocutory
22 order that provides for the parenting of a child pending final resolution of a domestic relations action.

1 **§48-2-4a. Petition instituting a domestic relations action; answer.**

2 (a) A domestic relations action is instituted by the filing of a verified petition. On and after
3 the first day of October, one thousand nine hundred ninety-nine, the formal style of a domestic
4 relations petition and the caption for all subsequent pleadings is as follows:

5 (1) In an action for divorce, separate maintenance or annulment the action may be styled “In
6 Re the marriage of _____ and _____”; and

7 (2) In an action to establish a child support obligation or to allocate custodial responsibility
8 and decision-making responsibility when the parties are not married, the action may be styled “In Re
9 the Child(ren) of _____ and _____.”

10 The parties are identified in all pleadings as “petitioner” and “respondent”.

11 (b) The responsive pleading to a petition instituting a domestic relations action is
12 denominated an answer. The form and requisites for an answer to a petition for divorce or any other
13 responsive pleading shall be verified in accordance with the provisions of section ten, article two of
14 this article and are governed by the rules of civil procedure.

15 (c) The provisions of this section will become effective on the first day of October, one
16 thousand nine hundred ninety-nine.

17 ~~A verified answer to a divorce complaint alleging as one of the grounds for divorce, the~~
18 ~~ground of irreconcilable differences as contained in subdivision (10), subsection (a), section four of~~
19 ~~this article, may be in the form or effect as follows:~~

20 ~~_____ IN THE CIRCUIT COURT OF COUNTY, WEST VIRGINIA~~

21 ~~_____~~

22 ~~_____ Plaintiff~~

1 vs. _____ CIVIL ACTION NO.....

2 _____,

3 _____ Defendant

4 _____ ANSWER

5 _____ Now comes the defendant for answer to the complaint and says as follows:

6 _____ (1) The defendant admits all the allegations contained in the complaint except the allegations
7 contained in paragraph number(s) _____, which allegations the defendant denies.

8 _____ (2) That irreconcilable differences exist between the parties:

9 _____

10 _____ Defendant

11 _____ VERIFICATION

12 _____ STATE OF WEST VIRGINIA,

13 _____ COUNTY OF _____,

14 _____, the defendant named in the foregoing answer, being duly sworn,

15 says that the facts and allegations therein contained are true, except so far as they are therein stated to
16 be on information, and that, so far as they are therein stated to be on information, the defendant
17 believes them to be true.

18 _____

19 _____ Defendant

20 _____ Taken, sworn to and subscribed before me this _____ day of _____,

21 _____

22 _____ My commission expires _____

1 _____ Notary Public

2 _____ CERTIFICATE OF SERVICE

3 _____ I have mailed a true copy of the foregoing answer to _____, plaintiff's attorney, by
4 first-class mail, at his last known address at _____ on the _____ date of _____,
5 _____

6 _____

7 _____ Defendant.

8 **§48-2-15. Relief upon ordering divorce or annulment or granting decree of separate**

9 **maintenance.**

10 (a) Upon ordering a divorce or granting a decree of separate maintenance, the court may
11 require either party to pay alimony in the form of periodic installments, or a lump sum, or both, for
12 the maintenance of the other party. Payments of alimony are to be ordinarily made from a party's
13 income, but when the income is not sufficient to adequately provide for those payments, the court
14 may, upon specific findings set forth in the order, order the party required to make those payments to
15 make them from the corpus of his or her separate estate. An award of alimony shall not be
16 disproportionate to a party's ability to pay as disclosed by the evidence before the court.

17 (b) Upon ordering the annulment of a marriage or a divorce or granting of decree of separate
18 maintenance, the court may further order all or any part of the following relief:

19 (1) The court may provide for the custody of minor children of the parties, subject to such
20 rights of visitation, both in and out of the residence of the custodial parent or other person or persons
21 having custody, as may be appropriate under the circumstances. In every action where visitation is
22 awarded, the court shall specify a schedule for visitation by the noncustodial parent: *Provided, That*

1 with respect to any existing order which provided for visitation but which does not provide a specific
2 schedule for visitation by the noncustodial parent, upon motion of any party, notice of hearing and
3 hearing, the court shall issue an order which provides a specific schedule of visitation by the
4 noncustodial parent;

5 (2) When the action involves a minor child or children, the court shall require either party to
6 pay child support in the form of periodic installments for the maintenance of the minor children of the
7 parties in accordance with support guidelines promulgated pursuant to article one-b, chapter
8 forty-eight-a of this code. Payments of child support are to be ordinarily made from a party's income,
9 but in cases when the income is not sufficient to adequately provide for those payments, the court
10 may, upon specific findings set forth in the order, order the party required to make those payments to
11 make them from the corpus of his or her separate estate;

12 (3) When the action involves a minor child or children, the court shall provide for medical
13 support for any minor children in accordance with section fifteen-a of this article;

14 (4) As an incident to requiring the payment of alimony or child support, the court may order
15 either party to continue in effect existing policies of insurance covering the costs of health care and
16 hospitalization of the other party: *Provided*, That if the other party is no longer eligible to be covered
17 by such insurance because of the granting of an annulment or divorce, the court may require a party
18 to substitute such insurance with a new policy to cover the other party or may consider the
19 prospective cost of such insurance in awarding alimony to be paid in periodic installments. Payments
20 made to an insurer pursuant to this subdivision, either directly or by a deduction from wages, shall be
21 deemed to be alimony or installment payments for the distribution of marital property, in such
22 proportion as the court shall direct: *Provided, however*, That if the court does not set forth in the

1 order that a portion of such payments is to be deemed installment payments for the distribution of
2 marital property, then all such payments made pursuant to this subdivision shall be deemed to be
3 alimony: *Provided further*, That the designation of insurance coverage as alimony under the
4 provisions of this subdivision shall not, in and of itself, give rise to a subsequent modification of the
5 order to provide for alimony other than insurance for covering the costs of health care and
6 hospitalization;

7 (5) The court may grant the exclusive use and occupancy of the marital home to one of the
8 parties, together with all or a portion of the household goods, furniture and furnishings reasonably
9 necessary for such use and occupancy. Such use and occupancy shall be for a definite period, ending
10 at a specific time set forth in the order, subject to modification upon the petition of either party.

11 Except in extraordinary cases supported by specific findings set forth in the order granting relief, a
12 grant of the exclusive use and occupancy of the marital home shall be limited to those situations
13 when such use and occupancy is reasonably necessary to accommodate the rearing of minor children
14 of the parties. The court may require payments to third parties in the form of home loan installments,
15 land contract payments, rent, property taxes and insurance coverage if the amount of such coverage
16 is reduced to a fixed monetary amount set forth in the court's order. When such third party payments
17 are ordered, the court shall specify whether such payments or portions of payments are alimony, child
18 support, a partial distribution of marital property or an allocation of marital debt: *Provided*, That if
19 the court does not set forth in the order that a portion of such payments is to be deemed child support
20 or installment payments for the distribution of marital property, then all such payments made
21 pursuant to this subdivision shall be deemed to be alimony. When such third party payments are
22 ordered, the court shall specify whether such payments or portions of payments are alimony, child

1 support, a partial distribution of marital property or an allocation of marital debt. If the payments are
2 not designated in an order and the parties have waived any right to receive alimony, the court may
3 designate the payments upon motion by any party. Nothing contained in this subdivision shall
4 abrogate an existing contract between either of the parties and a third party or affect the rights and
5 liabilities of either party or a third party under the terms of such contract;

6 (6) As an incident to requiring the payment of alimony, the court may grant the exclusive use
7 and possession of one or more motor vehicles to either of the parties. The court may require
8 payments to third parties in the form of automobile loan installments or insurance coverage if
9 available at reasonable rates, and any such payments made pursuant to this subdivision for the benefit
10 of the other party shall be deemed to be alimony or installment payments for the distribution of
11 marital property, as the court may direct. Nothing contained in this subdivision shall abrogate an
12 existing contract between either of the parties and a third party or affect the rights and liabilities of
13 either party or a third party under the terms of such contract;

14 (7) When the pleadings include a specific request for specific property or raise issues
15 concerning the equitable division of marital property as defined in section one of this article, the court
16 shall order such relief as may be required to effect a just and equitable distribution of the property
17 and to protect the equitable interests of the parties therein;

18 (8) Unless a contrary disposition is ordered pursuant to other provisions of this section, then
19 upon the motion of either party, the court may compel the other party to deliver to the moving party
20 any of his or her separate estate which may be in the possession or control of the respondent party
21 and may make such further order as is necessary to prevent either party from interfering with the
22 separate estate of the other;

1 (9) When allegations of abuse have been proven, the court shall enjoin the offending party
2 from molesting or interfering with the other, or otherwise imposing any restraint on the personal
3 liberty of the other or interfering with the custodial or visitation rights of the other. Such order may
4 permanently enjoin the offending party from entering the school, business or place of employment of
5 the other for the purpose of molesting or harassing the other; or from contacting the other, in person
6 or by telephone, for the purpose of harassment or threats; or from harassing or verbally abusing the
7 other in a public place;

8 (10) The court may order either party to take necessary steps to transfer utility accounts and
9 other accounts for recurring expenses from the name of one party into the name of the other party or
10 from the joint names of the parties into the name of one party. Nothing contained in this subdivision
11 shall affect the liability of the parties for indebtedness on any such account incurred before the
12 transfer of such account.

13 (c) When an annulment or divorce is denied, the court shall retain jurisdiction of the case and
14 may order all or any portion of the relief provided for in subsections (a) and (b) of this section which
15 has been demanded or prayed for in the pleadings.

16 (d) When a divorce or annulment is granted in this state upon constructive service of process
17 and personal jurisdiction is thereafter obtained of the defendant in such case, the court may order all
18 or any portion of the relief provided for in subsections (a) and (b) of this section which has been
19 demanded or prayed for in the pleadings.

20 (e) After the entry of an order pursuant to the provisions of this section, the court may revise
21 the order concerning the maintenance of the parties and enter a new order concerning the same, as
22 the circumstances of the parties may require.

1 The court may also from time to time afterward, upon motion of either of the parties and
2 upon proper service, revise such order to grant relief pursuant to subdivision (9), subsection (b) of
3 this section, and enter a new order concerning the same, as the circumstances of the parties and the
4 benefit of children may require. The court may also from time to time afterward, upon the motion of
5 either of the parties or other proper person having actual or legal custody of the minor child or
6 children of the parties, revise or alter the order concerning the custody and support of the children,
7 and make a new order concerning the same, issuing it forthwith, as the circumstances of the parents
8 or other proper person or persons and the benefit of the children may require: *Provided*, That all
9 orders modifying child support shall be in conformance with the requirements of support guidelines
10 promulgated pursuant to article one-b, chapter forty-eight-a of this code: *Provided, however*, That an
11 order providing for child support payments may be revised or altered for the reason, inter alia, that
12 the existing order provides for child support payments in an amount that is less than eighty-five
13 percent or more than one hundred fifteen percent of the amount that would be required to be paid
14 under the child support guidelines promulgated pursuant to the provisions of said section: *Provided*
15 *further*, That the child support enforcement division may review a child support order and, if
16 appropriate, file a motion with the circuit court for modification of the child support order pursuant to
17 the provisions of section thirty-five, article two, chapter forty-eight-a of this code.

18 In granting relief under this subsection, the court may, when other means are not
19 conveniently available, alter any prior order of the court with respect to the distribution of marital
20 property, if such property is still held by the parties, and if necessary to give effect to a modification
21 of alimony, child support or child custody or necessary to avoid an inequitable or unjust result which
22 would be caused by the manner in which the modification will affect the prior distribution of marital

1 property.

2 (f) (1) When a separation agreement is the basis for an award of alimony, the court, in
3 approving the agreement, shall examine the agreement to ascertain whether it clearly provides for
4 alimony to continue beyond the death of the payor ~~party~~ or the payee or to cease in such event. When
5 alimony is to be paid pursuant to the terms of a separation agreement which does not state whether
6 the payment of alimony is to continue beyond the death of the payor ~~party~~ or payee or is to cease, or
7 when the parties have not entered into a separation agreement and alimony is ~~to be~~ awarded, the
8 court shall ~~specifically state~~ have the discretion to determine, as a part of its order, whether such
9 payments of alimony are to be continued beyond the death of the payor ~~party~~ or payee or cease. In
10 the event neither an agreement nor an order make provision for the death of the payor or payee,
11 alimony other than rehabilitative alimony or alimony in gross shall cease on the death of the payor or
12 payee. In the event neither an agreement nor an order make provision for the death of the payor,
13 rehabilitative alimony continues beyond the payor's death, in the absence of evidence that the
14 payor's estate is likely to be insufficient to meet other obligations or that other matters would make
15 continuation after death inequitable. Rehabilitative alimony ceases with the payee's death. In the
16 event neither an agreement nor an order make provision for the death of the payor or payee, alimony
17 in gross continues beyond the payor's or payee's death.

18 ~~(g)~~ (2) When a separation agreement is the basis for an award of alimony, the court, in
19 approving the agreement, shall examine the agreement to ascertain whether it clearly provides for
20 alimony to continue beyond the remarriage of the payee ~~party~~ or to cease in such event. When
21 alimony is to be paid pursuant to the terms of a separation agreement which does not state whether
22 the payment of alimony is to continue beyond the remarriage of the payee ~~party~~ or is to cease, or

1 when the parties have not entered into a separation agreement and alimony is ~~to be~~ awarded, the
2 court shall ~~specifically state~~ have the discretion to determine, as a part of its order, whether such
3 payments of alimony are to be continued beyond the remarriage of the payee, ~~party or cease~~. In the
4 event neither an agreement nor an order make provision for the remarriage of the payee, alimony
5 other than rehabilitative alimony or alimony in gross shall cease on the remarriage of the payee.
6 Rehabilitative alimony does not cease upon the remarriage of the payee during the first four years of
7 a rehabilitative period. In the event neither an agreement nor an order make provision for the
8 remarriage of the payee, alimony in gross continues beyond the payee's remarriage.

9 (g)(1) In the discretion of the court, an award of alimony may be reduced or terminated upon
10 specific written findings by the court that since the granting of a divorce and the award of alimony a
11 de facto marriage has existed between the alimony payee and another person.

12 (2) In determining whether an existing award of alimony or spousal support should be
13 reduced or terminated because of an alleged de facto marriage between a payee and another person,
14 the court should elicit the nature and extent of the relationship in question. The court should give
15 consideration, without limitation, to circumstances such as the following in determining the
16 relationship of an ex-spouse to another person:

17 (A) The extent to which the ex-spouse and the other person have held themselves out as a
18 married couple by engaging in conduct such as using the same last name, using a common mailing
19 address, referring to each other in terms such as "my husband" or "my wife," or otherwise
20 conducting themselves in a manner that evidences a stable marriage-like relationship;

21 (B) The period of time that the ex-spouse has resided with another person not related by
22 consanguinity or affinity in a permanent place of abode;

1 (C) The duration and circumstances under which the ex-spouse has maintained a continuing
2 conjugal relationship with the other person;

3 (D) The extent to which the ex-spouse and the other person have pooled their assets or
4 income or otherwise exhibited financial interdependence;

5 (E) The extent to which the ex-spouse or the other person has supported the other, in whole
6 or in part;

7 (F) The extent to which the ex-spouse or the other person has performed valuable services
8 for the other;

9 (G) The extent to which the ex-spouse or the other person has performed valuable services
10 for the other's company or employer;

11 (H) Whether the ex-spouse and the other person have worked together to create or enhance
12 anything of value;

13 (I) Whether the ex-spouse and the other person have jointly contributed to the purchase of
14 any real or personal property;

15 (J) Evidence in support of a claim that the ex-spouse and the other person have an express
16 agreement regarding property sharing or support; or

17 (K) Evidence in support of a claim that the ex-spouse and the other person have an implied
18 agreement regarding property sharing or support.

19 (7) On the issue of whether alimony should be reduced or terminated under this subsection,
20 the burden is on the payor to prove by a preponderance of the evidence that a de facto marriage
21 exists. If the court finds that the payor has failed to meet burden of proof on the issue, the court may
22 award reasonable attorney's fees to a payee who prevails in an action that sought to reduce or

1 terminate alimony on the ground that a de facto marriage exists.

2 (8) The court shall order that a reduction or termination of alimony is retroactive to the date
3 of service of the petition on the payee, unless the court finds that reimbursement of amounts already
4 paid would cause an undue hardship on the payee.

5 (9) An award of rehabilitative alimony shall not be reduced or terminated because of the
6 existence of a de facto marriage between the alimony payee and another person.

7 (10) An award of alimony in gross shall not be reduced or terminated because of the
8 existence of a de facto marriage between the alimony payee and another person.

9 (11) An award of alimony shall not be reduced or terminated under the provisions of this
10 subsection for conduct by an alimony payee that occurred before the first day of October, one
11 thousand nine hundred ninety-nine.

12 (12) Nothing in this subsection shall be construed to abrogate the requirement that every
13 marriage in this state be solemnized under a license or construed to recognize a common law
14 marriage as valid.

15 (h) In addition to the disclosure requirements set forth in section thirty-three of this article,
16 the court may order accounts to be taken as to all or any part of marital property or the separate
17 estates of the parties and may direct that the accounts be taken as of the date of the marriage, the date
18 upon which the parties separated or any other time in assisting the court in the determination and
19 equitable division of property.

20 (i) In determining whether alimony is to be awarded, or in determining the amount of
21 alimony, if any, to be awarded under the provisions of this section, the court shall consider and
22 compare the fault or misconduct of either or both of the parties and the effect of such fault or

1 misconduct as a contributing factor to the deterioration of the marital relationship. However, alimony
2 shall not be awarded when both parties prove grounds for divorce and are denied a divorce, nor shall
3 an award of alimony under the provisions of this section be ordered which directs the payment of
4 alimony to a party determined to be at fault, when, as a grounds granting the divorce, such party is
5 determined by the court:

6 (1) To have committed adultery; or

7 (2) To have been convicted for the commission of a crime which is a felony, subsequent to
8 the marriage if such conviction has become final; or

9 (3) To have actually abandoned or deserted his or her spouse for six months.

10 (j) Whenever under the terms of this section or section thirteen of this article a court enters an
11 order requiring the payment of alimony or child support, if the court anticipates the payment of such
12 alimony or child support or any portion thereof to be paid out of "disposable retired or retainer pay"
13 as that term is defined in 10 U.S.C. §1408, relating to members or former members of the uniformed
14 services of the United States, the court shall specifically provide for the payment of an amount,
15 expressed in dollars or as a percentage of disposable retired or retainer pay, from the disposable
16 retired or retainer pay of the payor party to the payee party.

17 (k) Any order which provides for the custody or support of a minor child shall include:

18 (1) The name of the custodian;

19 (2) The amount of the support payments;

20 (3) The date the first payment is due;

21 (4) The frequency of the support payments;

22 (5) The event or events which trigger termination of the support obligation;

1 (6) A provision regarding wage withholding;

2 (7) The address where payments shall be sent;

3 (8) A provision for medical support; and

4 (9) When child support guidelines are not followed, a specific written finding pursuant to
5 section fourteen, article one-b, chapter forty-eight-a of this code.

6 ~~(f) (1) Unless the best interests of the child require otherwise, every final order and every~~
7 ~~modification order which provides for the custody of a minor child of the parties shall also provide~~
8 ~~for the following:~~

9 ~~(A) The custodial parent shall be required to authorize school authorities in the school in~~
10 ~~which the child is enrolled to release to the noncustodial parent copies of any and all information~~
11 ~~concerning the child which would otherwise be properly released to the custodial parent;~~

12 ~~(B) The custodial parent shall be required, promptly after receipt, to transmit to the~~
13 ~~noncustodial parent a copy of the child's grades or report card and copies of any other reports~~
14 ~~reflecting the status or progress of the child;~~

15 ~~(C) The custodial parent shall be required, when practicable, to arrange appointments for~~
16 ~~parent-teacher conferences at a time when the noncustodial parent can be present;~~

17 ~~(D) The custodial parent shall be required to authorize medical providers to release to the~~
18 ~~noncustodial parent copies of any and all information concerning medical care provided to the child~~
19 ~~which would otherwise be properly released to the custodial parent;~~

20 ~~(E) The custodial parent shall be required to promptly inform the noncustodial parent of any~~
21 ~~illness of the child which requires medical attention; or, if the child is in the actual physical custody of~~
22 ~~the noncustodial parent during a period of visitation, the noncustodial parent shall be required to~~

1 promptly inform the custodial parent of any illness of the child which requires medical attention;

2 (F) ~~The custodial parent shall be required to consult with the noncustodial parent prior to any~~
3 ~~elective surgery being performed on the child; and in the event emergency medical procedures are~~
4 ~~undertaken for the child which require the parental consent of either parent, if time permits, the other~~
5 ~~parent shall be consulted, or if time does not permit such consultation, the other parent shall be~~
6 ~~promptly informed of such emergency medical procedures: *Provided,* That the same duty to inform~~
7 ~~the custodial parent applies to the noncustodial parent in the event that the emergency medical~~
8 ~~procedures are required while the child is in the physical custody of the noncustodial parent during a~~
9 ~~period of visitation: *Provided, however,* That nothing contained herein shall be deemed to alter or~~
10 ~~amend the law of this state as it otherwise pertains to physicians or health care facilities obtaining~~
11 ~~parental consent prior to providing medical care or performing medical procedures.~~

12 (2) ~~In the event a custodial parent shall fail or refuse to authorize the release of school or~~
13 ~~medical records as provided for by subdivision (1) of this subsection, then upon the ex parte~~
14 ~~application of the noncustodial parent, the family law master shall prepare an order for entry by the~~
15 ~~circuit court which appoints the family law master as a special commissioner authorized to execute a~~
16 ~~consent for the release of such records and direct it to the appropriate school authorities or medical~~
17 ~~providers.~~

18 (1) Effective the first day of October, one thousand nine hundred ninety-nine, any order
19 entered that provides for the payment of child support shall also include a statement that requires
20 both parties to report any changes in gross income, either in source of employment or in the amount
21 of gross income, to the child support enforcement division and to the other party. The notice shall not
22 be required if the change in gross income is less than a fifteen percent change in gross income.

1 **§48-2-16. Effect of separation agreement; what considered in awarding alimony, child**
2 **support or separate maintenance.**

3 (a) In cases where the parties to an action commenced under the provisions of this article
4 have executed a separation agreement, if the court finds that the agreement is fair and reasonable,
5 and not obtained by fraud, duress or other unconscionable conduct by one of the parties, and further
6 finds that the parties, through the separation agreement, have expressed themselves in terms which, if
7 incorporated into a judicial order, would be enforceable by a court in future proceedings, then the
8 court shall conform the relief which it is authorized to order under the provisions of sections thirteen
9 and fifteen of this article to the separation agreement of the parties. The separation agreement may
10 contractually fix the division of property between the parties and may determine whether alimony
11 shall be awarded, whether an award of alimony, other than an award of rehabilitative alimony or
12 alimony in gross, may be reduced or terminated because a de facto marriage exists between the
13 alimony payee and another person, whether a court shall have continuing jurisdiction over the amount
14 of an alimony award so as to increase or decrease the amount of alimony to be paid, whether alimony
15 shall be awarded as a lump sum settlement in lieu of periodic payments, whether alimony shall
16 continue beyond the death of the payor party or the remarriage of the payee party, or whether the
17 alimony award shall be enforceable by contempt proceedings or other judicial remedies aside from
18 contractual remedies. Any award of periodic payments of alimony shall be deemed to be judicially
19 decreed and subject to subsequent modification unless there is some explicit, well expressed, clear,
20 plain and unambiguous provision to the contrary set forth in the court approved separation agreement
21 or the order granting the divorce. Child support shall, under all circumstances, always be subject to
22 continuing judicial modification.

1 (b) In cases where the parties to an action commenced under the provisions of this article
2 have not executed a separation agreement, or have executed an agreement which is incomplete or
3 insufficient to resolve the outstanding issues between the parties, or where the court finds the
4 separation agreement of the parties not to be fair and reasonable or clear and unambiguous, the court
5 shall proceed to resolve the issues outstanding between the parties. The court shall consider the
6 following factors in determining the amount of alimony, child support or separate maintenance, if
7 any, to be ordered under the provisions of sections thirteen and fifteen of this article, as a supplement
8 to or in lieu of the separation agreement:

9 (1) The length of time the parties were married;

10 (2) The period of time during the marriage when the parties actually lived together as
11 husband and wife;

12 (3) The present employment income and other recurring earnings of each party from any
13 source;

14 (4) The income-earning abilities of each of the parties, based upon such factors as
15 educational background, training, employment skills, work experience, length of absence from the
16 job market and custodial responsibilities for children;

17 (5) The distribution of marital property to be made under the terms of a separation agreement
18 or by the court under the provisions of section thirty-two of this article, insofar as the distribution
19 affects or will affect the earnings of the parties and their ability to pay or their need to receive
20 alimony, child support or separate maintenance: Provided, That for the purposes of determining a
21 spouse's ability to pay alimony, the court may not consider the income generated by property
22 allocated to the payor spouse in connection with the division of marital property unless the court

1 makes specific findings that a failure to consider income from the allocated property would result in
2 substantial inequity;

3 (6) The ages and the physical, mental and emotional condition of each party;

4 (7) The educational qualifications of each party;

5 (8) Whether either party has foregone or postponed economic, education or employment
6 opportunities during the course of the marriage;

7 (9) The standard of living established during the marriage;

8 ~~(8)~~ (10) The likelihood that the party seeking alimony, child support or separate maintenance
9 can substantially increase his or her income-earning abilities within a reasonable time by acquiring
10 additional education or training;

11 (11) Any financial or other contribution made by either party to the education, training,
12 vocational skills, career or earning capacity of the other party;

13 ~~(9)~~ (12) The anticipated expense of obtaining the education and training described in
14 subdivision ~~(8)~~(10) above;

15 ~~(10)~~ (13) The costs of educating minor children;

16 ~~(11)~~ (14) The costs of providing health care for each of the parties and their minor children;

17 ~~(12)~~ (15) The tax consequences to each party;

18 ~~(13)~~ (16) The extent to which it would be inappropriate for a party, because said party will be
19 the custodian of a minor child or children, to seek employment outside the home;

20 ~~(14)~~ (17) The financial need of each party;

21 ~~(15)~~ (18) The legal obligations of each party to support himself or herself and to support any
22 other person; ~~and~~

1 (19) Costs and care associated with a minor or adult child's physical or mental disabilities;

2 and

3 ~~(16)~~ (20) Such other factors as the court deems necessary or appropriate to consider in order
4 to arrive at a fair and equitable grant of alimony, child support or separate maintenance.

5 **§48-2-32. Marital property disposition.**

6 (a) Except as otherwise provided in this section, upon every judgment of annulment, divorce
7 or separation, the court shall divide the marital property of the parties equally between the parties.

8 (b) In cases where the parties to an action commenced under the provisions of this article
9 have executed a separation agreement, then the court shall divide the marital property in accordance
10 with the terms of the agreement, unless the court finds:

11 (1) That the agreement was obtained by fraud, duress or other unconscionable conduct by
12 one of the parties; or

13 (2) That the parties, in the separation agreement, have not expressed themselves in terms
14 which, if incorporated into a judicial order, would be enforceable by a court in future proceedings; or

15 (3) That the agreement, viewed in the context of the actual contributions of the respective
16 parties to the net value of the marital property of the parties, is so inequitable as to defeat the
17 purposes of this section, and such agreement was inequitable at the time the same was executed.

18 (c) In the absence of a valid agreement, the court shall presume that all marital property is to
19 be divided equally between the parties, but may alter this distribution, without regard to any
20 attribution of fault to either party which may be alleged or proved in the course of the action, after a
21 consideration of the following:

22 (1) The extent to which each party has contributed to the acquisition, preservation and

1 maintenance, or increase in value of marital property by monetary contributions, including, but not
2 limited to:

3 (A) Employment income and other earnings; and

4 (B) Funds which are separate property.

5 (2) The extent to which each party has contributed to the acquisition, preservation and
6 maintenance or increase in value of marital property by nonmonetary contributions, including, but not
7 limited to:

8 (A) Homemaker services;

9 (B) Child care services;

10 (C) Labor performed without compensation, or for less than adequate compensation, in a
11 family business or other business entity in which one or both of the parties has an interest;

12 (D) Labor performed in the actual maintenance or improvement of tangible marital property;

13 and

14 (E) Labor performed in the management or investment of assets which are marital property.

15 (3) The extent to which each party expended his or her efforts during the marriage in a
16 manner which limited or decreased such party's income-earning ability or increased the income-
17 earning ability of the other party, including, but not limited to:

18 (A) Direct or indirect contributions by either party to the education or training of the other
19 party which has increased the income-earning ability of such other party; and

20 (B) Foregoing by either party of employment or other income-earning activity through an
21 understanding of the parties or at the insistence of the other party.

22 (4) The extent to which each party, during the marriage, may have conducted himself or

1 herself so as to dissipate or depreciate the value of the marital property of the parties: *Provided*, That
2 except for a consideration of the economic consequences of conduct as provided for in this
3 subdivision, fault or marital misconduct shall not be considered by the court in determining the
4 proper distribution of marital property.

5 (d) After considering the factors set forth in subsection (c) of this section, the court shall:

6 (1) Determine the net value of all marital property of the parties as of the date of the
7 ~~commencement of the action~~ separation of the parties or as of such later date determined by the court
8 to be more appropriate for attaining an equitable result. ~~: *Provided*, That for contractual rights to~~
9 ~~contingent and other future earned fees that are considered to be marital property, the valuation date~~
10 ~~is the date the parties separated. Contractual agreements for contingent or other future earned fees~~
11 ~~entered into during the marriage and before the parties separated is marital property. The court shall~~
12 ~~not delay a division of marital property by retaining continuing jurisdiction over the matter until the~~
13 ~~amount of the contingent or other future earned fee has been ultimately decided, but shall make a~~
14 ~~valuation of the contractual agreement contemporaneously with the valuation of other marital~~
15 ~~property; Where the value of the marital property portion of a spouse's entitlement to future~~
16 ~~payments can be determined at the time of entering a final order in a domestic relations action, the~~
17 ~~court may include it in reckoning the worth of the marital property assigned to each spouse. In the~~
18 ~~absence of an agreement between the parties, when the value of the future payments is not known at~~
19 ~~the time of entering a final order in a domestic relations action, if their receipt is contingent on future~~
20 ~~events or not reasonably assured, or if for other reasons it is not equitable under the circumstances to~~
21 ~~include their value in the property assigned at the time of dissolution, the court may decline to do so,~~
22 and

1 (A) Fix the spouses' respective shares in such future payments if and when received, or,

2 (B) If it is not possible and practical to fix their share at the time of entering a final order in a
3 domestic relations action, reserve jurisdiction to make an appropriate order at the earliest practical
4 date.

5 If a valuation is made after a contingent or other future fee has been earned through the
6 personal services or skills of a spouse, the portion that is marital property shall be in the same
7 proportion to the total fee that the personal services or skills expended before the separation of the
8 parties bears to the total personal skills or services expended. The provisions of this subdivision
9 apply to pending cases when the issues of contingent fees or future earned fees have not been finally
10 adjudicated.

11 (2) Designate the property which constitutes marital property, and define the interest therein
12 to which each party is entitled and the value of their respective interest therein. In the case of an
13 action wherein there is no agreement between the parties and the relief demanded requires the court
14 to consider such factors as are described in subdivisions (1), (2), (3) and (4), subsection (c) of this
15 section, if a consideration of factors only under said subdivisions (1) and (2) would result in an
16 unequal division of marital property, and if an examination of the factors described in said
17 subdivisions (3) and (4) produce a finding that a party: (A) Expended his or her efforts during the
18 marriage in a manner which limited or decreased such party's income-earning ability or increased the
19 income-earning ability of the other party; or (B) conducted himself or herself so as to dissipate or
20 depreciate the value of the marital property of the parties, then the court may, in the absence of a fair
21 and just alimony award under the provisions of section fifteen of this article which adequately takes
22 into account the facts which underlie the factors described in subdivisions (3) and (4), subsection (c)

1 of this section, equitably adjust the definition of the parties' interest in marital property, increasing the
2 interest in marital property of a party adversely affected by the factors considered under said
3 subdivisions who would otherwise be awarded less than one half of the marital property, to an
4 interest not to exceed one half of the marital property;

5 (3) Designate the property which constitutes separate property of the respective parties or the
6 separate property of their children;

7 (4) Determine the extent to which marital property is susceptible to division in accordance
8 with the findings of the court as to the respective interests of the parties therein;

9 (5) In the case of any property which is not susceptible to division, ascertain the projected
10 results of a sale of such property;

11 (6) Ascertain the projected effect of a division or transfer of ownership of income-producing
12 property, in terms of the possible pecuniary loss to the parties or other persons which may result from
13 an impairment of the property's capacity to generate earnings; and

14 (7) Transfer title to such component parts of the marital property as may be necessary to
15 achieve an equitable distribution of the marital property. To make such equitable distribution, the
16 court may:

17 (A) Direct either party to transfer their interest in specific property to the other party;

18 (B) Permit either party to purchase from the other party their interest in specific property;

19 (C) Direct either party to pay a sum of money to the other party in lieu of transferring specific
20 property or an interest therein, if necessary to adjust the equities and rights of the parties, which sum
21 may be paid in installments or otherwise, as the court may direct;

22 (D) Direct a party to transfer his or her property to the other party in substitution for property

1 of the other party of equal value which the transferor is permitted to retain and assume ownership of;

2 or

3 (E) Order a sale of specific property and an appropriate division of the net proceeds of such
4 sale: *Provided*, That such sale may be by private sale, or through an agent or by judicial sale,
5 whichever would facilitate a sale within a reasonable time at a fair price.

6 (e) In order to achieve the equitable distribution of marital property, the court shall, unless the
7 parties otherwise agree, order, when necessary, the transfer of legal title to any property of the
8 parties, giving preference to effecting equitable distribution through periodic or lump sum payments:

9 *Provided*, That the court may order the transfer of legal title to motor vehicles, household goods and
10 the former marital domicile without regard to such preference where the court determines it to be

11 necessary or convenient. In any case involving the equitable distribution of: (1) Property acquired by
12 bequest, devise, descent, distribution or gift; or (2) ownership interests in a business entity, the court

13 shall, unless the parties otherwise agree, give preference to the retention of the ownership interests in
14 such property. In the case of such business interests, the court shall give preference to the party

15 having the closer involvement, larger ownership interest or greater dependency upon the business
16 entity for income or other resources required to meet responsibilities imposed under this article, and

17 shall also consider the effects of transfer or retention in terms of which alternative will best serve to
18 preserve the value of the business entity or protect the business entity from undue hardship or from

19 interference caused by one of the parties or by the divorce, annulment or decree of separate

20 maintenance: *Provided, however*, That the court may, unless the parties otherwise agree, sever the
21 business relationship of the parties and order the transfer of legal title to ownership interests in the

22 business entity from one party to the other, without regard to the limitations on the transfer of title to

1 such property otherwise provided in this subsection, if such transfer is required to achieve the other
2 purposes of this article: *Provided further*, That in all such cases the court shall order or the
3 agreement of the parties shall provide for equitable payment or transfer of legal title to other property,
4 of fair value in money or moneys' worth, in lieu of any ownership interests in a business entity which
5 are ordered to be transferred under this subsection: *And provided further*, That the court may order
6 the transfer of such business interests to a third party (such as the business entity itself or another
7 principal in the business entity) where the interests of the parties under this article can be protected
8 and at least one party consents thereto.

9 (f) In any order which divides or transfers the title to any property, determines the ownership
10 or value of any property, designates the specific property to which any party is entitled or grants any
11 monetary award, the court shall set out in detail its findings of fact and conclusions of law, and the
12 reasons for dividing the property in the manner adopted.

13 (g) If an order entered in accordance with the provisions of this article requires the transfer of
14 title to property and a party fails or refuses to execute a deed or other instrument necessary to convey
15 title to such property, the deed or other instrument shall be executed by a special commissioner
16 appointed by the court for the purpose of effecting such transfer of title pursuant to section seven,
17 article twelve, chapter fifty-five of this code.

18 (h) As to any third party, the doctrine of equitable distribution of marital property and the
19 provisions of this article shall be construed as creating no interest or title in property until and unless
20 an order is entered under this article judicially defining such interest or approving a separation
21 agreement which defines such interest. Neither this article nor the doctrine of equitable distribution
22 of marital property shall be construed to create community property nor any other interest or estate in

1 property except those previously recognized in this state. A husband or wife may alienate property at
2 any time prior to the entry of an order under the provisions of this article or prior to the recordation of
3 a notice of lis pendens in accordance with the provisions of section thirty-five of this article, and at
4 anytime and in any manner not otherwise prohibited by an order under this article, in like manner and
5 with like effect as if this article and the doctrine of equitable distribution had not been adopted:

6 *Provided*, That as to any transfer prior to the entry of an order under the provisions of this article, a
7 transfer other than to a bona fide purchaser for value shall be voidable if the court finds such transfer
8 to have been effected to avoid the application of the provisions of this article or to otherwise be a
9 fraudulent conveyance. Upon the entry of any order under this article or the admission to record of
10 any notice with respect to an action under this article, restraining the alienation of property of a party,
11 a bona fide purchaser for value shall take such title or interest as he or she might have taken prior to
12 the effective date of this section and no purchaser for value need see to the application of the
13 proceeds of such purchase except to the extent he or she would have been required so to do prior to
14 the effective date of this section: *Provided, however*, That as to third parties nothing in this section
15 shall be construed to limit or otherwise defeat the interests or rights to property which any husband or
16 wife would have had in property prior to the enactment of this section or prior to the adoption of the
17 doctrine of equitable distribution by the supreme court of appeals on the twenty-fifth day of May, one
18 thousand nine hundred eighty-three: *Provided further*, That no order entered under this article shall
19 be construed to defeat the title of a third party transferee thereof except to the extent that the power to
20 effect such a transfer of title or interest in such property is secured by a valid and duly perfected lien
21 and, as to any personal property, secured by a duly perfected security interest.

22 (i) Notwithstanding the provisions of chapter eleven of this code, no transfer of interest in or

1 title to property under this section shall be taxable as a transfer of property without consideration nor,
2 except as to alimony, create liability for sales, use, inheritance and transfer or income taxes due the
3 state or any political subdivision nor require the payment of the excise tax imposed under article
4 twenty-two, chapter eleven of this code.

5 (j) Whenever under the terms of this article a court enters an order requiring a division of
6 property, if the court anticipates the division of property will be effected by requiring sums to be paid
7 out of "disposable retired or retainer pay" as that term is defined in 10 U.S.C. §1408, relating to
8 members or former members of the uniformed services of the United States, the court shall
9 specifically provide for the payment of an amount, expressed in dollars or as a percentage of
10 disposable retired or retainer pay, from the disposable retired or retainer pay of the payor party to the
11 payee party.

12 (k) A court may not award alimony or order equitable distribution of property between
13 individuals who are not married to one another in accordance with the provisions of article one of this
14 chapter.

15 ~~(k)~~ (l) The amendments to this section effected by the reenactment of this section during the
16 regular session of the Legislature, one thousand nine hundred ninety-six, are to be applied
17 prospectively and shall have no application to any action for annulment, divorce or separate
18 maintenance that was commenced on or before the effective date of this section.

19 **§48-2-37. Calculation of interest; accumulation of simple interest; prejudgment interest.**

20 (a) If an obligation to pay interest arises under this chapter and the rate is not specified, the
21 rate is that specified in section thirty-one, article six, chapter fifty-six of this code. On or after ~~the~~
22 ~~effective date of this section,~~ the ninth day of June, one thousand nine hundred ninety-five, interest

1 shall accrue only upon the outstanding principal of such obligation. This section shall be construed to
2 permit the accumulation of simple interest, and may not be construed to permit the compounding of
3 interest. Interest which has accrued on unpaid installments accruing before ~~the effective date of this~~
4 ~~section~~ the ninth day of June, one thousand nine hundred ninety-five, may not be modified by any
5 court, irrespective of whether such installment accrued simple or compound interest: *Provided*, That
6 unpaid installments upon which interest was compounded before ~~the effective date of this section~~ the
7 ninth day of June, one thousand nine hundred ninety-five, shall accrue only simple interest thereon on
8 and after ~~the effective date of this section~~ the ninth day of June, one thousand nine hundred ninety-
9 five.

10 (b) Except as otherwise provided in this subsection, prejudgment interest shall not be
11 awarded in a domestic relations action. The circuit court may only award prejudgment interest in a
12 domestic relations action against a party if the court finds, in writing, that the party engaged in
13 conduct that would violate subsection (b), rule eleven of the West Virginia rules of civil procedure.
14 If prejudgment interest is awarded, the court shall calculate prejudgment interest from the date the
15 offending representation was presented to the court.

16 **ARTICLE 2A. PREVENTION AND TREATMENT OF DOMESTIC AND FAMILY LAW**
17 **VIOLENCE.**

18 **§48-2A-3. Jurisdiction; venue; effect of petitioner's leaving residence; priority of petitions**
19 **filed under this article; who may file; full faith and credit; process.**

20 (a) *Jurisdiction.* -- Circuit courts and magistrate courts, as constituted under chapter fifty of
21 this code, have concurrent jurisdiction over proceedings under this article: *Provided*, That on and
22 after the first day of April, two thousand one, magistrate court jurisdiction shall be limited, and

1 thereafter, full hearings wherein a protective order is sought shall be heard before a circuit judge or a
2 family law master.

3 (b) *Venue.* -- The action may be heard in the county in which the domestic or family violence
4 occurred, in the county in which the respondent is living or in the county in which the petitioner is
5 living, either temporarily or permanently. If the parties are married to each other, the action may also
6 be brought in the county in which an action for divorce between the parties may be brought as
7 provided by section eight, article two of this chapter.

8 (c) *Petitioner's rights.* -- The petitioner's right to relief under this article shall not be affected
9 by his or her leaving a residence or household to avoid further abuse.

10 (d) *Priority of petitions.* -- Any petition filed under the provisions of this article shall be given
11 priority over any other civil action before the court, except actions in which trial is in progress, and
12 shall be docketed immediately upon filing. Any appeal to the circuit court of a magistrate's judgment
13 on a petition for relief under this article shall be heard within ten working days of the filing of the
14 appeal.

15 (e) *Full faith and credit.* -- Any ~~temporary or final~~ protective order issued pursuant to this
16 article shall be effective throughout the state in every county. Any protective order issued by any
17 other state, territory or possession of the United States, Puerto Rico, the District of Columbia or
18 Indian tribe shall be accorded full faith and credit and enforced as if it were an order of this state
19 whether or not such relief is available in this state. A protective order from another jurisdiction is
20 presumed to be valid if the order appears authentic on its face and shall be enforced in this state. If
21 the validity of the order is contested, the court or law enforcement to which the order is presented
22 shall, prior to the ~~final~~ full hearing, determine the existence, validity and terms of such order in the

1 issuing jurisdiction. A protective order from another jurisdiction may be enforced even if the order is
2 not entered into the state law-enforcement information system described by section twelve of this
3 article.

4 (f) *Service by publication.* -- A protective order may be served on the respondent by means
5 of a Class I legal advertisement published notice, with the publication area being the county in which
6 the respondent resides, published in accordance with the provisions of section two, article three,
7 chapter fifty-nine of this code if: (I) The petitioner files an affidavit with the court stating that an
8 attempt at personal service pursuant to rule four of the West Virginia rules of civil procedure has
9 been unsuccessful or evidence is adduced at the hearing for the protective order that the respondent
10 has left the state of West Virginia; and (ii) a copy of the order is mailed by certified or registered mail
11 to the respondent at the respondent's last known residence and returned undelivered.

12 **§48-2A-6. Protective orders.**

13 (a) At the conclusion of the hearing, if the petitioner has proven the allegations of domestic or
14 family violence, or that he or she reported or witnessed domestic or family violence against another
15 and has, as a result, been abused, threatened, harassed or has been the subject of other actions to
16 attempt to intimidate him or her, by a preponderance of the evidence, the court shall issue a
17 protective order directing the respondent to refrain from abusing, harassing, stalking, threatening or
18 otherwise intimidating the petitioner, the person who reported or witnessed family or domestic
19 violence or the minor children, or engaging in other conduct that would place the petitioner, the
20 person who reported or witnessed family or domestic violence or the minor children in reasonable
21 fear of bodily injury. Where the respondent is present at the hearing and elects not to contest the
22 allegations of domestic or family violence or does not contest the relief sought, the petitioner is not

1 required to adduce evidence and prove the allegations of domestic or family violence and the court
2 may directly address the issues of the relief requested.

3 (b) Where the petitioner is the victim of domestic or family violence, the terms of a protective
4 order may include:

5 (1) Granting possession to the petitioner of the residence or household jointly resided in at the
6 time the abuse occurred;

7 (2) Awarding temporary custody of or establishing temporary visitation rights with regard to
8 minor children named in the order;

9 (3) Establishing terms of temporary visitation with regard to the minor children named in the
10 order including, but not limited to, requiring third party supervision of visitations if necessary to
11 protect the petitioner and/or the minor children;

12 (4) Ordering the noncustodial parent to pay to the custodial parent a sum for temporary
13 support and maintenance of the petitioner and children, if any;

14 (5) Ordering the respondent to pay to the petitioner a sum for temporary support and
15 maintenance of the petitioner, where appropriate;

16 (6) Ordering the respondent to refrain from entering the school, business or place of
17 employment of the petitioner or household or family members for the purpose of violating the
18 protective order;

19 (7) Ordering the respondent to participate in an intervention program for perpetrators;

20 (8) Ordering the respondent to refrain from contacting, telephoning, communicating,
21 harassing or verbally abusing the petitioner;

22 (9) Providing for either party to obtain personal property or other items from a location,

1 including granting temporary possession of motor vehicles owned by either or both of the parties, and
2 providing for the safety of the parties while this occurs, including ordering a law-enforcement officer
3 to accompany one or both of the parties;

4 (10) Prohibiting the respondent from using or possessing a firearm or other weapon,
5 notwithstanding the fact that the respondent has a valid license to possess such firearm or other
6 weapon;

7 (11) Informing the respondent that possession of a firearm while subject to a protective order
8 is a violation of federal law;

9 (12) Ordering the respondent to reimburse the petitioner or other person for any expenses
10 incurred as a result of the domestic or family violence, including, but not limited to, medical
11 expenses, transportation and shelter; and

12 (13) Ordering the petitioner and respondent to refrain from transferring, conveying,
13 alienating, encumbering, or otherwise dealing with property which could otherwise be subject to the
14 jurisdiction of the court or another court in an action for divorce or support, partition or in any other
15 action affecting their interests in property.

16 (c) Where the petitioner or other person to be protected reported or was a witness to the
17 family or domestic violence, the terms of a protective order may include:

18 (1) Ordering the respondent to refrain from abusing, contacting, telephoning, communicating,
19 harassing, verbally abusing or otherwise intimidating the petitioner or other person to be protected;

20 (2) Ordering the respondent to refrain from entering the school, business or place of
21 employment of the petitioner or other person to be protected, for the purpose of violating the
22 protective order.

1 (d) Except as otherwise provided by subsection (d), section three-a of this article, a ~~final~~
2 protective order issued by a magistrate, family law master or circuit judge pursuant to this article or
3 subdivision (13), subsection (a), article two of this chapter, is effective for either ninety days or one
4 hundred eighty days, in the discretion of the court. If the court enters an order for a period of ninety
5 days, upon receipt of a written request from the petitioner prior to the expiration of the ninety-day
6 period, the court shall extend its order for an additional ninety-day period.

7 (e) To be effective, a written request to extend an order from ninety days to one hundred
8 eighty days must be submitted to the court prior to the expiration of the original ninety-day period. A
9 notice of the extension shall be sent by the clerk of the court to the respondent by first class mail,
10 addressed to the last known address of the respondent as indicated by the court's case filings. The
11 extension of time is effective upon mailing of the notice.

12 (f) The court may amend the terms of a protective order at any time upon subsequent petition
13 filed by either party. The protective order shall be in full force and effect in every county of this state
14 and shall so state.

15 (g) No order under this article shall in any manner affect title to any real property.

16 (h) Certified copies of any order or extension notice made under the provisions of this section
17 shall be issued to the petitioner, the respondent and any law-enforcement agency having jurisdiction
18 to enforce the order, including the city police, the county sheriff's office or local office of the West
19 Virginia state police within twenty-four hours of the entry of the order.

20 (I) Mutual protective orders are prohibited unless both parties have filed a petition under
21 section four of this article and have proven the allegations of domestic or family violence by a
22 preponderance of the evidence. This shall not prevent other persons, including the respondent, from

1 filing a separate petition. The court may consolidate two or more petitions if he or she determines
2 that consolidation will further the interests of justice and judicial economy. The court shall enter a
3 separate order for each petition filed.

4 (j) Any protective order issued pursuant to this article shall contain on its face the following
5 statement, printed in bold faced type or in capital letters:

6 **"VIOLATION OF THIS ORDER MAY BE PUNISHED BY CONFINEMENT IN A**
7 **REGIONAL OR COUNTY JAIL FOR AS LONG AS ONE YEAR AND BY A FINE OF AS**
8 **MUCH AS TWO THOUSAND DOLLARS"**

9 (k) Any person against whom a protective order is issued after a full hearing pursuant to this
10 section shall be assessed a fee of twenty-five dollars. Such fee shall be paid to the family court fund
11 established pursuant to section twenty-three, article four, chapter forty-eight-a of this code

12 (l) The supreme court of appeals shall promulgate a procedural rule to establish time-keeping
13 requirements for magistrates, magistrate court clerks and magistrate assistants so as to assure the
14 maximum funding of incentive payments, grants and other funding sources available to the state for
15 the processing of cases filed for the establishment of temporary orders of child support pursuant to
16 the provisions of this section.

17 **ARTICLE 2C. DOMESTIC VIOLENCE ACT.**

18 **§48-2C-4c. Domestic violence legal services fund.**

19 There is hereby established in the state treasury a special revenue account, designated as the
20 “domestic violence legal services fund”, which shall be an appropriated fund for receipt of grants,
21 gifts, fees, or federal or state funds designated for legal services for domestic violence victims:-

22 ~~Provided, That state funds may not be appropriated prior to fiscal year two thousand two.~~

1 Expenditures from the fund shall be limited to attorneys employed by domestic violence shelters, or
2 employed by nonprofit agencies which establish a collaborative relationship with a domestic violence
3 shelter, that provide civil legal services to victims of domestic violence.

4 **ARTICLE 11. ALLOCATION OF CUSTODIAL AND DECISION-MAKING**
5 **RESPONSIBILITY FOR CHILDREN.**

6 PART 1. SCOPE, OBJECTIVES, DEFINITIONS AND PARTIES.

7 **§48-11-101. Scope of article; legislative findings and declarations**

8 (a) This article sets forth principles governing the allocation of custodial and decision-making
9 responsibility for a minor child when the parents do not live together.

10 (b) The Legislature finds and declares that it is the public policy of this state to assure that the
11 best interest of children is the court's primary concern in allocating custodial and decision-making
12 responsibilities between parents who do not live together. In furtherance of this policy, the
13 Legislature declares that a child's best interest will be served by assuring that minor children have
14 frequent and continuing contact with parents who have shown the ability to act in the best interest of
15 their children, to educate parents on their rights and responsibilities and the effect their separation
16 may have on children, to encourage mediation of disputes, and to encourage parents to share in the
17 rights and responsibilities of rearing their children after the parents have separated or divorced.

18 **§48-11-102. Objectives; best interests of the child defined.**

- 19 (a) The primary objective of this article is to serve the child's best interests, by facilitating:
- 20 (1) Stability of the child;
 - 21 (2) Parental planning and agreement about the child's custodial arrangements and upbringing;
 - 22 (3) Continuity of existing parent-child attachments;

1 (4) Meaningful contact between a child and each parent;

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

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

5 (7) Expeditious, predictable decision-making and avoidance of prolonged uncertainty
6 respecting arrangements for the child's care and control.

7 (b) A secondary objective of article is to achieve fairness between the parents.

8 **§48-11-103. Parties to an action under this article.**

9 (1) Persons who have a right to be notified of and participate as a party in an action filed by
10 another are:

11 (a) A legal parent of the child, as defined in section one, article two of this chapter;

12 (b) An adult allocated custodial responsibility or decision-making responsibility under a
13 parenting plan regarding the child that is then in effect; or

14 (c) Persons who were parties to a prior order establishing custody and visitation, or who,
15 under a parenting plan, were allocated custodial responsibility or decision-making responsibility.

16 (2) In exceptional cases the court may, in its discretion, grant permission to intervene to other
17 persons or public agencies whose participation in the proceedings under this article it determines is
18 likely to serve the child's best interests. The court may place limitations on participation by the
19 intervening party as the court determines to be appropriate. Such persons or public agencies do not
20 have standing to initiate an action under this article.

21 **§48-11-104. Parent education classes.**

22 (a) A circuit court shall, by administrative rule or order, and with the approval of the supreme

1 court of appeals, designate an organization or agency to establish and operate education programs
2 designed for parents who have filed an action for divorce, paternity, support, separate maintenance or
3 other custody proceeding and who have minor children. The education programs shall be designed
4 to instruct and educate parents about the effects of divorce and custody disputes on their children and
5 to teach parents ways to help their children and minimize their trauma.

6 (b) The circuit court shall issue an order requiring parties to an action for divorce involving a
7 minor child or children to attend parent education classes established pursuant to subsection (a) of
8 this section unless the court determines that attendance is not appropriate or necessary based on the
9 conduct or circumstances of the parties. The court may, by order, establish sanctions for failure to
10 attend. The court may also order parties to an action involving paternity, separate maintenance or
11 modification of a divorce decree to attend such classes.

12 (c) The circuit court may require that each person attending a parent education class pay a
13 fee, not to exceed twenty-five dollars, to the clerk of such court to defray the cost of materials and of
14 hiring teachers: *Provided*, That where it is determined that a party is indigent and unable to pay for
15 such classes, the court shall waive the payment of the fee for such party. The clerk of the circuit
16 court shall, on or before the tenth day of each month, transmit all fees collected under this subsection
17 to the state treasurer for deposit in the state treasury to the credit of special revenue fund to be known
18 as the “parent education fund”, which is hereby created. All moneys collected and received under
19 this subsection and paid into the state treasury and credited to the “parent education fund” shall be
20 used by the administrative office of the supreme court of appeals solely for reimbursing the provider
21 of parent education classes for the costs of materials and of providing such classes. Such moneys
22 shall not be treated by the auditor and treasurer as part of the general revenue of the state.

1 (d) The administrative office of the supreme court of appeals shall submit a report to the joint
2 committee on government and finance summarizing the effectiveness of any program of parent
3 education no later than two years from the initiation of the program.

4 PART 2. PARENTING PLANS.

5 **§48-11-201. Parenting agreements.**

6 (a) If the parents agree to one or more provisions of a parenting plan, the court shall so order,
7 unless it makes specific findings that:

8 (1) The agreement is not knowing or voluntary, or

9 (2) The plan would be harmful to the child.

10 (b) The court, at its discretion and on any basis it deems sufficient, may conduct an
11 evidentiary hearing to determine whether there is a factual basis for a finding under subdivision (1) or
12 (2), subsection (a) of this section. When there is credible information that child abuse as defined by
13 section three, article one, chapter forty-nine of this code or domestic violence as defined by section
14 two, article two-a, chapter forty-eight-a of this code has occurred, a hearing is mandatory and if the
15 court determines that abuse has occurred, appropriate protective measures shall be ordered.

16 (c) If an agreement, in whole or in part, is not accepted by the court under the standards set
17 forth in subsection (a) of this section, the court shall allow the parents the opportunity to negotiate
18 another agreement.

19 **§48-11-202. Court ordered services.**

20 (a) (1) The court shall inform the parents, or require them to be informed, about:

21 (A) How to prepare a parenting plan;

22 (B) The impact of family dissolution on children and how the needs of children facing family

1 dissolution can best be addressed;

2 (C) The impact of domestic abuse on children, and resources for addressing domestic abuse;

3 and

4 (D) Mediation or other nonjudicial procedures designed to help them achieve an agreement.

5 (2) The court shall require the parents to attend parent education classes.

6 (3) If parents are unable to resolve issues and agree to a parenting plan, the court shall
7 require mediation, unless application of the procedural rules promulgated pursuant to the provisions
8 of subsection (b) of this section indicates that mediation is inappropriate in the particular case.

9 (b) The supreme court of appeals shall make and promulgate rules that will provide for
10 premediation screening procedures to determine whether domestic violence, child abuse or neglect,
11 acts or threats of duress or coercion, substance abuse, mental illness or other such elements would
12 adversely affect the safety of a party, the ability of a party to meaningfully participate in the
13 mediation, or the capacity of a party to freely and voluntarily consent to any proposed agreement
14 reached as a result of the mediation. Such rules shall authorize a family law master or judge to
15 consider alternatives to mediation which may aid the parties in establishing a parenting plan. Such
16 rules shall not establish a per se bar to mediation if domestic violence, child abuse or neglect, acts or
17 threats of duress or coercion, substance abuse, mental illness or other such elements exist, but may
18 be the basis for the court, in its discretion, not to order services under subsection (a) of this section,
19 or not to require a parent to have face-to-face meetings with the other parent.

20 (c) A mediator shall not make a recommendation to the court and may not reveal information
21 that either parent has disclosed during mediation under a reasonable expectation of confidentiality,
22 except that a mediator may reveal to the court credible information that he or she has received

1 concerning domestic violence or child abuse.

2 (d) Mediation services authorized under subsection (a) of this section shall be ordered at an
3 hourly cost that is reasonable in light of the financial circumstances of each parent, assessed on a
4 uniform sliding scale. Where one parent's ability to pay for such services is significantly greater than
5 the other, the court may order that parent to pay some or all of the expenses of the other. State
6 revenues shall not be used to defray the costs for the services of a mediator: *Provided*, That the
7 supreme court of appeals may use a portion of its budget to pay administrative costs associated with
8 establishing and operating mediation programs: *Provided however*, That grants and gifts to the state
9 that may be used to fund mediation are not to be considered as state revenues for purposes of this
10 subsection.

11 (e) The supreme court of appeals shall establish standards for the qualification and training
12 of mediators.

13 **§48-11-203. Proposed temporary parenting plan; temporary order; amendment; vacation of**
14 **order.**

15 (a) A parent seeking a temporary order relating to parenting shall file and serve a proposed
16 temporary parenting plan by motion. The other parent, if contesting the proposed temporary
17 parenting plan, shall file and serve a responsive proposed parenting plan. Either parent may move to
18 have a proposed temporary parenting plan entered as part of a temporary order. The parents may
19 enter an agreed temporary parenting plan at any time as part of a temporary order. The proposed
20 temporary parenting plan may be supported by relevant evidence and shall be verified and shall state
21 at a minimum the following:

22 (1) The name, address and length of residence with the person or persons with whom the

1 child has lived for the preceding twelve months;

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

4 (3) The parents' work and child-care schedules for the preceding twelve months;

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

6 (5) Any of the circumstances set forth in section two hundred nine of this article that are
7 likely to pose a serious risk to the child and that warrant limitation on the award to a parent of
8 temporary residence or time with the child pending entry of a permanent parenting plan.

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

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

12 (2) Designation of a temporary residence for the child;

13 (3) Allocation of decision-making authority, if any. Absent allocation of decision-making
14 authority consistent with section two hundred seven of this article, neither party shall make any
15 decision for the child other than those relating to day-to-day or emergency care of the child, which
16 shall be made by the party who is present with the child;

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

18 (5) Restraining orders, if applicable.

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

21 (d) A parent may move for amendment of a temporary parenting plan, and the court may
22 order amendment to the temporary parenting plan, if the amendment conforms to the limitations of

1 section two hundred nine of this article and is in the best interest of the child.

2 **§48-11-204. Criteria for temporary parenting plan.**

3 (a) After considering the proposed temporary parenting plan filed pursuant to section two
4 hundred three of this article and other relevant evidence presented, the court shall make a temporary
5 parenting plan that is in the best interest of the child. In making this determination, the court shall
6 give particular consideration to:

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

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

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

13 (c) Upon credible evidence of one or more of the circumstances set forth in subsection (a)
14 section two hundred nine of this article, the court shall issue a temporary order limiting or denying
15 access to the child as required by that section, in order to protect the child or the other party, pending
16 adjudication of the underlying facts.

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

19 **§48-11-205. Permanent parenting plan.**

20 (a) A party seeking a judicial allocation of custodial responsibility or decision-making
21 responsibility under this article shall file a proposed parenting plan with the court. Parties may file a
22 joint plan. A proposed plan shall be verified and shall state, to the extent known or reasonably

1 discoverable by the filing party or parties:

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

5 (2) The name and address of each of the child's parents and any other individuals with
6 standing to participate in the action under section one hundred three of this article;

7 (3) A description of the allocation of caretaking and other parenting responsibilities
8 performed by each person named in subdivisions (1) and (2) of this subsection during the twenty-
9 four months preceding the filing of an action under this article;

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

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

13 (6) A description of any of the limiting factors as described in two hundred nine of this article
14 that are present, including any restraining orders against either parent to prevent domestic or family
15 violence, by case number and jurisdiction;

16 (7) Required financial information; and

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

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

22 (b) The court shall develop a process to identify cases in which there is credible information

1 that child abuse or neglect, as defined in section three, article one, chapter forty-nine of this code, or
2 domestic or family violence as defined in section one hundred twenty-one, article two of this chapter
3 has occurred. The process shall include assistance for possible victims of domestic abuse in
4 complying with subdivision (6), subsection (a) of this section, and referral to appropriate resources
5 for safe shelter, counseling, safety planning, information regarding the potential impact of domestic
6 abuse on children, and information regarding civil and criminal remedies for domestic abuse. The
7 process shall also include a system for ensuring that jointly submitted parenting plans that are filed in
8 cases in which there is credible information that child abuse or domestic abuse has occurred receive
9 the court review that is mandated by subdivision (b), section two hundred one of this article.

10 (c) Upon motion of a party and after consideration of the evidence, the court shall order a
11 parenting plan consistent with the provisions of section two hundred six through two hundred nine of
12 this article, containing:

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

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

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

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

21 (3) A provision consistent with section two hundred two of this article for resolution of
22 disputes that arise under the plan, and remedies for violations of the plan.

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

4 **§48-11-206. Allocation of custodial responsibility.**

5 (a) Unless otherwise resolved by agreement of the parents under section two hundred one of
6 this article or unless manifestly harmful to the child, the court shall allocate custodial responsibility so
7 that the proportion of custodial time the child spends with each parent approximates the proportion of
8 time each parent spent performing caretaking functions for the child prior to the parents' separation
9 or, if the parents never lived together, before the filing of the action, except to the extent required
10 under section two hundred nine of this article or necessary to achieve any of the following objectives:

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

13 (2) To accommodate the firm and reasonable preferences of a child who is fourteen years of
14 age or older, and with regard to a child under fourteen years of age, but sufficiently matured that he
15 or she can intelligently express a voluntary preference for one parent, to give that preference such
16 weight as circumstances warrant;

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

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

22 (5) To take into account any prior agreement of the parents that, under the circumstances as a

1 whole including the reasonable expectations of the parents in the interest of the child, would be
2 appropriate to consider;

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

8 (7) To apply the principles set forth in subsection (d), section four hundred three of this
9 article if one parent relocates or proposes to relocate at a distance that will impair the ability of a
10 parent to exercise the amount of custodial responsibility that would otherwise be ordered under this
11 section; and

12 (8) To consider the stage of a child's development.

13 (b) In determining the proportion of caretaking functions each parent previously performed
14 for the child under subsection (a) of this section, the court shall not consider the divisions of functions
15 arising from temporary arrangements after separation, whether those arrangements are consensual or
16 by court order. The court may take into account information relating to the temporary arrangements
17 in determining other issues under this section.

18 (c) If the court is unable to allocate custodial responsibility under subsection (a) of this
19 section because the allocation under that subsection would be manifestly harmful to the child, or
20 because there is no history of past performance of caretaking functions, as in the case of a newborn,
21 or because the history does not establish a pattern of caretaking sufficiently dispositive of the issues
22 of the case, the court shall allocate custodial responsibility based on the child's best interest, taking

1 into account the factors in considerations that are set forth in this section and in section two hundred
2 nine and subsection (d), section four hundred three of this article and preserving to the extent
3 possible this section's priority on the share of past caretaking functions each parent performed.

4 (d) In determining how to schedule the custodial time allocated to each parent, the court shall
5 take account of the economic, physical and other practical circumstances such as those listed in
6 subdivision (6), subsection (a) of this section.

7 **§48-11-207. Allocation of significant decision-making responsibility.**

8 (a) Unless otherwise resolved by agreement of the parents under section two hundred one of
9 this article, the court shall allocate responsibility for making significant life decisions on behalf of the
10 child, including the child's education and health care, to one parent or to two parents jointly, in
11 accordance with the child's best interest, in light of:

12 (1) The allocation of custodial responsibility under section two hundred six of this article;

13 (2) The level of each parent's participation in past decision-making on behalf of the child;

14 (3) The wishes of the parents;

15 (4) The level of ability and cooperation the parents have demonstrated in decision-making on
16 behalf of the child;

17 (5) Prior agreements of the parties; and

18 (6) The existence of any limiting factors, as set forth in section two hundred nine of this
19 article.

20 (b) If each of the child's legal parents has been exercising a reasonable share of parenting
21 functions for the child, the court shall presume that an allocation of decision-making responsibility to
22 both parents jointly is in the child's best interests. The presumption is overcome if there is a history

1 of domestic abuse, or by a showing that joint allocation of decision-making responsibility is not in the
2 child's best interest.

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

7 **§48-11-208. Criteria for parenting plan; dispute resolution.**

8 (a) If provisions for resolving parental disputes are not ordered by the court pursuant to
9 parenting agreement under section two hundred one of this article, the court shall order a method of
10 resolving disputes that serves the child's best interest in light of:

11 (1) The parents' wishes and the stability of the child;

12 (2) Circumstances, including, but not limited to, financial circumstances, that may affect the
13 parents ability to participate in a prescribed dispute resolution process; and

14 (3) The existence of any limiting factor, as set forth in section two hundred nine of this
15 article.

16 (b) The court may order a nonjudicial process of dispute resolution, by designating with
17 particularity the person or agency to conduct the process or the method for selecting such a person or
18 agency. The disposition of a dispute through a non-judicial method of dispute resolution that has
19 been ordered by the court without prior parental agreement is subject to de novo judicial review. If
20 the parents have agreed in a parenting plan or by agreement thereafter to a binding resolution of their
21 dispute by nonjudicial means, a decision by such means is binding upon the parents and must be
22 enforced by the court, unless it is shown to be contrary to the best interests of the child, beyond the

1 scope of the parents' agreement, or the result of fraud, misconduct, corruption or other serious
2 irregularity.

3 (c) This section is subject to the limitations imposed by section two hundred two of this
4 article.

5 **§48-11-209. Parenting plan; limiting factors.**

6 (a) If either of the parents so requests, or upon receipt of credible information thereof, the
7 court shall determine whether a parent who would otherwise be allocated responsibility under a
8 parenting plan:

9 (1) Has abused, neglected, or abandoned a child, as defined by state law;

10 (2) Has sexually assaulted or sexually abused a child as those terms are defined in articles
11 eight-b and eight-d, chapter sixty-one of this code;

12 (3) Has committed domestic violence, as defined in section two, article two-a, chapter forty-
13 eight of this code;

14 (4) Has interfered persistently with the other parent's access to the child, except in the case of
15 actions taken for the purpose of protecting the safety of the child or the interfering parent or another
16 family member, pending adjudication of the facts underlying that belief; or

17 (5) Has repeatedly made fraudulent reports of domestic violence or child abuse.

18 (b) If a parent is found to have engaged in any activity specified by subsection (a) of this
19 section, the court shall impose limits that are reasonably calculated to protect the child or child's
20 parent from harm. The limitations that the court shall consider include, but are not limited to:

21 (1) An adjustment of the custodial responsibility of the parents, including the allocation of
22 exclusive custodial responsibility to one of them;

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

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

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

5 (5) A requirement that the parent abstain from possession or consumption of alcohol or
6 nonprescribed drugs while exercising custodial responsibility and in the twenty-four hour period
7 immediately preceding such exercise;

8 (6) Denial of overnight custodial responsibility;

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

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

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

15 (10) Any other constraints or conditions that the court deems necessary to provide for the
16 safety of the child, a child's parent, or any person whose safety immediately affects the child's
17 welfare.

18 (c) If a parent is found to have engaged in any activity specified in subsection (a) of this
19 section, the court may not allocate custodial responsibility or decision-making responsibility to that
20 parent without making special written findings that the child and other parent can be adequately
21 protected from harm by such limits as it may impose under subsection (b) of this section. The parent
22 found to have engaged in the behavior specified in subsection (a) of this section has the burden of

1 proving that an allocation of custodial responsibility or decision-making responsibility to that parent
2 will not endanger the child or the other parent.

3 PART 3. FACT FINDING.

4 **§48-11-301. Court-ordered investigation.**

5 (a) In its discretion, the court may order a written investigation and report to assist it in
6 determining any issue relevant to proceedings under this article. The investigation and report may be
7 made by the guardian ad litem, the staff of the court, or other professional social service organization
8 experienced in counseling children and families. The court shall specify the scope of the investigation
9 or evaluation and the authority of the investigator.

10 (b) In preparing the report concerning a child, the investigator may consult any person who may
11 have information about the child and the potential parenting or custodian arrangements. Upon order of
12 the court, the investigator may refer the child to professional personnel for diagnosis. The investigator
13 may consult with and obtain information from medical, psychiatric or other expert persons who have
14 served the child in the past without obtaining the consent of the parent or the child's custodian; but the
15 child's consent must be obtained if the child has reached the age of twelve, unless the court finds that the
16 child lacks mental capacity to consent. If the requirements of subsection (c) of this section are fulfilled,
17 the investigator's report may be received in evidence at the hearing.

18 (c) The investigator shall deliver the investigator's report to counsel and to any party not
19 represented by counsel at least ten days prior to the hearing unless a shorter time is ordered by the court
20 for good cause shown. The investigator shall make available to counsel and to any party not represented
21 by counsel the investigator's file of underlying data and reports, complete texts of diagnostic reports
22 made to the investigator pursuant to the provisions of subsection (b) of this section, and the names and

1 addresses of all persons whom the investigator has consulted. Any party to the proceeding may call the
2 investigator and any person whom the investigator has consulted for cross-examination. A party may
3 not waive the right of cross-examination prior to the hearing.

4 (e) Services and tests ordered under this section shall be ordered only if at no cost to the
5 individuals involved, or at a cost that is reasonable in light of the available financial resources.

6 **§48-11-302. Appointment of guardian.**

7 (a) In its discretion, the court may appoint a guardian ad litem to represent the child's best
8 interests. The court shall specify the terms of the appointment, including the guardian's role, duties and
9 scope of authority.

10 (b) In its discretion, the court may appoint a lawyer to represent the child, if the child is
11 competent to direct the terms of the representation and court has a reasonable basis for finding that the
12 appointment would be helpful in resolving the issues of the case. The court shall specify the terms of the
13 appointment, including the lawyer's role, duties and scope of authority.

14 (c) When substantial allegations of domestic abuse have been made, the court shall order an
15 investigation under section three hundred one of this article or make an appointment under subsection
16 (a) or (b) of this section, unless the court is satisfied that the information necessary to evaluate the
17 allegations will be adequately presented to the court without such an order or appointment.

18 (d) Subject to whatever restrictions the court may impose or that may be imposed by the
19 attorney-client privilege or by subsection (d), section two hundred two of this article, the court may
20 require the child or parent to provide information to an individual or agency appointed by the court under
21 section three hundred one of this article or subsection (a) or (b) of this section, and it may require any
22 person having information about the child or parent to provide that information, even in the absence of

1 consent by a parent or by the child, except if the information is otherwise protected by law.

2 (e) The investigator who submits a report or evidence to the court that has been requested under
3 section three hundred one of this article and a guardian ad litem appointed under subsection (a) of this
4 section who submits information or recommendations to the court are subject to cross-examination by
5 the parties. A lawyer appointed under subsection (b) of this section may not be a witness in the
6 proceedings, except as allowed under standards applicable in other civil proceedings.

7 (f) Services and tests ordered under this section shall be ordered only if at no cost to the
8 individuals involved, or at a cost that is reasonable in light of the available financial resources.

9 **§48-11-303. Interview of the child by the court.**

10 The court, in its discretion, may interview the child in chambers or direct another person to
11 interview the child, in order to obtain information relating to the issues of the case. The interview shall
12 be conducted in accordance with rule 16 of the rules of practice and procedure for family law, as
13 promulgated by the supreme court of appeals.

14 **PART 4. MODIFICATION OF PARENTING PLAN.**

15 **§48-11-401. Modification upon showing of changed circumstances or harm.**

16 (a) Except as provided in section four hundred two or four hundred three of this article, a court
17 shall modify a parenting plan order if it finds, on the basis of facts that were not known or have arisen
18 since the entry of the prior order and were not anticipated therein, that a substantial change has occurred
19 in the circumstances of the child or of one or both parents and a modification is necessary to serve the
20 best interests of the child.

21 (b) In exceptional circumstances, a court may modify a parenting plan if it finds that the plan is
22 not working as contemplated and in some specific way is manifestly harmful to the child, even if a

1 substantial change of circumstances has not occurred.

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

4 (1) Circumstances resulting in an involuntary loss of income, by loss of employment or
5 otherwise, affecting the parents economic status;

6 (2) A parent's remarriage or cohabitation; and

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

9 (d) For purposes of subsection (a) of this section, the occurrence or worsening of a limiting
10 factor, as defined in subsection (a), section two hundred nine of this article, after a parenting plan has
11 been ordered by the court, constitutes a substantial change of circumstances and measures shall be
12 ordered pursuant to section two hundred nine of this article to protect the child or the child's parent.

13 **§48-11-402. Modification without showing of changed circumstances.**

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

16 (b) The court may modify any provisions of the parenting plan without the showing of change
17 circumstances required by subsection (a), section four hundred one of this article if the modification is
18 in the child's best interests, and the modification:

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

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

2 (3) Is necessary to accommodate the reasonable and firm preferences of a child who has attained
3 the age of fourteen.

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

8 **§48-11-403. Relocation of a parent.**

9 (a) The relocation of a parent constitutes a substantial change in the circumstances under
10 subsection (a) section four hundred one of this article of the child only when it significantly impairs either
11 parent's ability to exercise responsibilities that the parent has been exercising.

12 (b) Unless otherwise ordered by the court, a parent who has responsibility under a parenting plan
13 who changes, or intends to change, residences for more than ninety days must give a minimum of sixty
14 days advance notice, or the most notice practicable under the circumstances, to any other parent with
15 responsibility under the same parenting plan. Notice shall include:

16 (1) The relocation date;

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

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

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

20 and

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

1 Failure to comply with the notice requirements of this section without good cause may be a factor
2 in the determination of whether the relocation is in good faith under subsection (d) of this section, and
3 is a basis for an award of reasonable expenses and reasonable attorneys fees to another parent that are
4 attributable to such failure.

5 The supreme court of appeals shall make available through the offices of the circuit clerks and
6 the family law masters a form notice that complies with the provisions of this subsection. The supreme
7 court of appeals shall promulgate procedural rules that provide for an expedited hearing process to
8 resolve issues arising from a relocation or proposed relocation.

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

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

18 (1) A parent who has been exercising a significant majority of the custodial responsibility for the
19 child should be allowed to relocate with the child so long as that parent shows that the relocation is in
20 good faith for a legitimate purpose and to a location that is reasonable in light of the purpose. The
21 percentage of custodial responsibility that constitutes a significant majority of custodial responsibility is
22 seventy percent or more. A relocation is for a legitimate purpose if it is to be close to significant family

1 or other support networks, for significant health reasons, to protect the safety of the child or another
2 member of the child's household from significant risk of harm, to pursue a significant employment or
3 educational opportunity, or to be with one's spouse who is established, or who is pursuing a significant
4 employment or educational opportunity, in another location. The relocating parent has the burden of
5 proving of the legitimacy of any other purpose. A move with a legitimate purpose is reasonable unless
6 its purpose is shown to be substantially achievable without moving, or by moving to a location that is
7 substantially less disruptive of the other parent's relationship to the child.

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

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

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

21 (e) In determining the proportion of caretaking functions each parent previously performed for
22 the child under the parenting plan before relocation, the court shall not consider a division of functions

1 arising from any arrangements made after a relocation but before a modification hearing on the issues
2 related to relocation.

3 (f) In determining the effect of the relocation or proposed relocation on a child, any interviewing
4 or questioning of the child shall be conducted in accordance with the provisions of rule 16 of the rules
5 of practice and procedure for family law, as promulgated by the supreme court of appeals.

6 PART 5. ENFORCEMENT OF PARENTING PLANS.

7 **§48-11-501. Enforcement of parenting plans.**

8 (a) If, upon a parental complaint, the court finds a parent intentionally and without good cause
9 violated a provision of the court-ordered parenting plan, it shall enforce the remedy specified in the plan
10 or, if no remedies are specified or they are clearly inadequate, it shall find the plan has been violated and
11 order an appropriate remedy, which may include:

12 (1) In the case of interference with the exercise of custodial responsibility for a child by the other
13 parent, substitute time for that parent to make up for time missed with the child;

14 (2) In the case of missed time by a parent, costs in recognition of lost opportunities by the other
15 parent, in child care costs and other reasonable expenses in connection with the missed time;

16 (3) A modification of the plan, if the requirements for a modification are met under sections two
17 hundred nine, four hundred one, four hundred two or four hundred three of this article, including an
18 adjustment of the custodial responsibility of the parents or an allocation of exclusive custodial
19 responsibility to one of them;

20 (4) An order that the parent who violated the plan obtain appropriate counseling;

21 (5) A civil penalty, in an amount of not more than one hundred dollars for a first offense, not
22 more than five hundred dollars for a second offense, or not more than one thousand dollars for a third

1 or subsequent offense, to be paid to the parent education fund as established under section one hundred
2 four of this article;

3 (6) Court costs, reasonable attorney's fees, and any other reasonable expenses in enforcing the
4 plan; and

5 (7) Any other appropriate remedy.

6 (b) Except as provided in a jointly submitted plan that has been ordered by the court, obligations
7 established in a parenting plan are independent obligations, and it is not a defense to an action under this
8 section by one parent that the other parent failed to meet obligations under a parenting plan or child
9 support order.

10 (c) An agreement between the parents to depart from the parenting plan can be a defense to a
11 claim that the plan has been violated, even though the agreement was not made part of a court order, but
12 only as to acts or omissions consistent with the agreement that occur before the agreement is disaffirmed
13 by either parent.

14 PART 6. MISCELLANEOUS PROVISIONS.

15 **§48-11-601. Access to a child's records.**

16 (a)(1) Each parent has full and equal access to a child's educational records absent a court order
17 to the contrary. Neither parent may veto the access requested by the other parent. Educational records
18 are academic, attendance, and disciplinary records of public and private schools in all grades
19 kindergarten through twelve and any form of alternative school. Educational records are any and all
20 school records concerning the child that would otherwise be properly released to the primary custodial
21 parent, including, but not limited to, report cards and progress reports, attendance records, disciplinary
22 reports, results of the child's performance on standardized tests and statewide tests and information on

1 the performance of the school that the child attends on standardized statewide tests; curriculum materials
2 of the class or classes in which the child is enrolled; names of the appropriate school personnel to contact
3 if problems arise with the child; information concerning the academic performance standards,
4 proficiencies, or skills their child is expected to accomplish; school rules, attendance policies, dress
5 codes, and procedures for visiting the school; and information about any psychological testing the school
6 does involving their child;

7 (2) In addition to the right to receive school records, the nonresidential parent has the right to
8 participate as a member of a parent advisory committee or any other organization comprised of parents
9 of children at the school that the child attends.

10 (3) The nonresidential parent or noncustodial parent has the right to question anything in the
11 child's record that the parent feels is inaccurate or misleading or is an invasion of privacy and to receive
12 a response from the school.

13 (4) Each parent has a right to arrange appointments for parent-teacher conferences absent a court
14 order to the contrary. Neither parent can be compelled against their will to exercise this right by
15 attending conferences jointly with the other parent.

16 (b) (1) Each parent has full and equal access to a child's medical records absent a court order
17 to the contrary. Neither parent may veto the access requested by the other parent. If necessary, either
18 parent is required to authorize medical providers to release to the other parent copies of any and all
19 information concerning medical care provided to the child which would otherwise be properly released
20 to either parent.

21 (2) If the child is in the actual physical custody of one parent, that parent is required to promptly
22 inform the other parent of any illness of the child which requires medical attention.

1 (3) Each parent is required to consult with the other parent prior to any elective surgery being
2 performed on the child; and in the event emergency medical procedures are undertaken for the child
3 which require the parental consent of either parent, if time permits, the other parent shall be consulted,
4 or if time does not permit such consultation, the other parent shall be promptly informed of the
5 emergency medical procedures: *Provided*, That nothing contained herein alters or amends the law of this
6 state as it otherwise pertains to physicians or health care facilities obtaining parental consent prior to
7 providing medical care or performing medical procedures.

8 (c) Each parent has full and equal access to a child’s juvenile court records, process and
9 pleadings, absent a court order to the contrary. Neither parent may veto any access requested by the
10 other parent. Juvenile court records are limited to those records which are normally available to a parent
11 of a child who is a subject of the juvenile justice system.

12 **§48-11-602. Designation of custody for the purpose of other state and federal statutes.**

13 Solely for the purposes of all other state and federal statutes which require a designation or
14 determination of custody, a parenting plan shall designate the parent with whom the child is scheduled
15 to reside the majority of the time as the custodian of the child. However, this designation shall not affect
16 either parent’s rights and responsibilities under a parenting plan. In the absence of such as designation,
17 the parent with whom the child is scheduled to reside the majority of the time shall be deemed to be the
18 custodian of the child for the purposes of such federal and state statutes.

19 **§48-11-603. Effect of enactment; operative dates.**

20 (a) The enactment of this article during the second extraordinary session of the Legislature, one
21 thousand nine hundred ninety-nine, is prospective in operation unless otherwise expressly indicated.

22 (b) The provisions of section two hundred two of this article, insofar as they provide for parent

1 education and mediation, become operative on the first day of January, two thousand. Until that date,
2 parent education and mediation with regard to custody issues are discretionary unless made mandatory
3 under a particular program or pilot project by rule or direction of the supreme court of appeals or a circuit
4 court.

5 (c) The provisions of this article that authorize a circuit court in the absence of an agreement of
6 the parents to order an allocation of custodial responsibility and an allocation of significant decision-
7 making responsibility, become operative on the first day of January, two thousand, at which time the
8 primary caretaker doctrine shall be replaced with a system that allocates custodial and decision-making
9 responsibility to the parents in accordance with this article.

10 **§48-11-604. Effect of enactment; modification of child visitation privileges in certain cases.**

11 (a) Parents who are parties to an order that establishes visitation privileges with a child and that
12 is in existence on the first day of January, two thousand, may move for a modification of the order, even
13 without a change of circumstances, in accordance with the provisions of this section, if the motion for
14 modification is made before the first day of July, two thousand, moving the court to establish a parenting
15 plan in accordance with the provisions of this article.

16 (b) Modification of an order that awards visitation privileges may be reconsidered on a motion
17 for modification if the court first makes a preliminary finding that the following factors are present:

18 (1) Visitation was based in whole or in part on a schedule or guidelines;

19 (2) The party petitioning for modification has consistently exercised or attempted to exercise
20 the ordered visitation;

21 (3) The visitation provisions of the order sought to be modified have been in effect for less than
22 five years; and

1 (4) The facts as alleged in the motion, if taken as true, would result in a parenting plan that is
2 substantially different from the result reached by application of the visitation schedule or guidelines that
3 the prior order was based on.

4 (c) If the court makes a preliminary finding that the factors described in subsection (b) of this
5 section are present, the case shall proceed under the provisions of this article to establish a parenting
6 plan: *Provided*, That in no case shall the parent petitioning for modification of a prior order of visitation
7 be allocated more than fifty percent of the custodial responsibility. Nothing contained in this subsection
8 shall be construed to authorize the continued application of the primary caretaker standard to
9 modifications made under this section.

10 **CHAPTER 48A. ENFORCEMENT OF FAMILY OBLIGATIONS.**

11 **ARTICLE 1. GENERAL PROVISIONS.**

12 **§48A-1-3. Calculation of interest.**

13 (a) If an obligation to pay interest arises under this chapter , the rate of interest is that specified
14 in section thirty-one, article six, chapter fifty-six of this code. Interest shall accrue only upon the
15 outstanding principal of such obligation. On and after the ninth day of June, one thousand nine hundred
16 ninety-five, this section shall be construed to permit the accumulation of simple interest, and may not be
17 construed to permit the compounding of interest. Interest which accrued on unpaid installments accruing
18 before the ninth day of June, one thousand nine hundred ninety-five, may not be modified by any court,
19 irrespective of whether such installment accrued simple or compound interest: *Provided*, That unpaid
20 installments upon which interest was compounded before the effective date of this section shall accrue
21 only simple interest thereon on and after the ninth day of June, one thousand nine hundred ninety-five.

22 (b) Except as otherwise provided in this subsection, prejudgment interest shall not be awarded

1 in a domestic relations action. The circuit court may only award prejudgment interest in a domestic
2 relations action against a party if the court finds, in writing, that the party engaged in conduct that would
3 violate subsection (b), rule eleven of the West Virginia rules of civil procedure. If prejudgment interest
4 is awarded, the court shall calculate prejudgment interest from the date the offending representation was
5 presented to the court.

6 **ARTICLE 1A. DEFINITIONS.**

7 **§48A-1A-19. Gross income.**

8 (a) "Gross income" means all earned and unearned income. The word "income" means gross
9 income unless the word is otherwise qualified or unless a different meaning clearly appears from the
10 context. When determining whether an income source should be included in the child support
11 calculation, the court ~~or master~~ shall consider the income source if it would have been available to pay
12 child-rearing expenses had the family remained intact or, in cases involving a nonmarital birth, if a
13 household had been formed.

14 (b) "Gross income" includes, but is not limited to, the following:

15 (1) Earnings in the form of salaries, wages, commissions, fees, bonuses, profit sharing, tips and
16 other income;

17 (2) Any payment from a pension plan, an insurance contract, an annuity, social security benefits,
18 unemployment compensation, supplemental employment benefits, workers' compensation benefits and
19 state lottery winnings and prizes;

20 (3) Interest, dividends or royalties;

21 (4) ~~Expense reimbursements or in~~ In kind payments such as business expense accounts, business
22 credit accounts, and tangible property such as automobiles and meals, to the extent that they provide the

1 parent with property or services he or she would otherwise have to provide;: Provided, That
2 reimbursement of actual expenses incurred and documented shall not be included as gross income.

3 (5) Attributed income of the parent, calculated in accordance with the provisions of section three,
4 article one-a of this chapter;

5 (6) ~~Compensation~~ An amount equal to fifty percent of the average compensation paid for
6 personal services as overtime ~~pay~~ compensation during the preceding thirty-six months: *Provided, That*
7 overtime compensation may be excluded from gross income if the parent with the overtime income
8 demonstrates to the court ~~or master~~ that the overtime work is voluntarily performed and that he or she
9 did not have a previous pattern of working overtime hours prior to separation or the birth of a nonmarital
10 child;

11 (7) Income from self-employment or the operation of a business, minus ordinary and necessary
12 expenses which are not reimbursable, and which are lawfully deductible in computing taxable income
13 under applicable income tax laws, and minus FICA and medicare contributions made in excess of the
14 amount that would be paid on an equal amount of income if the parent was not self-employed: *Provided,*
15 That the amount of monthly income to be included in gross income shall be determined by averaging the
16 income from such employment during the previous thirty-six-month period or during a period beginning
17 with the month in which the parent first received such income, whichever period is shorter;

18 (8) Income from seasonal employment or other sporadic sources: *Provided, That* the amount
19 of monthly income to be included in gross income shall be determined by averaging the income from
20 seasonal employment or other sporadic sources received during the previous thirty-six-month period or
21 during a period beginning with the month in which the parent first received such compensation,
22 whichever period is shorter; and

1 (9) Alimony and separate maintenance receipts.

2 (c) Depending on the circumstances of the particular case, the court ~~or master~~ may also include
3 severance pay, capital gains and net gambling, gifts or prizes as gross income.

4 (d) "Gross income" does not include:

5 (1) Income received by other household members such as a new spouse;

6 (2) Child support received for the children of another relationship;

7 (3) Means-tested assistance such as ~~aid to families with dependent children~~ temporary assistance
8 for needy families, supplemental security income and food stamps; and

9 (4) A child's income unless the court ~~or master~~ determines that the child's income substantially
10 reduces the family's living expenses.

11 **§48A-1A-21. Individual entitled to support enforcement services under the provisions of this**
12 **chapter and the provisions of Title IV-D of the federal Social Security Act.**

13 (a) "Individual entitled to support enforcement services under the provisions of this chapter and
14 the provisions of Title IV-D of the federal Social Security Act" means:

15 (1) An individual who has applied for or is receiving services from the child support enforcement
16 division and who is the custodial parent of a child, or the primary caretaker of a child, or the guardian
17 of the property of a child when:

18 (A) Such child has a parent and child relationship with an obligor who is not such custodial
19 parent, primary caretaker or guardian; and

20 (B) The obligor with whom the child has a parent and child relationship is not meeting an
21 obligation to support the child, or has not met such obligation in the past; or

22 (2) An individual who has applied for or is receiving services from the child support enforcement

1 division and who is an adult or an emancipated minor whose spouse or former spouse has been ordered
 2 by a court of competent jurisdiction to pay spousal support to the individual, whether such support is
 3 denominated alimony or separate maintenance, or is identified by some other terminology, thus
 4 establishing a support obligation with respect to such spouse, when the obligor required to pay such
 5 spousal support is not meeting the obligation, or has not met such obligation in the past; or

6 (3) Any individual who is an obligee in a support order, entered by a court of competent
 7 jurisdiction after the thirty-first day of December, one thousand nine hundred ninety-three.

8 (b) The filing of an action wherein the establishment or enforcement of child support is an issue
 9 constitutes an application to receive services from the child support enforcement division, if the
 10 individual filing the action is otherwise eligible for such services: *Provided*, That any such individual
 11 has the option to decline the receipt of such services.

12 **ARTICLE 1B . GUIDELINES FOR CHILD SUPPORT AWARDS.**

13 **§48A-1B-3. Basic child support obligation.**

14 (a) The basic child support obligation is determined from the following Table of Monthly Basic
 15 Child Support Obligations:

West Virginia						
Monthly Basic Child Support Obligations						
(Adjusted for West Virginia's Income Relative to U.S. Averages)						
COMBINED						
GROSS	ONE	TWO	THREE	FOUR	FIVE	SIX
MONTHLY	CHILD	CHILDRE	CHILDRE	CHILDRE	CHILDRE	CHILDRE
		N	N	N	N	N
INCOME						

1	550	127	185	219	242	263	281
2	600	137	200	237	262	284	304
3	650	147	214	253	280	303	325
4	700	156	227	268	296	321	344
5	750	163	238	282	311	337	361
6	800	171	249	295	326	353	378
7	850	179	261	309	341	370	395
8	900	188	273	323	357	387	414
9	950	197	286	338	374	405	433
10	1000	205	299	353	390	423	452
11	1050	214	311	368	406	440	471
12	1100	223	324	382	423	458	490
13	1150	231	336	397	439	476	509
14	1200	240	349	412	455	493	528
15	1250	248	361	426	471	511	547
16	1300	257	373	441	487	528	565
17	1350	265	386	456	503	546	584
18	1400	274	398	470	519	563	602
19	1450	282	410	484	534	579	620
20	1500	291	422	498	550	596	638
21	1550	299	434	512	565	613	656
22	1600	307	446	526	581	630	674
23	1650	316	458	540	596	646	692
24	1700	324	470	554	612	663	709
25	1750	332	482	568	627	680	727
26	1800	341	494	581	643	697	745
27	1850	349	506	595	658	713	763
28	1900	357	517	609	673	730	781
29	1950	366	529	623	689	747	799
30	2000	373	540	636	703	762	816
31	2050	381	551	649	717	778	832
32	2100	388	562	662	731	793	848
33	2150	395	573	674	745	808	864
34	2200	403	583	687	759	823	881
35	2250	410	594	700	773	838	897
36	2300	417	605	712	787	853	913
37	2350	425	616	725	801	869	929

1	2400	432	626	738	815	884	946
2	2450	440	637	750	829	899	962
3	2500	447	648	763	843	914	978
4	2550	454	658	776	857	929	994
5	2600	460	667	786	868	941	1007
6	2650	465	674	794	877	951	1018
7	2700	471	682	803	887	962	1029
8	2750	475	688	810	895	970	1038
9	2800	479	694	816	902	978	1046
10	2850	484	700	823	909	986	1055
11	2900	488	705	830	917	994	1063
12	2950	492	711	836	924	1002	1072
13	3000	496	717	843	931	1010	1080
14	3050	500	723	850	939	1018	1089
15	3100	504	729	856	946	1026	1097
16	3150	509	735	863	953	1033	1106
17	3200	513	740	869	961	1041	1114
18	3250	517	746	876	968	1049	1123
19	3300	521	752	882	975	1057	1131
20	3350	524	757	888	981	1064	1138
21	3400	527	761	893	987	1070	1145
22	3450	531	766	899	993	1077	1152
23	3500	534	771	904	999	1083	1159
24	3550	537	775	910	1006	1090	1166
25	3600	541	780	916	1012	1097	1173
26	3650	544	785	921	1018	1103	1180
27	3700	547	790	927	1024	1110	1187
28	3750	550	794	932	1030	1116	1194
29	3800	554	799	937	1036	1123	1201
30	3850	557	803	943	1041	1129	1208
31	3900	560	808	948	1047	1135	1215
32	3950	563	812	953	1053	1142	1222
33	4000	566	817	959	1059	1148	1229
34	4050	570	822	964	1065	1155	1236
35	4100	574	828	972	1074	1164	1245
36	4150	579	834	979	1082	1172	1254
37	4200	583	841	986	1090	1181	1264

1	4250	588	847	993	1098	1190	1273
2	4300	592	853	1001	1106	1199	1283
3	4350	597	860	1008	1114	1207	1292
4	4400	601	866	1015	1122	1216	1301
5	4450	606	873	1023	1130	1225	1311
6	4500	610	879	1030	1138	1234	1320
7	4550	615	885	1037	1146	1242	1329
8	4600	619	892	1044	1154	1251	1339
9	4650	624	898	1052	1162	1260	1348
10	4700	628	904	1059	1170	1269	1357
11	4750	633	911	1066	1178	1277	1367
12	4800	637	917	1074	1186	1286	1376
13	4850	642	924	1082	1195	1296	1386
14	4900	647	931	1090	1204	1305	1397
15	4950	651	938	1098	1213	1315	1407
16	5000	656	945	1106	1222	1325	1418
17	5050	661	951	1114	1231	1335	1428
18	5100	666	958	1123	1240	1345	1439
19	5150	670	965	1131	1249	1354	1449
20	5200	675	972	1139	1259	1364	1460
21	5250	680	979	1147	1268	1374	1470
22	5300	685	986	1155	1277	1384	1481
23	5350	689	993	1163	1285	1393	1491
24	5400	694	999	1171	1294	1403	1501
25	5450	698	1006	1179	1302	1412	1511
26	5500	703	1012	1186	1311	1421	1521
27	5550	707	1019	1194	1319	1430	1530
28	5600	712	1025	1201	1328	1439	1540
29	5650	716	1031	1208	1335	1447	1548
30	5700	719	1036	1214	1341	1454	1556
31	5750	723	1042	1220	1348	1462	1564
32	5800	727	1047	1226	1355	1469	1572
33	5850	731	1052	1233	1362	1477	1580
34	5900	735	1058	1239	1369	1484	1588
35	5950	739	1063	1245	1376	1492	1596
36	6000	743	1069	1251	1383	1499	1604
37	6050	747	1074	1258	1390	1506	1612

1	6100	751	1080	1265	1397	1515	1621
2	6150	755	1086	1272	1405	1523	1630
3	6200	760	1093	1279	1413	1531	1639
4	6250	764	1099	1286	1420	1540	1648
5	6300	768	1105	1292	1428	1548	1657
6	6350	773	1111	1299	1436	1556	1665
7	6400	777	1117	1306	1444	1565	1674
8	6450	781	1123	1313	1451	1573	1683
9	6500	785	1129	1320	1459	1582	1692
10	6550	789	1135	1327	1467	1590	1701
11	6600	793	1140	1334	1474	1598	1710
12	6650	797	1146	1341	1482	1607	1719
13	6700	801	1152	1348	1490	1615	1728
14	6750	806	1158	1355	1498	1623	1737
15	6800	810	1164	1362	1505	1632	1746
16	6850	814	1170	1369	1513	1640	1755
17	6900	818	1176	1376	1521	1649	1764
18	6950	822	1182	1383	1529	1657	1773
19	7000	826	1188	1390	1536	1665	1782
20	7050	830	1194	1397	1544	1674	1791
21	7100	834	1200	1404	1552	1682	1800
22	7150	838	1206	1411	1560	1691	1809
23	7200	842	1212	1418	1567	1699	1818
24	7250	847	1218	1425	1575	1707	1827
25	7300	851	1224	1432	1583	1716	1836
26	7350	855	1230	1439	1591	1724	1845
27	7400	859	1236	1446	1598	1733	1854
28	7450	863	1242	1453	1606	1741	1863
29	7500	867	1248	1460	1614	1749	1872
30	7550	871	1253	1468	1622	1758	1881
31	7600	875	1259	1475	1629	1766	1890
32	7650	879	1265	1482	1637	1775	1899
33	7700	883	1271	1489	1645	1783	1908
34	7750	887	1277	1496	1653	1792	1917
35	7800	891	1283	1503	1661	1800	1926
36	7850	895	1289	1510	1669	1809	1935
37	7900	899	1295	1517	1676	1817	1944

1	7950	903	1300	1524	1684	1826	1954
2	8000	907	1306	1531	1692	1834	1963
3	8050	911	1312	1538	1700	1843	1972
4	8100	915	1318	1545	1708	1851	1981
5	8150	919	1324	1553	1716	1860	1990
6	8200	923	1330	1560	1723	1868	1999
7	8250	927	1336	1567	1731	1877	2008
8	8300	931	1342	1574	1739	1885	2017
9	8350	935	1348	1581	1747	1894	2026
10	8400	939	1353	1588	1755	1902	2035
11	8450	943	1359	1595	1763	1911	2044
12	8500	947	1365	1602	1770	1919	2053
13	8550	951	1371	1609	1778	1928	2062
14	8600	954	1377	1616	1786	1936	2072
15	8650	958	1383	1623	1794	1944	2081
16	8700	962	1389	1630	1802	1953	2090
17	8750	966	1395	1638	1809	1961	2099
18	8800	970	1401	1645	1817	1970	2108
19	8850	974	1406	1652	1825	1978	2117
20	8900	978	1412	1659	1833	1987	2126
21	8950	982	1418	1666	1840	1995	2135
22	9000	985	1423	1672	1847	2002	2142
23	9050	989	1428	1678	1854	2010	2150
24	9100	992	1433	1684	1861	2017	2158
25	9150	996	1438	1690	1867	2024	2166
26	9200	999	1443	1696	1874	2032	2174
27	9250	1003	1448	1702	1881	2039	2182
28	9300	1006	1453	1708	1888	2046	2189
29	9350	1010	1458	1714	1894	2053	2197
30	9400	1013	1463	1720	1901	2061	2205
31	9450	1016	1469	1727	1908	2068	2213
32	9500	1020	1474	1733	1915	2075	2221
33	9550	1023	1479	1739	1921	2083	2228
34	9600	1027	1484	1745	1928	2090	2236
35	9650	1030	1489	1751	1935	2097	2244
36	9700	1034	1494	1757	1942	2105	2252
37	9750	1037	1499	1763	1948	2112	2260

1	9800	1041	1504	1769	1955	2119	2268
2	9850	1044	1509	1775	1962	2127	2275
3	9900	1047	1514	1781	1969	2134	2283
4	9950	1051	1519	1788	1975	2141	2291
5	10000	1054	1524	1794	1982	2148	2299
6	10050	1058	1529	1800	1989	2156	2307
7	10100	1061	1534	1806	1995	2163	2315
8	10150	1065	1539	1812	2002	2170	2322
9	10200	1068	1545	1818	2009	2178	2330
10	10250	1072	1550	1824	2016	2185	2338
11	10300	1075	1555	1830	2022	2192	2346
12	10350	1078	1560	1836	2029	2200	2354
13	10400	1082	1565	1842	2036	2207	2361
14	10450	1086	1570	1849	2043	2215	2370
15	10500	1089	1576	1855	2050	2222	2378
16	10550	1093	1581	1861	2057	2230	2386
17	10600	1097	1586	1868	2064	2237	2394
18	10650	1101	1592	1874	2071	2245	2402
19	10700	1104	1597	1880	2078	2252	2410
20	10750	1108	1602	1887	2085	2260	2418
21	10800	1112	1608	1893	2092	2268	2426
22	10850	1115	1613	1899	2099	2275	2434
23	10900	1119	1619	1906	2106	2283	2443
24	10950	1123	1624	1912	2113	2290	2451
25	11000	1127	1629	1918	2120	2298	2459
26	11050	1130	1635	1925	2127	2306	2467
27	11100	1134	1640	1931	2134	2313	2475
28	11150	1138	1645	1937	2141	2321	2483
29	11200	1142	1651	1944	2148	2328	2491
30	11250	1145	1656	1950	2155	2336	2499
31	11300	1149	1662	1956	2162	2343	2507
32	11350	1153	1667	1963	2169	2351	2516
33	11400	1156	1672	1969	2176	2359	2524
34	11450	1160	1678	1975	2183	2366	2532
35	11500	1163	1682	1981	2189	2373	2539
36	11550	1167	1687	1987	2196	2380	2547
37	11600	1170	1692	1993	2202	2387	2554

1	11650	1174	1697	1999	2208	2394	2561
2	11700	1177	1702	2004	2215	2401	2569
3	11750	1180	1707	2010	2221	2408	2576
4	11800	1184	1712	2016	2228	2415	2584
5	11850	1187	1717	2022	2234	2422	2591
6	11900	1191	1722	2027	2240	2428	2598
7	11950	1193	1725	2031	2245	2433	2604
8	12000	1195	1729	2035	2249	2438	2609
9	12050	1198	1732	2039	2254	2443	2614
10	12100	1200	1735	2043	2258	2448	2619
11	12150	1202	1739	2047	2262	2452	2624
12	12200	1205	1742	2051	2267	2457	2629
13	12250	1207	1746	2055	2271	2462	2634
14	12300	1210	1749	2059	2276	2467	2640
15	12350	1212	1752	2063	2280	2472	2645
16	12400	1214	1756	2067	2285	2476	2650
17	12450	1217	1759	2071	2289	2481	2655
18	12500	1219	1763	2075	2293	2486	2660
19	12550	1221	1766	2079	2298	2491	2665
20	12600	1224	1770	2083	2302	2496	2670
21	12650	1226	1773	2088	2307	2500	2675
22	12700	1228	1776	2092	2311	2505	2681
23	12750	1231	1780	2096	2316	2510	2686
24	12800	1233	1783	2100	2320	2515	2691
25	12850	1236	1787	2104	2324	2520	2696
26	12900	1238	1790	2108	2329	2524	2701
27	12950	1240	1793	2112	2333	2529	2706
28	13000	1243	1797	2116	2338	2534	2711
29	13050	1245	1800	2120	2342	2539	2717
30	13100	1247	1804	2124	2347	2544	2722
31	13150	1250	1807	2128	2351	2548	2727
32	13200	1252	1811	2132	2355	2553	2732
33	13250	1255	1814	2136	2360	2558	2737
34	13300	1257	1817	2140	2364	2563	2742
35	13350	1259	1821	2144	2369	2568	2747
36	13400	1262	1824	2148	2373	2572	2753
37	13450	1264	1828	2152	2378	2577	2758

1	13500	1266	1831	2156	2382	2582	2763
2	13550	1269	1834	2160	2386	2587	2768
3	13600	1271	1838	2164	2391	2592	2773
4	13650	1274	1841	2168	2395	2596	2778
5	13700	1276	1845	2172	2400	2601	2783
6	13750	1278	1848	2176	2404	2606	2789
7	13800	1281	1852	2180	2409	2611	2794
8	13850	1283	1855	2184	2413	2616	2799
9	13900	1285	1858	2188	2417	2620	2804
10	13950	1288	1862	2192	2422	2625	2809
11	14000	1290	1865	2196	2426	2630	2814
12	14050	1292	1869	2200	2431	2635	2819
13	14100	1295	1872	2204	2435	2640	2824
14	14150	1297	1875	2208	2440	2645	2830
15	14200	1300	1879	2212	2444	2649	2835
16	14250	1302	1882	2216	2448	2654	2840
17	14300	1304	1886	2220	2453	2659	2845
18	14350	1307	1889	2224	2457	2664	2850
19	14400	1309	1893	2228	2462	2669	2855
20	14450	1311	1896	2232	2466	2673	2860
21	14500	1314	1899	2236	2471	2678	2866
22	14550	1316	1903	2240	2475	2683	2871
23	14600	1319	1906	2244	2479	2688	2876
24	14650	1321	1910	2248	2484	2693	2881
25	14700	1323	1913	2252	2488	2697	2886
26	14750	1326	1916	2256	2493	2702	2891
27	14800	1328	1920	2260	2497	2707	2896
28	14850	1330	1923	2264	2502	2712	2902
29	14900	1333	1927	2268	2506	2717	2907
30	14950	1335	1930	2272	2510	2721	2912
31	15000	1338	1934	2276	2515	2726	2917
32							

33 (b) This subsection provides for incomes below table. If combined adjusted gross income is
34 below five hundred fifty dollars per month, which is the lowest amount of income considered in the table
35 of monthly basic child support obligations set forth in subsection (a) of this section, the basic child

1 support obligation shall be set at fifty dollars per month or a discretionary amount determined by the
2 court based on the resources and living expenses of the parents and the number of children due support.

3 (c) This subsection provides for incomes above table. If combined adjusted gross income is
4 above fifteen thousand dollars per month, which is the highest amount of income considered in the table
5 of monthly basic child support obligations set forth in subsection (a) of this section, the basic child
6 support obligation shall not be less than it would be based on a combined adjusted gross income of
7 fifteen thousand dollars. The court may also compute the basic child support obligation for combined
8 adjusted gross incomes above fifteen thousand dollars by the following:

9 (1) One child -- ~~\$1,457~~ \$1,338 + 0.088 x combined adjusted gross income above fifteen
10 thousand dollars per month;

11 (2) Two children -- ~~\$2,108~~ \$1,934 + 0.129 x combined adjusted gross income above fifteen
12 thousand dollars per month;

13 (3) Three children -- ~~\$2,483~~ \$2,276 + 0.153 x combined adjusted gross income above fifteen
14 thousand dollars per month;

15 (4) Four children -- ~~\$2,744~~ \$2,515 + 0.169 x combined adjusted gross income above fifteen
16 thousand dollars per month;

17 (5) Five children -- ~~\$2,974~~ \$2,726 + 0.183 x combined adjusted gross income above fifteen
18 thousand dollars per month; and

19 (6) Six children -- ~~\$3,182~~ \$2,917 + 0.196 x combined adjusted gross income above fifteen
20 thousand dollars per month.

21 **§48A-1B-6. Computation of child support order in sole custody cases.**

22 (a) For sole custody cases, the total child support obligation consists of the basic child support

1 obligation plus the child's share of any unreimbursed health care expenses, work-related child care
2 expenses and any other extraordinary expenses agreed to by the parents or ordered by the court less any
3 extraordinary credits agreed to by the parents or ordered by the court.

4 (b) In a sole custody case, the total basic child support obligation is divided between the parents
5 in proportion to their income. From this amount is subtracted the obligor's direct expenditures of any
6 items which were added to the basic child support obligation to arrive at the total child support
7 obligation.

(c) Child support for sole custody cases shall be calculated using the following worksheet:

WORKSHEET A: SOLE PHYSICAL CUSTODY

IN THE CIRCUIT COURT OF _____ COUNTY, WEST VIRGINIA

CASE NO. _____

Mother: _____ SS No.: _____

Primary Custodial parent? Yes No

Father: _____ SS No.: _____

Primary Custodial parent? Yes No

Children	SSN	Date of Birth	Children	SSN	Date of Birth

PART I. CHILD SUPPORT ORDER		Mother	Father	Combined
1. MONTHLY GROSS INCOME (Exclusive of overtime compensation)		\$	\$	
a. Minus preexisting child support payment		-	-	
b. Minus maintenance paid		-	-	
c. Plus overtime compensation, if not excluded, and not to exceed 50%, pursuant to W. Va. Code §48A-1A-19(b)(6)		+	+	
2. MONTHLY ADJUSTED GROSS INCOME		\$	\$	\$
3. PERCENTAGE SHARE OF INCOME (Each parent's income from line 2 divided by Combined Income)		%	%	100%
4. BASIC OBLIGATION (Use Line 2 combined to find amount from schedule.)				\$
5. ADJUSTMENTS (Expenses paid directly by each parent)				
a. Work-Related Child Care Costs Adjusted for Federal Tax Credit (0.75 x actual work-related child care costs.)		\$	\$	
b. Extraordinary Medical Expenses (Uninsured only) and Children's Portion of Health Insurance Premium Costs.		\$	\$	
c. Extraordinary Expenses (Agreed to by parents or by order of the court.)		\$	\$	
d. Minus Extraordinary Adjustments (Agreed to by parents or by order of court.)				
e. Total Adjustments (For each column, add 5a, 5b, and 5c. Subtract Line 5d. Add the parent's totals together for Combined amount.)		\$	\$	\$
6. TOTAL SUPPORT OBLIGATION (Add line 4 and line 5e Combined.)				\$
7. EACH PARENT'S SHARE OF THE TOTAL CHILD SUPPORT OBLIGATION (Line 3 x line 6 for each parent.)		\$	\$	
8. NONCUSTODIAL PARENT ADJUSTMENT (Enter noncustodial parent's line 5e.)		\$	\$	
9. RECOMMENDED CHILD SUPPORT ORDER (Subtract line 8 from line 7 for the noncustodial parent only. Leave custodial parent column blank.)		\$	\$	

PART II. ABILITY TO PAY CALCULATION (Complete if the noncustodial parent's adjusted monthly gross income is below \$1,550.)			
10. Spendable Income (0.80 x line 2 for noncustodial parent only.)			
11. Self Support Reserve	\$500	\$500	

12. Income Available for Support (Line 10 - line 11. If less than \$50, then \$50)			
13. Adjusted Child Support Order (Lessor of Line 9 and Line 12.)			
Comments, calculations, or rebuttals to schedule or adjustments if noncustodial parent directly pays extraordinary expenses.			
PREPARED BY:			Date:

1 (d) In cases where the noncustodial parent’s adjusted gross income is below ~~one thousand four~~
2 ~~hundred~~ one thousand five hundred fifty dollars per month, an additional calculation in Worksheet A,
3 Part II shall be made. This additional calculation sets the child support order at whichever is lower: (I)
4 Child support at the amount determined in Part I; or (ii) the difference between ~~eighty-five~~ eighty percent
5 of the noncustodial parent’s adjusted gross income and five hundred dollars, or fifty dollars, whichever
6 is more.

7 **§48A-1B-7. Shared physical custody adjustment.**

8 (a) Child support for cases with shared physical custody shall be calculated using Worksheet B.
9 The following method should be used only for shared physical custody as defined in section twenty-six,
10 article one-a of this chapter: That is, cases where each parent has the child for more than one hundred
11 twenty-seven days per year (thirty-five percent).

12 (b) The basic child support obligation shall be multiplied by 1.5 to arrive at a shared custody
13 basic child support obligation. The shared custody basic child support obligation is apportioned to each
14 parent according to his or her income. In turn, a child support obligation is computed for each parent
15 by multiplying that parent’s portion of the shared custody child support obligation by the percentage of
16 time the child spends with the other parent. The respective basic child support obligations are then
17 offset, with the parent owing more basic child support paying the difference between the two amounts.
18 The transfer for the basic obligation for the parent owing less basic child support shall be set at zero
19 dollars.

20 (c) Adjustments for each parent’s additional direct expenses on the child are made by
21 apportioning the sum of the parent’s direct expenditures on the child’s share of any unreimbursed child
22 health care expenses, work-related child care expenses and any other extraordinary expenses agreed to
23 by the parents or ordered by the court or master less any extraordinary credits agreed to by the parents

1 or ordered by the court or master to each parent according to their income share. In turn each parent's
2 net share of additional direct expenses is determined by subtracting the parent's actual direct expenses
3 on the child's share of any unreimbursed child health care expenses, work-related child care expenses
4 and any other extraordinary expenses agreed to by the parents or by the court or master less any
5 extraordinary credits agreed to by the parents or ordered by the court or master from their share. The
6 parent with a positive net share of additional direct expenses owes the other parent the amount of his or
7 her net share of additional direct expenses. The parent with zero or a negative net share of additional
8 direct expenses owes zero dollars for additional direct expenses.

9 (d) The final amount of the child support order is determined by summing what each parent owes
10 for the basic support obligation and additional direct expenses as defined in subsections (b) and (c) of
11 this section. The respective sums are then offset, with the parent owing more paying the other parent
12 the difference between the two amounts.

13 (e) Child support for shared physical custody cases shall be calculated using the following
14 worksheet:

PART IV. RECOMMENDED CHILD SUPPORT ORDER			
16. TOTAL AMOUNT TRANSFERRED (Line 11 + line 15)	\$	\$	
17. RECOMMENDED CHILD SUPPORT ORDER (Subtract smaller amount on line 16 from larger amount on line 16. Parent with larger amount on line 16 owes the other parent the difference.	\$	\$	
Comments, calculations, or rebuttals to schedule or adjustments			
PREPARED BY:			Date:

1 **§48A-1B-11. Modification.**

2 (a) The provisions of a child support order may be modified if there is a substantial
3 change of circumstances. ~~If~~ For purposes of this section, if application of the guideline would
4 result in a new order that is more than fifteen percent different, then the circumstances are
5 considered to be a substantial change.

6 (b) An expedited process for modification of a child support order may be utilized if
7 either parent experiences a substantial change of circumstances resulting in a decrease in
8 income due to loss of employment or other involuntary cause or an increase in income due to
9 promotion, change in employment, reemployment, or other such change in employment status.
10 The party seeking the recalculation of support and modification of the support order shall file
11 a description of the decrease or increase in income and an explanation of the cause of the
12 decrease or increase on a standardized form to be provided by the secretary-clerk or other
13 employee of the family court. The standardized form shall be verified by the filing party. Any
14 available documentary evidence shall be filed with the standardized form. Based upon the
15 filing and information available in the case record, the amount of support shall be tentatively
16 recalculated. The secretary-clerk shall cause a notice of the filing, a copy of the standardized
17 form, and the support calculations to be served upon the other party and upon the local office
18 of the child support enforcement division for the county in which the circuit court is located in
19 the same manner as original process under rule 4(d) of the rules of civil procedure. The notice
20 shall fix a date fourteen days from the date of mailing, and inform the party that unless the
21 recalculation is contested and a hearing request is made on or before the date fixed, the
22 proposed modification will be made effective. If the filing is contested, the proposed
23 modification shall be set for hearing; otherwise, the family law master shall prepare a

1 recommended default order for entry by the circuit judge. Either party may move to set aside
2 a default entered by the circuit clerk or a judgment by default entered by the clerk or the court,
3 pursuant to the provisions of rule 55 or rule 60(b) of the rules of civil procedure. If an obligor
4 uses the provisions of this section to expeditiously reduce his or her child support obligation,
5 the order that effected the reduction shall also require the obligor to notify the obligee of
6 reemployment, new employment or other such change in employment status that results in an
7 increase in income. If an obligee uses the provisions of this section to expeditiously increase
8 his or her child support obligation, the order that effected the increase shall also require the
9 obligee to notify the obligor of reemployment, new employment or other such change in
10 employment status that results in an increase in income of the obligee.

11 (c) The supreme court of appeals shall develop the standardized form required by
12 subsection (b) of this section.

13 **§48A-1B-14. Disregard of formula.**

14 (a) If the court ~~or master~~ finds that the guidelines are inappropriate in a specific case,
15 the court ~~or master~~ may either disregard the guidelines or adjust the guidelines-based award to
16 accommodate the needs of the child or children or the circumstances of the parent or parents.
17 In either case, the reason for the deviation and the amount of the calculated guidelines award
18 must be stated on the record (preferably in writing on the worksheet or in the order). Such
19 findings clarify the basis of the order if appealed or modified in the future.

20 (b) These guidelines do not take into account the economic impact of the following
21 factors and can be possible reasons for deviation:

22 (1) Special needs of the child or support obligor, including, but not limited to, the
23 special needs of a minor or adult child who is physically or mentally disabled;

24 (2) Educational expenses for the child or the parent (i.e. those incurred for private,
25 parochial, or trade schools, other secondary schools, or post-secondary education where there
26 is tuition or costs beyond state and local tax contributions);

27 (3) Families with more than six children;

28 (4) Long distance visitation costs; ~~or~~

29 (5) The child resides with third party;:

1 (6) The needs of another child or children to whom the obligor owes a duty of support;

2 (7) The extent to which the obligor's income depends on nonrecurring or nonguaranteed
3 income; or

4 (8) Whether the total of alimony, child support and child care costs subtracted from an
5 obligor's income reduces that income to less than the federal poverty level and conversely,
6 whether deviation from child support guidelines would reduce the income of the child's
7 household to less than the federal poverty level.

8 **§48A-1B-16. Investment of child support.**

9 (a) A circuit judge has the discretion, in appropriate cases, to direct that a portion of
10 child support be placed in trust and invested for future educational or other needs of the child.
11 The family law master may recommend and the circuit judge may order such investment when
12 all of the child's day-to-day needs are being met such that, with due consideration of the age
13 of the child, the child is living as well as his or her parents.

14 (b) If the amount of child support ordered per child exceeds the sum of two thousand
15 dollars per month, the court is required to make a finding, in writing, as to whether investments
16 shall be made as provided for in subsection (a) of this section.

17 (c) A trustee named by the court shall use the judgment and care under the
18 circumstances then prevailing that persons of prudence, discretion and intelligence exercise in
19 the management of their own affairs, not in regard to speculation but in regard to the permanent
20 disposition of their funds, considering the probable income as well as the probable safety of
21 their capital. A trustee shall be governed by the provisions of the uniform prudent investor act
22 as set forth in article six-c, chapter forty-four of this code. The court may prescribe the powers
23 of the trustee and provide for the management and control of the trust. Upon petition of a party
24 or the child's guardian or next friend and upon a showing of good cause, the court may order
25 the release of funds in the trust from time to time.

26 **§48A-1B-17. Operative date of certain amendments.**

27 The amendments to this article made during the second extraordinary session of the
28 Legislature, one thousand nine hundred ninety-nine, are operable after the thirtieth day of
29 September, one thousand nine hundred ninety-nine.

1 **ARTICLE 2. WEST VIRGINIA SUPPORT ENFORCEMENT COMMISSION;**
2 **CHILD SUPPORT ENFORCEMENT DIVISION; ESTABLISHMENT AND**
3 **ORGANIZATION.**

4 **§48A-2-17. Notice to unemployed obligor.**

5 Upon receipt of a report from an employer stating that a support obligor has been
6 discharged or laid off or has resigned or voluntarily quit, the child support enforcement division
7 shall send a notice to the obligor, informing the obligor of the availability of a modification of
8 the support award and of the services that may be available to him or her from the division. The
9 division shall also inform the obligor of his or her possible entitlement to a reduction in court-
10 ordered support payments; that a failure to obtain a modification will result in the previously-
11 ordered award remaining in effect; and that substantial arrearage might accumulate and remain
12 as judgments against him or her.

13 **§48A-2-38. Acceptance of federal purposes; compliance with federal requirements and**
14 **standards.**

15 (a) The state assents to the purposes of the federal laws regarding child support and
16 establishment of paternity and agrees to accept federal appropriations and other forms of
17 assistance made under or pursuant thereto, and authorizes the receipt of such appropriations
18 into the state treasury and the receipt of other forms of assistance by the child support
19 enforcement division for expenditure, disbursement and distribution by the division in
20 accordance with the provisions of this chapter and the conditions imposed by applicable federal
21 laws, rules and regulations.

22 (b) Insofar as such actions are consistent with the laws of this state granting authority
23 to the division and the director, the division shall comply with such requirements and standards
24 as the secretary of the federal department of health and human services may have determined,
25 as of the effective date of this section, to be necessary for the establishment of an effective
26 program for locating obligors, establishing paternity, obtaining support orders and collecting
27 support payments.

28 (c) The director shall propose for promulgation a legislative rule in accordance with the
29 provisions of chapter twenty-nine-a of this code, to establish time-keeping requirements to

1 assure the maximum funding of incentive payments, grants and other funding sources available
2 to the state for the processing of cases filed for the location of absent parents, the
3 establishment of paternity, and the establishment, modification or enforcement of orders of
4 child support.

5 **ARTICLE 4. PROCEEDING BEFORE A FAMILY LAW MASTER.**

6 **§48A-4-9. Hearing procedures**

7 (a) This section applies, according to the provisions thereof, to hearings required by
8 ~~section six of this article~~ section ten, article two-a, chapter fifty-one of this code to be conducted
9 ~~in accordance with this section~~ by a family law master.

10 (b) A ~~master~~ family law master to whom a matter is referred pursuant to the provisions
11 of ~~section six of this article~~ section ten, article two-a, chapter fifty-one of this code shall preside
12 at the taking of evidence.

13 (c) A ~~master~~ family law master presiding at a hearing under the provisions of this
14 chapter may:

15 (1) Administer oaths and affirmations, compel the attendance of witnesses and the
16 production of documents, examine witnesses and parties and otherwise take testimony, receive
17 relevant evidence and establish a record;

18 (2) Rule on motions for discovery and offers of proof;

19 (3) Take depositions or have depositions taken when the ends of justice may be served;

20 (4) Regulate the course of the hearing;

21 (5) Hold pre-trial conferences for the settlement or simplification of issues and enter
22 time frame orders which shall include, but not be limited to, discovery cut-offs, exchange of
23 witness lists and agreements on stipulations, contested issues, and hearing schedules;

24 (6) Make and enter temporary orders on procedural matters, including, but not limited
25 to, substitution of counsel, amendment of pleadings, requests for hearings and other similar
26 matters;

27 (7) Accept voluntary acknowledgments of support liability or paternity;

28 (8) Accept stipulated agreements;

29 (9) Prepare default orders for entry if the person against whom an action is brought does

1 not respond to notice or process within the time required;

2 (10) Recommend orders in accordance with the provisions of section thirteen of this
3 article;

4 (11) Require the issuance of subpoenas and subpoenas duces tecum, issue writs of
5 attachment, hold hearings in aid of execution and propound interrogatories in aid of execution
6 and fix bond or other security in connection with an action for enforcement in a child or spousal
7 support matter; and

8 (12) Take other action authorized by general order of the circuit court or the chief judge
9 thereof consistent with the provisions of this chapter.

10 (d) Except as otherwise provided by law, a moving party has the burden of proof on a
11 particular question presented. Any oral or documentary evidence may be received, but the
12 family law master shall exclude irrelevant, immaterial or unduly repetitious evidence. A party
13 is entitled to present his or her case or defense by oral or documentary evidence, to submit
14 rebuttal evidence and to conduct such cross-examination as may be required for a full and true
15 disclosure of the facts. In determining claims for money due or the amount of payments to be
16 made, when a party will not be prejudiced thereby, the ~~master~~ family law master may adopt
17 procedures for the submission of all or part of the evidence in written form.

18 (e) Hearings before a ~~master~~ family law master shall be recorded electronically. A
19 magnetic tape or other electronic recording medium on which a hearing is recorded shall be
20 indexed and securely preserved by the secretary-clerk of the family law master and shall not be
21 placed in the case file in the office of the circuit clerk: *Provided*, That upon the request of the
22 family law master, such magnetic tapes or other electronic recording media shall be stored by
23 the clerk of the circuit court. When requested by either of the parties, a family law master shall
24 provide a duplicate copy of the tape or other electronic recording medium of each hearing held.
25 For evidentiary purposes, a duplicate of such electronic recording prepared by the
26 secretary-clerk shall be a "writing" or "recording" as those terms are defined in rule 1001 of the
27 West Virginia rules of evidence, and unless the duplicate is shown not to reflect the contents
28 accurately, it shall be treated as an original in the same manner that data stored in a computer
29 or similar data is regarded as an "original" under such rule. The party requesting the copy shall

1 pay to the family law master an amount equal to the actual cost of the tape or other medium or
2 the sum of five dollars, whichever is greater. Unless otherwise ordered by the court, the
3 preparation of a transcript and the payment of the cost thereof shall be the responsibility of the
4 party requesting the transcript.

5 (f) The recording of the hearing or the transcript of testimony, as the case may be, and
6 the exhibits, together with all papers and requests filed in the proceeding, constitute the
7 exclusive record for recommending an order in accordance with section thirteen of this article,
8 and on payment of lawfully prescribed costs, shall be made available to the parties. When a
9 ~~master's~~ family law master's final recommended order rests on official notice of a material fact
10 not appearing in the evidence in the record, a party is entitled, on timely request, to an
11 opportunity to show the contrary.

12 (g) After a temporary parenting plan has been agreed to by the parties or ordered by the
13 family law master, or after a temporary support order has been entered by the court, a scheduled
14 final evidentiary hearing cannot be continued without the agreement of the parties or without
15 a review of the temporary parenting plan and the temporary support order.

16 (h) In any case in which a party has filed an affidavit that he or she is financially unable
17 to pay the fees or costs, the family law master shall determine whether either party is financially
18 able to pay such fees and costs based on the information set forth in the affidavit or on any
19 evidence submitted at the hearing. If the family law master determines that either party is
20 financially able to pay the fees and costs, the family law master shall assess the payment of such
21 fees and costs accordingly as part of a recommended order. The provisions of this subsection
22 do not alter or diminish the provisions of section one, article two, chapter fifty-nine of this code.

23 **§48A-4-20. Circuit court review of family law master's recommended order.**

24 (a) The circuit court shall proceed to a review of the recommended order of the ~~master~~
25 family law master when:

26 (1) No petition has been filed within the time allowed, or the parties have expressly
27 waived the right to file a petition;

28 (2) A petition and an answer in opposition have been filed, or the time for filing an
29 answer in opposition has expired, or the parties have expressly waived the right to file an

1 answer in opposition, as the case may be.

2 (b) To the extent necessary for decision and when presented, the circuit court shall
3 decide all relevant questions of law, interpret constitutional and statutory provisions and
4 determine the appropriateness of the terms of the recommended order of the ~~master~~ family law
5 master.

6 (c) The circuit court shall examine the recommended order of the ~~master~~ family law
7 master, along with the findings and conclusions of the ~~master~~ family law master, and may enter
8 the recommended order, may recommit the case, with instructions, for further hearing before
9 the master or may, in its discretion, enter an order upon different terms, as the ends of justice
10 may require. Conclusions of law of the family law master shall be subject to de novo review
11 by the circuit court. ~~Nothing in this subsection shall be construed to authorize a de novo review~~
12 ~~of the facts; however, the~~ The circuit court shall not be held to the clearly erroneous standard
13 in reviewing findings of fact. The circuit court shall not follow the recommendation, findings
14 and conclusions of a master found to be:

15 (1) Arbitrary, capricious, an abuse of discretion or otherwise not in conformance with
16 the law;

17 (2) Contrary to constitutional right, power, privilege or immunity;

18 (3) In excess of statutory jurisdiction, authority or limitations or short of statutory right;

19 (4) Without observance of procedure required by law;

20 (5) Unsupported by substantial evidence; or

21 (6) Unwarranted by the facts.

22 (d) In making its determinations under this section, the circuit court shall review the
23 whole record or those parts of it cited by a party. If the circuit court finds that a ~~master's~~ family
24 law master's recommended order is deficient as to matters which might be affected by evidence
25 not considered or inadequately developed in the ~~master's~~ family law master's recommended
26 order, the court may recommit the recommended order to the ~~master~~ family law master, with
27 instructions indicating the court's opinion, or the circuit court may proceed to take such
28 evidence without recommitting the matter.

29 (e) The order of the circuit court entered pursuant to the provisions of subsection (d) of

1 this section shall be entered not later than ten days after the time for filing pleadings or briefs
2 has expired or after the filing of a notice or notices waiving the right to file such pleading or
3 brief.

4 (f) If a case is recommitted by the circuit court, the ~~master~~ family law master shall retry
5 the matter within twenty days.

6 (g) At the time a case is recommitted, the circuit court shall enter appropriate temporary
7 orders awarding custody, visitation, child support, spousal support or such other temporary
8 relief as the circumstances of the parties may require.

9 **§48A-4-23. Family court fund.**

10 The office and the clerks of the circuit courts shall, on or before the tenth day of each
11 month, transmit all fees and costs received for the services of the office under this chapter to
12 the state treasurer for deposit in the state treasury to the credit of a special revenue fund to be
13 known as the "family ~~law masters~~ court fund", which is hereby created. All moneys collected
14 and received under this chapter and paid into the state treasury and credited to the "family ~~law~~
15 ~~masters~~ court fund" shall be used by the administrative office of the supreme court of appeals
16 solely for paying the costs associated with the duties imposed upon the family law masters
17 under the provisions of this chapter which require activities by the ~~masters~~ family law masters
18 which are not subject to being matched with federal funds or subject to reimbursement by the
19 federal government. Such moneys shall not be treated by the auditor and treasurer as part of
20 the general revenue of the state.

21 **CHAPTER 51. COURTS AND THEIR OFFICERS.**

22 **ARTICLE 2A. CIRCUIT COURTS; FAMILY COURT DIVISION.**

23 **§51-2A-1. Family court division established in circuit court; designation of division.**

24 There is hereby created in the circuit court of each county in this state, a division of the
25 circuit court to be designated as "The Family Court of _____ County, West Virginia."

26 **§51-2A-2. Appointment of commissioners to be designated as family law masters;
27 administrative and judicial functions of family law master.**

- 28 (a) In each of the family court circuits, family law masters shall be appointed as follows:
29 (1) If a family law master serves a single judicial circuit that has one circuit judge, the

1 circuit judge shall appoint the family law master;

2 (2) If a family law master serves a single judicial circuit that has two or more circuit
3 court judges, the chief judge of the circuit shall appoint the family law master or masters;

4 (3) If a family law master serves more than one judicial circuit, the chief judges of the
5 judicial circuits shall appoint the family law master or masters;

6 (4) If the chief judge or chief judges of the judicial circuits cannot agree, all of the
7 circuit judges of the affected judicial circuits shall appoint the family law master or masters; or

8 (5) If the circuit judges of the affected judicial circuits cannot agree, the supreme court
9 of appeals shall appoint the family law master or masters.

10 (b) A commissioner appointed under subsection (a) of this section may be designated
11 by the name “family law master.”

12 (c) The family law master will conduct hearings in family court cases, take testimony,
13 hear the parties, enter orders of a temporary or interlocutory nature, make findings of fact and
14 conclusions of law on the record, formulate recommendations, and report to the circuit court.
15 The family law master will exercise any other power or authority provided for in this article or
16 article four, chapter forty-eight-a of this code.

17 (d) The family law master, as a commissioner of the circuit court, has both
18 administrative and judicial functions to perform, as described in subsections (e) and (f) of this
19 section.

20 (e) The family law master has responsibility for the administration of the family court
21 division of the circuit court. A circuit court judge or judges whose circuit is served by a family
22 law master or masters must monitor the administration of the family court divisions within the
23 judicial circuit and regulate those activities, including naming one or more circuit judges to
24 serve as administrative supervisor of the family law master, through appropriate administrative
25 orders. The administrative orders of the administrative supervisor regarding a family court
26 division will be compiled and indexed in the office of the circuit clerk and be available for
27 public inspection.

28 (f) In exercising the judicial function of the family court, the family law master, free of
29 direct oversight by a circuit judge, is responsible for the preparation or preliminary

1 consideration of issues requiring judicial decision, subject only to a subsequent review by a
2 circuit judge. Conclusions of law of the family law master are subject to de novo review by the
3 circuit court. In reviewing the findings of fact of a family law master, the circuit court is held
4 to the clearly erroneous standard.

5 (g) A family law master shall not be eligible to participate in the judges retirement
6 system under the provisions of article nine, chapter fifty-one of this code.

7 (h) Beginning the first day of January, two thousand, each family law master is required
8 to file a quarterly activity report with the supreme court of appeals and the joint committee on
9 government and finance. The report shall include, but is not limited to, the number of cases
10 heard before the family law master, the date the case was heard, the date the case was filed and
11 the number and types of hearings held before the family law master in a particular case.

12 (i) The supreme court of appeals shall promulgate a procedural rule to establish time-
13 keeping requirements for family law masters, family case coordinators and secretary-clerks of
14 family law masters so as to assure the maximum funding of incentive payments, grants and
15 other funding sources available to the state for the processing of cases filed for the location
16 of absent parents, the establishment of paternity and the establishment, modification, and
17 enforcement of child support orders.

18 **§51-2A-3. Assignment of family law masters by family court circuits.**

19 (a) A total of thirty-three family law masters will serve throughout the state. The state
20 will be divided into twenty-four family court circuits with the number of family law masters
21 allocated as follows:

22 The counties of Brooke, Hancock, and Ohio shall constitute the first family court circuit
23 and shall have two family law masters; the counties of Marshall, Wetzel and Tyler shall
24 constitute the second family court circuit and shall have one family law master; the counties of
25 Pleasants, Wood, Wirt, Ritchie and Doddridge shall constitute the third family court circuit and
26 shall have two family law masters; the counties of Jackson, Roane, Calhoun and Gilmer shall
27 constitute the fourth family court circuit and shall have one family law master; the counties of
28 Mason and Putnam shall constitute the fifth family court circuit and shall have one family law
29 master; the county of Cabell shall constitute the sixth family court circuit and shall have two

1 family law masters; the county of Wayne shall constitute the seventh family court circuit and
2 shall have one family law master; the county of Mingo shall constitute the eighth family court
3 circuit and shall have one family law master; the county of Logan shall constitute the ninth
4 family court circuit and shall have one family law master; the counties of Lincoln and Boone
5 shall constitute the tenth family court circuit and shall have one family law master; the county
6 of Kanawha shall constitute the eleventh family court circuit and shall have four family law
7 masters; the counties of McDowell and Mercer shall constitute the twelfth family court circuit
8 and shall have two family law masters; the counties of Raleigh and Wyoming shall constitute
9 the thirteenth family court circuit and shall have two family law masters; the counties of and
10 Fayette and Summers shall constitute the fourteenth family court circuit and shall have one
11 family law master; the counties of Greenbrier, Monroe and Pocahontas shall constitute the
12 fifteenth family court circuit and shall have one family law master; the counties of Clay,
13 Nicholas and Webster shall constitute the sixteenth family court circuit and shall have one
14 family law master; the counties of Braxton, Lewis and Upshur shall constitute the seventeenth
15 family court circuit and shall have one family law master; the county of Harrison shall constitute
16 the eighteenth family court circuit and shall have one family law master; the county of Marion
17 shall constitute the nineteenth family court circuit and shall have one family law master; the
18 county of Monongalia shall constitute the twentieth family court circuit and shall have one
19 family law master; the counties of Barbour, Preston and Taylor shall constitute the twenty-first
20 family court circuit and shall have one family law master; the counties of Grant, Tucker and
21 Randolph shall constitute the twenty-second family court circuit and shall have one family law
22 master; the counties of Mineral, Hampshire, Hardy and Pendleton shall constitute the twenty-
23 third family court circuit and shall have one family law master; the counties of Berkeley,
24 Jefferson and Morgan shall constitute the twenty-fourth family court circuit and shall have two
25 family law masters.

26 (b) The chief justice of the supreme court of appeals may temporarily assign a family
27 law master from one family court circuit to another family court circuit, as caseload,
28 disqualification, recusal, vacation or illness may dictate. In each case of temporary assignment,
29 the chief justice shall appoint only a family law master who is actually serving at the time of

1 such appointment.

2 **§51-2A-4. Qualifications of family law masters.**

3 (a) An individual serving as a family law master prior to the initial election of family law
4 masters, as set forth in section five of this article, must be a member in good standing of the
5 West Virginia state bar and must have at least five years experience as a practicing attorney
6 prior to taking office. An individual elected as a family law master at the initial election of
7 family law masters or at any subsequent election of family law masters, as set forth in section
8 five of this article, or an individual appointed as a family law master at any time after the initial
9 election of family law masters must be a member in good standing of the West Virginia state
10 bar, must have at least five years experience as a practicing attorney prior to taking office, and
11 must, at the time he or she takes office, and thereafter during his or her continuance in office,
12 be a resident of the state of West Virginia.

13 (b) Upon assuming his or her duties, a family law master with no prior experience as a
14 family law master shall, as soon as is practicable, attend and complete a course of instruction
15 in principles of family law and procedure that is given in accordance with the supervisory rules
16 of the supreme court of appeals. All family law masters shall attend courses of continuing
17 educational instruction as may be required by supervisory rule of the supreme court of appeals.
18 Failure to attend the required courses of continuing educational instruction without good cause
19 constitutes neglect of duty. Persons attending such courses outside of the county of their
20 residence will be reimbursed by the supreme court of appeals for expenses actually incurred in
21 accordance with the supervisory rules of the supreme court of appeals.

22 (c) A family law master may not engage in any other business, occupation or
23 employment inconsistent with the expeditious, proper and impartial performance of his or her
24 duties as a judicial officer. A family law master is not permitted to engage in the outside
25 practice of law and shall devote full time to his or her duties as a judicial officer.

26 **§51-2A-5. Term of office of family law master; elections.**

27 (a) Before the first day of September, one thousand nine hundred ninety-nine, family law
28 masters shall be appointed to serve in the family court circuits as provided for in section three
29 of this article. The initial term of office for the family law masters first appointed shall

1 commence on the first day of October, one thousand nine hundred ninety-nine and end on the
2 thirty-first day of December, two thousand two.

3 (b) Beginning with the primary and general elections to be conducted in the year two
4 thousand two, family law masters shall be elected. In family court circuits having two or more
5 family law master there shall be, for election purposes, numbered divisions corresponding to
6 the number of family law masters in each area. Each family law master shall be elected at large
7 by the entire family court area. In each numbered division of a judicial circuit, the candidates
8 for nomination or election shall be voted upon and the votes cast for the candidates in each
9 division shall be tallied separately from the votes cast for candidates in other numbered division
10 within the family court area. The candidate or candidates receiving the highest number of the
11 votes cast within a numbered division shall be nominated or elected, as the case may be.

12 (c) The term of office for all family law masters elected in two thousand two shall be
13 for four years, commencing on the first day of January, two thousand three and ending on the
14 thirty-first day of December, two thousand six. Subsequent terms of office for family law
15 masters elected thereafter shall be for four years.

16 **§51-2A-6. Vacancy in the office of family law master.**

17 If a vacancy occurs in the office of family law master, the chief judge or judges of the
18 affected circuit courts, as the case may be, shall, within thirty days after the vacancy occurs, fill
19 the vacancy by appointment for the unexpired term. If the chief judge or judges of the affected
20 circuit court fail to act timely to fill a vacancy, the chief justice of the supreme court of appeals
21 may fill the vacancy for the unexpired term.

22 **§51-2A-6a. Terms of family law masters continued.**

23 The family law masters holding office on the first day of June, one thousand nine
24 hundred ninety-nine, by virtue of appointments made under the prior enactments of article four,
25 chapter forty-eight-a of this code are continued in their term of office through the thirtieth day
26 of September, one thousand nine hundred ninety-nine.

27 **§51-2A-7. Procedure for removal, suspension or discipline of family law master; appeal;
28 grounds.**

29 (a) A family law master appointed pursuant to section two of this article may be

1 removed from office in the manner provided in this section for official misconduct, malfeasance
2 in office, incompetence, neglect of duty, gross immorality or inability to serve.

3 (b) Charges may be preferred by:

4 (1) A circuit judge of a county that constitutes all or a part of the family law master's
5 region;

6 (2) By the administrative director of the supreme court of appeals; or

7 (3) By any person as provided in rule two of the rules of judicial disciplinary procedure.

8 If a formal charge is filed by the judicial investigation commission, such charge may
9 recommend removal and the convening of a three judge court as provided for in this section.

10 (c) The charges must be reduced to writing in the form of a petition, duly verified by the
11 charging party, and filed with the supreme court of appeals. The petition must request the
12 impaneling or convening of a three-judge court consisting of three circuit judges of the state.
13 The chief justice of the supreme court of appeals shall, without delay, designate and appoint
14 three circuit judges within the state, none of whom is from the region in which the family law
15 master serves. In the order of appointment, the chief justice shall designate the date, time and
16 place for the convening of the three-judge court. The date and time of hearing on the petition
17 must be more than twenty days from the date of the filing of the petition.

18 The three-judge court shall, without a jury, hear the charges and all evidence offered in
19 support thereof or in opposition thereto and upon satisfactory proof of the charges shall remove
20 the family law master from office and place the records, papers and property of his or her office
21 in the possession of some other officer or person for safekeeping or in the possession of the
22 person appointed as hereinafter provided to fill the office temporarily. Final orders shall set out
23 the court's decision to dismiss the charges or to suspend or remove the family law master, with
24 or without recommendations to refer the matter for investigation by the office of disciplinary
25 counsel under the rules of judicial disciplinary procedure, or to provide other disposition
26 appropriate to the case.

27 (d) An appeal from a final order of a three-judge court removing or refusing to remove
28 a family law master from office pursuant to this section may be taken to the supreme court of
29 appeals within thirty days from the date of entry of the order from which the appeal is to be

1 taken. The supreme court of appeals shall consider and decide the appeal upon the original
2 papers and documents, without requiring the same to be printed and shall enforce its findings
3 by proper writ. From the date of any order of the three-judge court removing an officer under
4 this section until the expiration of thirty days thereafter, and, if an appeal be taken, until the date
5 of suspension of such order, if suspended by the three-judge court and if not suspended, until
6 the final adjudication of the matter by the supreme court of appeals, the circuit court judge or
7 judges having power to fill a vacancy in such office may fill the same by a temporary
8 appointment until a final decision of the matter, and if a final decision is made by the supreme
9 court of appeals affirming the removal of the family law master, shall fill the vacancy in the
10 manner provided by law for such office.

11 (e) For purposes of subsections (a) through (d) of this section, “neglect of duty”
12 includes, but is not limited to, failure to make findings of fact and conclusions of law either on
13 the record or in writing to be filed as part of the record.

14 (f) Notwithstanding any other provision, the conduct of family law masters who begin
15 serving terms of office on the first day of January, two thousand three and thereafter, shall be
16 governed by the code of judicial conduct adopted by the supreme court of appeals and any
17 complaint of violation of the code of judicial conduct against a family law judge shall be filed
18 and considered in accordance with the rules of judicial disciplinary procedure adopted by the
19 supreme court of appeals.

20 **§51-2A-8. Compensation and expenses of family law masters and their staffs.**

21 (a) Beginning the first day of October, one thousand nine hundred ninety-nine, until the
22 thirty-first day of December, two thousand two, a family law master is entitled to receive as
23 compensation for his or her services an annual salary of sixty thousand dollars. Beginning the
24 first day of January, two thousand three, a family law master is entitled to receive as
25 compensation for his or her services, an annual salary of sixty-two thousand five hundred
26 dollars.

27 (b) The secretary-clerk of the family law master is appointed by the family law master
28 and serves at his or her will and pleasure. The secretary-clerk of the family law master is
29 entitled to receive an annual salary of twenty-two thousand three hundred eight dollars. In

1 addition, beginning the first day of October, one thousand nine hundred ninety-nine, any
2 secretary-clerk who is employed by a family law master on the effective date of this section who
3 has been so employed for at least two years prior to such effective date, shall receive an
4 additional five hundred dollars per year up to ten years of such prior employment. Further, the
5 secretary-clerk will receive such percentage or proportional salary increases as may be provided
6 for by general law for other public employees and is entitled to receive the annual incremental
7 salary increase as provided for in article five, chapter five of this code.

8 (c) After the first day of October, one thousand nine hundred ninety-nine, the family law
9 master may employ not more than one family case coordinator who serves at his or her will and
10 pleasure: *Provided*, That for purposes of the initial employment of family case coordinators,
11 the administrative director of the supreme court of appeals shall designate twenty family law
12 masters who are authorized to employ family case coordinators, and the additional thirteen
13 family case coordinators may only be employed when authorized by the administrative director
14 of the supreme court of appeals. The annual salary of the family case coordinator of the family
15 law master shall be established by the administrative director of the supreme court of appeals
16 but may not exceed thirty-five thousand dollars. The family case coordinator will receive such
17 percentage or proportional salary increases as may be provided for by general law for other
18 public employees and is entitled to receive the annual incremental salary increase as provided
19 for in article five, chapter five of this code.

20 (d) Subject to the approval of the chief judge of the circuit, the sheriff or his or her
21 designated deputy, shall serve as a bailiff for a family law master. The sheriff of each county
22 shall serve or designate persons to serve so as to assure that a bailiff is available when a family
23 law master determines the same is necessary for the orderly and efficient conduct of the
24 business of the family court division of the circuit court.

25 (e) A special commissioner of the court appointed pursuant to subdivision (4),
26 subsection (a) section ten of this article is entitled to be compensated by the supreme court of
27 appeals at an hourly rate not to exceed the hourly rate paid to panel attorneys for performing
28 work in court pursuant to the provisions of section thirteen-a, article twenty-one, chapter
29 twenty-nine of this code.

1 (f) Disbursement of salaries for family law masters and members of their staffs are made
2 by or pursuant to the order of the director of the administrative office of the supreme court of
3 appeals.

4 (g) Family law masters, members of their staffs and special commissioners of the court
5 are allowed their actual and necessary expenses incurred in the performance of their duties.
6 The expenses and compensation will be determined and paid by the director of the
7 administrative office of the supreme court of appeals under such guidelines as he or she may
8 prescribe, as approved by the supreme court of appeals.

9 **§51-2A-9. Rules of practice and procedure; applicability of rules of evidence; local**
10 **administrative rules.**

11 (a) Pleading, practice and procedure in matters before a family law master are governed
12 by rules of practice and procedure for family law promulgated by the supreme court of appeals
13 pursuant to section four, article one of this chapter.

14 (b) The West Virginia rules of evidence apply to proceedings before a family law
15 master.

16 (c) The chief judge of a circuit court may promulgate local administrative rules
17 governing the conduct and administration of family courts serving the circuit court. Local
18 administrative rules are subordinate and subject to the rules of the supreme court of appeals or
19 the orders of the chief justice. Rules promulgated by the chief judge of a circuit court are made
20 by order entered upon the order book of the circuit court, and are effective when filed with the
21 clerk of the supreme court of appeals.

22 **§51-2A-10. Matters to be heard by a family law master.**

23 (a) A chief judge of a circuit court shall refer to the family law master the following
24 matters for hearing:

25 (1) Actions to obtain orders of support brought under the provisions of section one,
26 article five, chapter forty-eight-a of this code;

27 (2) All actions to establish paternity brought under the provisions of article six of chapter
28 forty-eight-a of this code, and any dependent claims related to such action regarding child
29 support, custody and visitation;

1 (3) All petitions for writs of habeas corpus wherein the issue contested is child custody;

2 (4) All motions for temporary relief affecting child custody, visitation, child support,
3 spousal support or domestic or family violence, wherein either party has requested such referral
4 or the court on its own motion in individual cases or by general order has referred such motions
5 to the family law master: *Provided*, That if the family law master determines, in his or her
6 discretion, that the pleadings raise substantial issues concerning the identification of separate
7 property or the division of marital property which may have a bearing on an award of support,
8 the family law master shall notify the appropriate circuit court of this fact and the circuit court
9 may refer the case to a special commissioner chosen by the circuit court to serve in such
10 capacity;

11 (5) All petitions for modification of an order involving child custody, child visitation,
12 child support or spousal support;

13 (6) All actions for divorce, annulment or separate maintenance brought pursuant to
14 article two, chapter forty-eight of this code: *Provided*, That an action for divorce, annulment
15 or separate maintenance which does not involve child custody or child support shall be heard
16 by a circuit judge if, at the time of the filing of the action, the parties file a written property
17 settlement agreement which has been signed by both parties;

18 (7) All actions wherein an obligor is contesting the enforcement of an order of support
19 through the withholding from income of amounts payable as support or is contesting an
20 affidavit of accrued support, filed with a circuit clerk, which seeks to collect arrearage;

21 (8) All actions commenced under chapter forty-eight-b of this code or the interstate
22 family support act of another state;

23 (9) Proceedings for the enforcement of support, custody or visitation orders;

24 (10) All actions to establish custody of a minor child or visitation with a minor child,
25 including actions brought pursuant to the uniform child custody jurisdiction act and actions
26 brought to establish grandparent visitation: *Provided*, That any action instituted under article
27 six, chapter forty-nine shall be heard by a circuit judge;

28 (11) On and after October first, one thousand nine hundred ninety-nine, civil contempt
29 and direct contempts: *Provided*, That criminal contempts must be heard by a circuit judge; and

1 (12) On and after the first day of April, two thousand one, full hearings in domestic or
2 family violence proceedings wherein a protective order is sought.

3 (b) On its own motion or upon motion of a party, the circuit court may revoke the
4 referral of a particular matter to a family law master if the family law master is recused, if the
5 matter is uncontested, or for other good cause, or if the matter will be more expeditiously and
6 inexpensively heard by a circuit judge without substantially affecting the rights of parties.

7 **§51-2A-11. Contempt powers of family law master.**

8 (a) A family law master, acting in his or her capacity as a commissioner of the circuit
9 court, may:

10 (1) Sanction persons through civil contempt proceedings when necessary to preserve and
11 enforce the rights of private parties or to administer remedies granted by the court;

12 (2) Regulate all proceedings in a hearing before the family law master;

13 (3) Punish direct contempts that are offered in the presence of the court or that obstruct
14 or corrupt the proceedings of the court.

15 (b) A family law master may enforce compliance with his or her lawful orders with
16 remedial or coercive sanctions designed to compensate a complainant for losses sustained and
17 to coerce obedience for the benefit of the complainant. Sanctions must give the contemnor an
18 opportunity to purge himself or herself. In selecting sanctions, the court must use the least
19 possible power adequate to the end proposed. A person who lacks the present ability to comply
20 with the order of the court may not be confined for a civil contempt. Sanctions may include,
21 but are not limited to, seizure or impoundment of property to secure compliance with a prior
22 order. Ancillary relief may provide for an award of attorney's fees.

23 **§51-2A-12. Effects of certain repealers or reenactments.**

24 The repeal or reenactment of sections in article four, chapter forty-eight of this code
25 effected during the second extraordinary session of the Legislature, one thousand nine hundred
26 ninety-nine become operable on the first day of July, one thousand nine hundred ninety-nine.
27 It is intended that the family law master system in existence on the eighteenth day of May, one
28 thousand nine hundred ninety-nine will continue to function under the prior enactment of article
29 four, chapter forty-eight-a of this code, notwithstanding the repeal or the amendment and

1 reenactment of sections of that article, until the first day of October, one thousand nine hundred
2 ninety-nine when the family law master system is replaced with the system of family law
3 masters provided for in this article.

4 **ARTICLE 3. COURTS IN GENERAL.**

5 **§51-3-14. Court security fund.**

6 (a) The offices and the clerks of the magistrate courts and the circuit courts shall, on or
7 before the tenth day of each month, transmit all fees and costs received for the court security
8 fund in accordance with the provisions of sections one and two, article three, chapter fifty of
9 this code and section eleven, article one, chapter fifty-nine of this code for deposit in the state
10 treasury to the credit of a special revenue fund to be known as the "Court Security Fund", which
11 is hereby created under the department of military affairs and public safety. The court security
12 fund may receive any gifts, grants, contributions or other money from any source which is
13 specifically designated for deposit in the fund. All moneys collected and received and paid into
14 the state treasury and credited to the court security fund shall be expended by the board
15 exclusively to implement the improvement measures agreed upon in accordance with the
16 security plans submitted pursuant to section sixteen of this article and in accordance with an
17 appropriation by the Legislature: ~~Provided, That for the fiscal year ending the thirtieth day of~~
18 ~~June, one thousand nine hundred ninety-seven, expenditures are authorized from collections~~
19 ~~rather than pursuant to an appropriation by the Legislature.~~ Amounts collected which are found
20 from time to time to exceed the funds needed for the purposes set forth in this article may be
21 transferred to other accounts or funds and redesignated for other purposes upon appropriation
22 by the Legislature.

23 (b) Notwithstanding any provision of this code to the contrary, during fiscal year two
24 thousand, all fees and costs received for the court security fund in accordance with the
25 provisions of sections one and two, article three, chapter fifty of this code, section eleven,
26 article one, chapter fifty-nine of this code, and any other provision of this code, for deposit in
27 the state treasury to the credit of the court security fund shall not be deposited in the court
28 security fund, but shall instead be transmitted by the offices and the clerks of the magistrate
29 courts and the circuit courts, on or before the tenth day of each month, for deposit in the state

1 treasury to the credit of the family court fund established under section twenty-three, article
2 four, chapter forty-eight-a of this code. The fees and costs that are deposited in the family court
3 fund under the provisions of this subsection shall be expended for the purposes set forth in said
4 section twenty-three.

5 (c) Notwithstanding any provision of this code to the contrary, after the thirtieth day of
6 June, two thousand, the court security board shall transfer such amounts from the court security
7 fund as may from time to time be directed by the Legislature in an appropriation act to the
8 domestic violence legal services fund created in section four-c, article two-c, chapter forty-eight
9 of this code. Any monies transferred to the domestic violence legal services fund pursuant to
10 the provisions of this section shall be expended for the purposes specified in said section four-c.

11 **CHAPTER 59. FEES, ALLOWANCES AND COSTS;**
12 **NEWSPAPERS; LEGAL ADVERTISEMENTS.**

13 **ARTICLE 1. FEES AND ALLOWANCES.**

14 **§59-1-11. Fees to be charged by clerk of circuit court.**

15 (a) The clerk of a circuit court shall charge and collect for services rendered as such
16 clerk the following fees, and such fees shall be paid in advance by the parties for whom such
17 services are to be rendered:

18 (1) For instituting any civil action under the rules of civil procedure, any statutory
19 summary proceeding, any extraordinary remedy, the docketing of civil appeals, or any other
20 action, cause, suit or proceeding, seventy-five dollars: *Provided*, That the fee for instituting an
21 action for divorce shall be one hundred five dollars;

22 (2) Beginning on and after the first day of July, one thousand nine hundred ninety-nine,
23 for instituting an action for divorce, separate maintenance or annulment, one hundred twenty-
24 five dollars; and

25 (3) For petitioning for the modification of an order involving child custody, child
26 visitation, child support or spousal support, seventy-five dollars.

27 (b) In addition to the foregoing fees, the following fees shall likewise be charged and
28 collected:

29 (1) For preparing an abstract of judgment, five dollars;

1 (2) For any transcript, copy or paper made by the clerk for use in any other court or
2 otherwise to go out of the office, for each page, fifty cents;

3 (3) For action on suggestion, ten dollars;

4 (4) For issuing an execution, ten dollars;

5 (5) For issuing or renewing a suggestee execution, including copies, postage, registered
6 or certified mail fees and the fee provided by section four, article five-a, chapter thirty-eight of
7 this code, three dollars;

8 (6) For vacation or modification of a suggestee execution, one dollar;

9 (7) For docketing and issuing an execution on a transcript of judgment from magistrate's
10 court, three dollars;

11 (8) For arranging the papers in a certified question, writ of error, appeal or removal to
12 any other court, five dollars:

13 (9) For postage and express and for sending or receiving decrees, orders or records, by
14 mail or express, three times the amount of the postage or express charges;

15 (10) For each subpoena, on the part of either plaintiff or defendant, to be paid by the
16 party requesting the same, fifty cents;

17 (11) For additional service (plaintiff or appellant) where any case remains on the docket
18 longer than three years, for each additional year or part year, twenty dollars.

19 (c) The clerk shall tax the following fees for services in any criminal case against any
20 defendant convicted in such court:

21 (1) In the case of any misdemeanor, fifty-five dollars;

22 (2) In the case of any felony, sixty-five dollars.

23 (d) No such clerk shall be required to handle or accept for disbursement any fees, cost
24 or amounts, of any other officer or party not payable into the county treasury, except it be on
25 order of the court or in compliance with the provisions of law governing such fees, costs or
26 accounts.

27 **§59-1-28a. Disposition of filing fees in divorce and other civil actions and fees for**
28 **services in criminal cases.**

29 (a) Except for those payments to be made from amounts equaling filing fees received

1 for the institution of divorce actions as prescribed in subsection (b) of this section, and except
2 for those payments to be made from amounts equaling filing fees received for the institution of
3 actions for divorce, separate maintenance and annulment as prescribed in subsection (c) of this
4 section, for each civil action instituted under the rules of civil procedure, any statutory summary
5 proceeding, any extraordinary remedy, the docketing of civil appeals, or any other action, cause,
6 suit or proceeding in the circuit court, the clerk of the court shall, at the end of each month, pay
7 into the funds or accounts described in this subsection an amount equal to the amount set forth
8 in this subsection of every filing fee received for instituting such action as follows:

9 (1) Into the regional jail and correctional facility development fund in the state treasury
10 established pursuant to the provisions of section ten, article twenty, chapter thirty-one of this
11 code, the amount of sixty dollars;

12 (2) Into the court security fund in the state treasury established pursuant to the provisions
13 of section fourteen, article three, chapter fifty-one of this code, the amount of five dollars.

14 (b) For each divorce action instituted in the circuit court, the clerk of the court shall, at
15 the end of each month, pay into the funds or accounts in this subsection an amount equal to the
16 amount set forth in this subsection of every filing fee received for instituting such divorce action
17 as follows:

18 (1) Into the regional jail and correctional facility development fund in the state treasury
19 established pursuant to the provisions of section ten, article twenty, chapter thirty-one of this
20 code, the amount of ten dollars;

21 (2) Into the special revenue account of the state treasury, established pursuant to section
22 twenty-four, article one, chapter forty-eight of this code, an amount of thirty dollars;

23 (3) Into the family law ~~masters court~~ fund ~~in the state treasury~~, established pursuant to
24 under section twenty-three, article four, chapter forty-eight-a of this code, an amount of fifty
25 dollars; and

26 (4) Into the court security fund in the state treasury, established pursuant to the
27 provisions of section fourteen, article three, chapter fifty-one of this code, the amount of five
28 dollars.

29 (c) This subsection applies to filing fees paid after the thirtieth day of June, one thousand

1 nine hundred ninety-nine. For each action for divorce, separate maintenance or annulment
2 instituted in the circuit court, the clerk of the court shall, at the end of each month, pay into the
3 funds or accounts in this subsection an amount equal to the amount set forth in this subsection
4 of every filing fee received for instituting such divorce action as follows:

5 (1) Into the regional jail and correctional facility development fund in the state treasury
6 established pursuant to the provisions of section ten, article twenty, chapter thirty-one of this
7 code, the amount of ten dollars;

8 (2) Into the special revenue account of the state treasury, established pursuant to section
9 twenty-four, article one, chapter forty-eight of this code, an amount of thirty dollars;

10 (3) Into the family court fund established under section twenty-three, article four, chapter
11 forty-eight-a of this code, an amount of seventy dollars; and

12 (4) Into the court security fund in the state treasury, established pursuant to the
13 provisions of section fourteen, article three, chapter fifty-one of this code, the amount of five
14 dollars.

15 (d) Notwithstanding any provision of subsection (a) or (b) of this section to the contrary,
16 the clerk of the court shall, at the end of each month, pay into the family court fund established
17 under section twenty-three, article four, chapter forty-eight-a of this code an amount equal to
18 the amount of every fee received for petitioning for the modification of an order involving child
19 custody, child visitation, child support or spousal support as determined by subdivision (3)
20 subsection (a) section eleven of this article.

21 (e) The clerk of the court from which a protective order is issued shall, at the end of
22 each month, pay into the family court fund established under section twenty-three, article four,
23 chapter forty-eight-a of this code an amount equal to every fee received pursuant to the
24 provisions of subsection (k), section six, article two-a, chapter forty-eight of this code.

25 (f) The clerk of each circuit court shall, at the end of each month, pay into the regional
26 jail and prison development fund in the state treasury an amount equal to forty dollars of every
27 fee for service received in any criminal case against any defendant convicted in such court and
28 shall pay an amount equal to five dollars of every such fee into the court security fund in the
29 state treasury established pursuant to the provisions of section fourteen, article three, chapter

1 fifty-one of this code.

2 **ARTICLE 2. COSTS GENERALLY.**

3 **§59-2-1. Suits by persons financially unable to pay.**

4 (a) A natural person who is financially unable to pay the fees or costs attendant to the
5 commencement, prosecution or defense of any civil action or proceeding, or an appeal therein,
6 is permitted to proceed without prepayment in any court of this state, after filing with the court
7 an affidavit that he or she is financially unable to pay the fees or costs or give security therefor.

8 (1) The clerk of the court and all other officers of the court shall issue and serve all
9 process and perform all duties in such cases.

10 (2) Judgment may be rendered for costs at the conclusion of the action, where otherwise
11 authorized by law, and be taxable against a losing party who has not been determined to be
12 financially unable to pay.

13 (3) Upon the filing of an affidavit in accordance with this subsection, seeking an appeal
14 in a civil case from a circuit court to the supreme court of appeals, the supreme court of appeals
15 may direct payment by the administrative office of the supreme court of appeals of the expenses
16 of duplicating the record on appeal after it is transmitted by the clerk of the circuit court. The
17 transcript of proceedings before the circuit court, if the petition for appeal is to be filed with the
18 transcript, shall be provided by the court reporter without cost: *Provided*, That actual expenses
19 of the court reporter for supplies used in preparing the transcript may be paid when authorized
20 by the director of the administrative office of the supreme court of appeals.

21 (b) The supreme court of appeals or the chief justice thereof shall establish and
22 periodically review and update financial guidelines for determining the eligibility of civil
23 litigants to proceed in forma pauperis.

24 (c) The supreme court of appeals shall adopt a financial affidavit form for use by persons
25 seeking a waiver of fees, costs or security pursuant to the provisions of this section. Copies of
26 the form shall be available to the public in the offices of the clerk of any court of this state. The
27 affidavit shall state the nature of the action, defense or appeal and the affiant's belief that he or
28 she is entitled to redress. The form shall elicit information from the affiant which will enable
29 the court in which it is filed to consider the following factors in determining whether the affiant

1 is financially unable to pay fees, costs or security:

2 (1) Current income prospects, taking into account seasonal variations in income;

3 (2) Liquid assets, assets which may provide collateral to obtain funds and other assets
4 which may be liquidated to provide funds to pay fees, costs or security;

5 (3) Fixed debts and obligations, including federal, state and local taxes and medical
6 expenses;

7 (4) Child care, transportation and other expenses necessary for employment;

8 (5) Age or physical infirmity of resident family members;

9 (6) Whether the person has paid or will pay counsel fees, or whether counsel will be
10 provided by a private attorney on a contingent fee basis, an attorney pro bono, a legal services
11 attorney, or some other attorney at no cost or a reduced cost to the affiant; and

12 (7) The consequences for the individual if a waiver of fees, costs or security is denied.

13 (d) When the information set forth in the affidavit or the evidence submitted in the
14 action reveals that the person filing the affidavit is financially able to pay the fees and costs, the
15 court or the family law master ~~may~~ shall order the person to pay the fees and costs in the action.

16 (e) No other party in any proceeding may initiate an inquiry by motion or other pleading
17 or participate in any proceeding relevant to the issues raised pursuant to this section.

18 (f) The making of an affidavit subject to inquiry under this section does not in any event
19 give rise to criminal remedies against the affiant nor occasion any civil action against the affiant
20 except for the recovery of costs as in any other case where costs may be recovered and the
21 recovery of the value of services, if any, provided pursuant to this section. A person who has
22 made an affidavit knowing the contents thereof to be false may be prosecuted for false swearing
23 as provided by law.

24 **CHAPTER 61. CRIMES AND THEIR PUNISHMENT.**

25 **ARTICLE 5. CRIMES AGAINST PUBLIC JUSTICE.**

26 **§61-5-29. Failure to meet an obligation to provide support to a minor; penalties.**

27 (1) A person who: (a) Persistently fails to provide support which he or she can
28 reasonably provide and which he or she knows he or she has a duty to provide to a minor; or
29 (b) is subject to court order to pay any amount for the support of a minor child and is delinquent

1 in meeting the full obligation established by the order and has been delinquent for a period of
2 at least six months' duration, is guilty of a misdemeanor and, upon conviction thereof, shall be
3 fined not less than one hundred dollars nor more than one thousand dollars, or ~~imprisoned~~
4 confined in the county or regional jail for not more than one year, or both fined and ~~imprisoned~~
5 confined.

6 (2) A person who persistently fails to provide support which he or she can reasonably
7 provide and which he or she knows he or she has a duty to provide to a minor by virtue of a
8 court or administrative order and the failure results in: (a) An arrearage of not less than eight
9 thousand dollars; or (b) twelve consecutive months without payment of support, is guilty of a
10 felony and, upon conviction thereof, shall be fined not less than one hundred dollars nor more
11 than one thousand dollars, or imprisoned for not less than one year nor more than three years,
12 or both fined and imprisoned.

13 (3) In a prosecution under this section, the defendant's alleged inability to reasonably
14 provide the required support may be raised only as an affirmative defense, after reasonable
15 notice to the state.

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And,
[Enacting Section Amendment]

On pages two and three, by striking out the enacting section and inserting in lieu thereof a new enacting section, to read as follows:

That section ten-b, article two, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that sections one, two, three, four, five and six, article four, chapter forty-eight-a of said code be repealed; that sections one, four-a, fifteen, sixteen, thirty-two and thirty-seven, article two, chapter forty-eight of said code be amended and reenacted [remainder of enacting section amendment omitted] . . .

[Title Amendment]

Senators Wooton and Craigo moved to amend the House of Delegates amendment on pages one and two, by striking out the title and substituting therefor a new title, to read as follows:

Eng. Com. Sub. for Senate Bill No. 2003--A Bill to repeal section ten-b, article two, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to repeal sections one, two, three, four, five and six, article four, chapter forty-eight-a of said code; to amend and reenact [Remainder of title amendment omitted] . . .