

# **WEST VIRGINIA LEGISLATURE**

## **2017 REGULAR SESSION**

### **Introduced**

## **House Bill 2703**

BY DELEGATES UPSON, SYPOLT, WILSON,  
HOUSEHOLDER, LEWIS, DEAN AND FOSTER, G.

[Introduced February 24, 2017; Referred  
to the Committee on the Judiciary.]

1 A BILL to amend and reenact §48-9-206 of the Code of West Virginia, 1936, as amended, relating  
2 to court ordered allocation of custodial responsibility of children; and providing that the  
3 court to allocate time equally between parents, unless equal custody is not consistent with  
4 the best interest of the child.

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

1 That §48-9-206 of the Code of West Virginia, 1936, as amended, be amended and  
2 reenacted to read as follows:

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

**§48-9-206. Allocation of custodial responsibility.**

1 (a) Unless otherwise resolved by agreement of the parents under section 9-201 or unless  
2 manifestly harmful to the child or not otherwise in the best interest of the child, the court shall  
3 allocate custodial responsibility so that the proportion of custodial time the child spends with each  
4 parent is equal: *Provided*, That if the court determines that equal custodial responsibility is not in  
5 the best interest of the child, the court shall allocate custodial responsibility that approximates the  
6 proportion of time each parent spent performing caretaking functions for the child prior to the  
7 parents' separation or, if the parents never lived together, before the filing of the action, except to  
8 the extent required under section 9-209 or necessary to achieve any of the following objectives:

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

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

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

16 welfare;

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

21 (5) To take into account any prior agreement of the parents that, under the circumstances  
22 as a whole including the reasonable expectations of the parents in the interest of the child, would  
23 be appropriate to consider;

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

29 (7) To apply the principles set forth in 9-403(d) of this article if one parent relocates or  
30 proposes to relocate at a distance that will impair the ability of a parent to exercise the amount of  
31 custodial responsibility that would otherwise be ordered under this section; and

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

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

38 (c) If the court is unable to allocate custodial responsibility under subsection (a) of this  
39 section because the allocation under that subsection would be manifestly harmful to the child, or  
40 because there is no history of past performance of caretaking functions, as in the case of a  
41 newborn, or because the history does not establish a pattern of caretaking sufficiently dispositive

42 of the issues of the case, the court shall allocate custodial responsibility based on the child's best  
43 interest, taking into account the factors in considerations that are set forth in this section and in  
44 section two hundred nine and 9-403(d) of this article and preserving to the extent possible this  
45 section's priority on the share of past caretaking functions each parent performed.

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

NOTE: The purpose of this bill is to require the court to allocate time equally between  
parents, unless equal custody is not consistent with the best interest of the child.

Strike-throughs indicate language that would be stricken from a heading or the present law  
and underscoring indicates new language that would be added.