

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

House Bill 4923

By Delegate Forsht

[Introduced January 19, 2024; Referred to the
Committee on Health and Human Resources then the
Judiciary]

1 A BILL to amend and reenact §48-9-203 and §48-9-207 of the Code of West Virginia, 1931, as
 2 amended; and to amend and reenact §49-1-201 of said code, all relating to establishing
 3 parental requirements regarding gender reassignment surgery or gender altering
 4 medications for minor children.

Be it enacted by the Legislature of West Virginia:

CHAPTER 48. DOMESTIC RELATIONS.

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

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

1 (a) A parent seeking a temporary order relating to parenting shall file and serve a proposed
 2 temporary parenting plan by motion. The other parent, if contesting the proposed temporary
 3 parenting plan, shall file and serve a responsive proposed parenting plan. Either parent may move
 4 to have a proposed temporary parenting plan entered as part of a temporary order. The parents
 5 may enter an agreed temporary parenting plan at any time as part of a temporary order. The
 6 proposed temporary parenting plan may be supported by relevant evidence and shall be verified
 7 and shall state at a minimum the following:

8 (1) The name, address, and length of residence with the person or persons with whom the
 9 child has lived for the preceding 12 months;

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

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

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

16 (b) At the hearing, the court shall enter a temporary parenting order incorporating a

17 temporary parenting plan which includes:

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

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

20 (3) Allocation of decision-making authority, if any. Absent allocation of decision-making
21 authority consistent with §48-9-207 of this code, neither party shall make any decision for the child
22 other than those relating to day-to-day or emergency care of the child, which shall be made by the
23 party who is present with the child. All temporary parenting orders shall contain language that
24 establishes that a child, that is the subject to the temporary order, who is moved out of state by a
25 custodial parent or guardian, shall not be exposed to any medical practices prohibited by §30-3-20
26 of this code without the express written consent of the non-custodial parent or guardian, unless the
27 court makes specific written findings of fact and conclusions of law that the required permission of
28 the non-custodial parent is not in the best interest of the child;

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

30 (5) Restraining orders, if applicable.

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

34 (d) Upon request of either parent for an equal (50-50) allocation of physical custody, the
35 presumption provided in §48-9-102a of this code applies.

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

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

43 the Intermediate Court of Appeals shall provide an expedited review of the order: *Provided*, That
44 no stay shall be granted pending resolution of the appeal, and the filing of an interlocutory appeal
45 shall not be the basis of a continuance of any subsequent or final hearing.

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

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

1 (a) Unless otherwise resolved by agreement of the parents under §48-9-201 of this code,
2 the court shall allocate responsibility for making significant life decisions on behalf of the child,
3 including the child's education and health care, to one parent or to both parents jointly, in
4 accordance with the child's best interest, in light of the ability or inability of the parents, based upon
5 the evidence before the court, to work collaboratively and in cooperation with each other in
6 decisionmaking on behalf of the child, and the existence of any criteria as set forth in §48-9-209 of
7 this code.

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

9 (2) The wishes of the parents; and

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

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

17 of this code. The court’s determination shall be in writing and include specific findings of fact
18 supporting any determination that joint allocation of decision-making responsibility is not in the
19 child’s best interest.

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

24 (d) All final parenting orders or final divorce orders which contain provisions relating to
25 allocation of significant decision-making responsibility shall contain language that establishes that
26 a child, that is the subject to the final order, who is moved out of state by a custodial parent or
27 guardian, shall not be exposed to any medical practices prohibited by §30-3-20 of this code
28 without the express written consent of the non-custodial parent or guardian, unless the court
29 makes specific written findings of fact and conclusions of law that the required permission of the
30 non-custodial parent is not in the best interest of the child

CHAPTER 49. CHILD WELFARE.

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§49-1-201. Definitions related, but not limited, to child abuse and neglect.

1 When used in this chapter, terms defined in this section have the meanings ascribed to
2 them that relate to, but are not limited to, child abuse and neglect, except in those instances where
3 a different meaning is provided or the context in which the word is used clearly indicates that a
4 different meaning is intended.

5 "Abandonment" means any conduct that demonstrates the settled purpose to forego the
6 duties and parental responsibilities to the child;

7 "Abused child" means:

8 (1) A child whose health or welfare is being harmed or threatened by:

9 (A) A parent, guardian, or custodian who knowingly or intentionally inflicts, attempts to
10 inflict, or knowingly allows another person to inflict, physical injury or mental or emotional injury,
11 upon the child or another child in the home. Physical injury may include an injury to the child as a
12 result of excessive corporal punishment;

13 (B) Sexual abuse or sexual exploitation;

14 (C) The sale or attempted sale of a child by a parent, guardian, or custodian in violation of
15 §61-2-14h of this code;

16 (D) Domestic violence as defined in §48-27-202 of this code; or

17 (E) Human trafficking or attempted human trafficking, in violation of §61-14-2 of this code;

18 (F) A parent, guardian, or custodian who knowingly transports, or allows for the transport,
19 of a child to an out-of-state healthcare facility for the purpose of allowing the commission of any
20 medical act upon a child that is expressly prohibited by §30-3-20 of this code.

21 (2) A child conceived as a result of sexual assault, as that term is defined in this section, or
22 as a result of the violation of a criminal law of another jurisdiction which has the same essential
23 elements: *Provided*, That no victim of sexual assault may be determined to be an abusive parent,
24 as that term is defined in this section, based upon being a victim of sexual assault.

25 "Abusing parent" means a parent, guardian, or other custodian, regardless of his or her
26 age, whose conduct has been adjudicated by the court to constitute child abuse or neglect as
27 alleged in the petition charging child abuse or neglect.

28 "Battered parent" for the purposes of §49-4-601 *et seq.* of this code means a respondent
29 parent, guardian, or other custodian who has been adjudicated by the court to have not condoned
30 the abuse or neglect and has not been able to stop the abuse or neglect of the child or children due
31 to being the victim of domestic violence as defined by §48-27-202 of this code, which was
32 perpetrated by the same person or persons determined to have abused or neglected the child or
33 children.

34 "Child abuse and neglect" or "child abuse or neglect" means any act or omission that
35 creates an abused child or a neglected child as those terms are defined in this section.

36 "Child abuse and neglect services" means social services which are directed toward:

37 (A) Protecting and promoting the welfare of children who are abused or neglected;

38 (B) Identifying, preventing, and remedying conditions which cause child abuse and
39 neglect;

40 (C) Preventing the unnecessary removal of children from their families by identifying family
41 problems and assisting families in resolving problems which could lead to a removal of children
42 and a breakup of the family;

43 (D) In cases where children have been removed from their families, providing time-limited
44 reunification services to the children and the families so as to reunify those children with their
45 families, or some portion of the families;

46 (E) Placing children in suitable adoptive homes when reunifying the children with their
47 families, or some portion of the families, is not possible or appropriate; and

48 (F) Assuring the adequate care of children or juveniles who have been placed in the
49 custody of the department or third parties.

50 "Condition requiring emergency medical treatment" means a condition which, if left
51 untreated for a period of a few hours, may result in permanent physical damage; that condition
52 includes, but is not limited to, profuse or arterial bleeding, dislocation or fracture,
53 unconsciousness, and evidence of ingestion of significant amounts of a poisonous substance.

54 "Imminent danger to the physical well-being of the child" means an emergency situation in
55 which the welfare or the life of the child is threatened. These conditions may include an emergency
56 situation when there is reasonable cause to believe that any child in the home is or has been
57 sexually abused or sexually exploited, or reasonable cause to believe that the following conditions
58 threaten the health, life, or safety of any child in the home:

59 (A) Nonaccidental trauma inflicted by a parent, guardian, custodian, sibling, babysitter or
60 other caretaker;

61 (B) A combination of physical and other signs indicating a pattern of abuse which may be
62 medically diagnosed as battered child syndrome;

63 (C) Nutritional deprivation;

64 (D) Abandonment by the parent, guardian, or custodian;

65 (E) Inadequate treatment of serious illness or disease;

66 (F) Substantial emotional injury inflicted by a parent, guardian, or custodian;

67 (G) Sale or attempted sale of the child by the parent, guardian, or custodian;

68 (H) The parent, guardian, or custodian's abuse of alcohol or drugs or other controlled
69 substance as defined in §60A-1-101 of this code, has impaired his or her parenting skills to a
70 degree as to pose an imminent risk to a child's health or safety; or

71 (I) Any other condition that threatens the health, life or safety of any child in the home.

72 "Neglected child" means a child:

73 (A) Whose physical or mental health is harmed or threatened by a present refusal, failure
74 or inability of the child's parent, guardian, or custodian to supply the child with necessary food,
75 clothing, shelter, supervision, medical care, or education, when that refusal, failure, or inability is
76 not due primarily to a lack of financial means on the part of the parent, guardian, or custodian;

77 (B) Who is presently without necessary food, clothing, shelter, medical care, education, or
78 supervision because of the disappearance or absence of the child's parent or custodian; or

79 (C) "Neglected child" does not mean a child whose education is conducted within the
80 provisions of §18-8-1 *et seq.* of this code.

81 "Petitioner or copetitioner" means the department or any reputable person who files a child
82 abuse or neglect petition pursuant to §49-4-601 *et seq.* of this code.

83 "Permanency plan" means the part of the case plan which is designed to achieve a
84 permanent home for the child in the least restrictive setting available.

85 "Respondent" means all parents, guardians, and custodians identified in the child abuse
86 and neglect petition who are not petitioners or copetitioners.

87 "Sexual abuse" means:

88 (A) Sexual intercourse, sexual intrusion, sexual contact, or conduct proscribed by §61-8c-3
89 of this code, which a parent, guardian, or custodian engages in, attempts to engage in, or
90 knowingly procures another person to engage in, with a child notwithstanding the fact that for a
91 child who is less than 16 years of age, the child may have willingly participated in that conduct or
92 the child may have suffered no apparent physical, mental or emotional injury as a result of that
93 conduct or, for a child 16 years of age or older, the child may have consented to that conduct or the
94 child may have suffered no apparent physical injury or mental or emotional injury as a result of that
95 conduct;

96 (B) Any conduct where a parent, guardian, or custodian displays his or her sex organs to a
97 child, or procures another person to display his or her sex organs to a child, for the purpose of
98 gratifying the sexual desire of the parent, guardian, or custodian, of the person making that
99 display, or of the child, or for the purpose of affronting or alarming the child; or

100 (C) Any of the offenses proscribed in §61-8b-7, §61-8b-8, or §61-8b-9 of this code.

101 "Sexual assault" means any of the offenses proscribed in §61-8b-3, §61-8b-4, or §61-8b-5
102 of this code.

103 "Sexual contact" means sexual contact as that term is defined in §61-8b-1 of this code.

104 "Sexual exploitation" means an act where:

105 (A) A parent, custodian, or guardian, whether for financial gain or not, persuades, induces,
106 entices or coerces a child to engage in sexually explicit conduct as that term is defined in §61-8c-1
107 of this code;

108 (B) A parent, guardian, or custodian persuades, induces, entices or coerces a child to
109 display his or her sex organs for the sexual gratification of the parent, guardian, custodian or a
110 third person, or to display his or her sex organs under circumstances in which the parent,

111 guardian, or custodian knows that the display is likely to be observed by others who would be
112 affronted or alarmed; or

113 (C) A parent, guardian, or custodian knowingly maintains or makes available a child for the
114 purpose of engaging the child in commercial sexual activity in violation of §61-14-5 of this code.

115 "Sexual intercourse" means sexual intercourse as that term is defined in §61-8b-1 of this
116 code.

117 "Sexual intrusion" means sexual intrusion as that term is defined in §61-8b-1 of this code.

118 "Serious physical abuse" means bodily injury which creates a substantial risk of death,
119 causes serious or prolonged disfigurement, prolonged impairment of health, or prolonged loss or
120 impairment of the function of any bodily organ.

NOTE: The purpose of this bill is to establish parental requirements regarding gender reassignment surgery or gender altering medications for minor children.

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