

# **WEST VIRGINIA LEGISLATURE**

## **2024 REGULAR SESSION**

**Introduced**

### **Senate Bill 353**

By Senators Swope and Phillips

[Introduced January 12, 2024; referred  
to the Committee on the Judiciary]

1 A BILL to repeal §48-9-301 of the Code of West Virginia, 1931, as amended; and to amend and  
 2 reenact §48-9-302 of said code, relating to removing the discretion of the court to issue a  
 3 written investigation for proceedings; ensuring that the West Virginia judiciary remains  
 4 neutral and detached in all matters pending before any court of this state; ensuring that the  
 5 West Virginia judiciary does not in any way initiate or participate in investigations or other  
 6 activities properly reserved to the executive consistent with the separation of powers  
 7 required under section one, article V, of the Constitution of the State of West Virginia; to  
 8 ensuring that the West Virginia judiciary at all times in the performance of its duties acts in  
 9 a manner consistent with West Virginia Judicial Code of Conduct Rule 2.9, which states  
 10 that "[a] judge shall not initiate, permit, or consider ex parte communications, or consider  
 11 other communications made to the judge outside the presence of the parties or their  
 12 lawyers, concerning a pending or impending matter"; and ensuring that courts are abiding  
 13 by the foundational principle of Anglo-American jurisprudence rooted in the Magna Carta  
 14 and the Due Process clauses of the United States Constitution that no person may have  
 15 their rights curtailed or stripped from them without the right to confront any witnesses and  
 16 to rebut any evidence against them, as well as to present their own witnesses and  
 17 evidence to the court.

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

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

**PART 3. FACT FINDING.**

**§48-9-301. Court-ordered investigation.**

1 [Repealed].

**§48-9-302. Appointment of guardian.**

1 (a) In its discretion, the court may appoint a guardian ad litem to represent the child's best

2 interests. The court shall specify the terms of the appointment, including the guardian's role, duties  
3 and scope of authority.

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

8 (c) When substantial allegations of domestic abuse have been made, the court shall order  
9 an investigation may take any reasonable, temporary steps as the court in its discretion deems  
10 appropriate given the circumstances to protect the child's safety under section 9-301 pursuant to  
11 section §48-9-301a or make an appointment under subsection (a) or (b) of this section: unless the  
12 court is satisfied that the information necessary to evaluate the allegations will be adequately  
13 presented to the court without such order or appointment *Provided, That under no circumstances*  
14 shall the court initiate any investigation, nor shall it conduct any proceeding, meeting, conference,  
15 teleconference, or hearing, nor shall the court accept receipt of any testimony, report or  
16 information from any source, at or in which allegations or evidence shall be presented *ex parte*  
17 against a parent. Any and all allegations or evidence presented against a parent shall be  
18 rebuttable by pleading, motion, and subject to full adversarial judicial hearing as defined in this  
19 Chapter 48 of the West Virginia Code.

20 (d) Subject to whatever restrictions the court may impose or that may be imposed by the  
21 attorney-client privilege or by subsection 9-202(d), the court may require the child or parent to  
22 provide information to an individual or agency appointed by the court under section 9-301 or  
23 subsection (a) or (b) of this section, and it may require any person having information about the  
24 child or parent to provide that information, even in the absence of consent by a parent or by the  
25 child, except if the information is otherwise protected by law.

26 (e) The investigator who submits a report or evidence to the court that has been requested  
27 under section 9-301 and a guardian ad litem appointed under subsection (a) of this section who

28 submits information or recommendations to the court are subject to cross-examination by the  
29 parties. A lawyer appointed under subsection (b) of this section may not be a witness in the  
30 proceedings, except as allowed under standards applicable in other civil proceedings.

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

NOTE: The purpose of this bill is to remove the procedure for the court to conduct written investigations into proceedings under Article 9, to ensure that the West Virginia judiciary remains neutral and detached in all matters pending before any court of this state, and to ensure that the West Virginia judiciary does not in any way initiate or participate in investigations or other activities properly reserved to the executive consistent with the separation of powers required under Article V, Section 1, of the Constitution of the State of West Virginia.

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