

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Committee Substitute

for

Senate Bill 516

BY SENATORS WOELFEL, TRUMP, AND CAPUTO

[Originating in the Committee on the Judiciary;

reported February 1, 2024]

1 A BILL to amend and reenact §48-9-105 of the Code of West Virginia, 1931, as amended, relating
2 to determining venue for custodial allocation actions; providing venue options for initial
3 custody determinations; providing venue for modification or enforcement of custodial
4 allocation; providing for transfer of venue for modification or enforcement of custodial
5 allocation arising out of a finalized divorce proceeding or independent of divorce if certain
6 conditions are met; allowing family court to decline transfer of venue; and providing for
7 transfer of venue for child support and paternity where the venue for modification or
8 enforcement of a custody determination is transferred.

Be it enacted by the Legislature of West Virginia:

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

§48-9-105. Venue for custodial allocation actions independent of divorce.

1 ~~(a) Venue for the initial determination of custodial allocation or child custody determination~~
2 ~~within a divorce action shall be governed by §48-5-106 or §48-20-101 et seq. of this code, or both.~~

3 ~~(b) Venue for the initial determination of custodial allocation or child custody determination~~
4 ~~as between parties who reside in separate states shall be governed by §48-20-101 et seq. of this~~
5 ~~code.~~

6 ~~(c) Venue for modification of custodial allocation or modification of child custody~~
7 ~~determination which was previously determined in a tribunal of a state other than West Virginia~~
8 ~~shall be governed by §48-20-101 et seq. of this code.~~

9 (a) If a court of this state has subject matter jurisdiction over the initial determination of
10 child custody pursuant to §48-20-101 et seq. of this code, the petitioner may bring an action for
11 an initial custody determination in any of the following counties:

12 (1) The county where the parties and the child last resided together;

13 (2) For a child over the age of six months, the county where the child resides and has
14 resided for at least six consecutive months prior to the filing;

15 (3) The county where the respondent resides; or

16 (4) If the respondent is not a resident of this state, in the county where the petitioner
17 resides.

18 (b) If a court of this state has subject matter jurisdiction to modify or enforce a child custody
19 determination pursuant to §48-20-101 et seq. of this code, venue for a modification or
20 enforcement of custodial allocation, including a custody modification or enforcement action arising
21 from a finalized divorce proceeding, remains in the county in which the initial custodial allocation
22 was determined until such time as all of the following conditions are satisfied:

23 (1) Neither the child nor any person with custodial responsibility has resided in the county
24 where the initial custodial allocation was determined for a period of not less than six months
25 preceding the filing of the modification action;

26 (2) Neither the child nor any person with custodial responsibility resides within 60 miles of
27 the courthouse in the county where the initial custodial allocation was determined;

28 (3) A modification or enforcement action has been filed in the county where the initial
29 custodial allocation was determined; and

30 (4) A motion to change venue has been filed and served upon all parties pursuant to Rule
31 5 of the Rules of Civil Procedure.

32 (c) If the conditions of subsection (b) of this section have been satisfied, the family court
33 may transfer the action to a county where any person with custodial responsibility resides or the
34 county where the child resides after considering which county has the most available evidence
35 concerning the child's care, protection, training, and personal relationships: *Provided*, That the
36 family court may decline to transfer the action if there has been significant history before the family
37 court, and the family court determines that it is not an inconvenient forum for any party with
38 custodial responsibility.

39 (d) If venue for the modification or enforcement of a custody determination is transferred,
40 any portions of the action pertaining to child support or paternity shall be transferred as well.