

H. B. 4122

(By Delegate Walker (By Request))
[Introduced January 9, 2014; referred to the
Committee on Health and Human Resources then the
Judiciary.]

A BILL to amend and reenact §48-9-209 of the Code of West Virginia,
1931, as amended, relating to permitting a court to take into
consideration a parent's drug or alcohol abuse to impose
limits that are reasonably calculated to protect a child or
child's parent from harm when implementing a parenting plan.

Be it enacted by the Legislature of West Virginia:

That §48-9-209 of the Code of West Virginia, 1931, as amended,
be amended and reenacted to read as follows:

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

Part 2 - Parenting Plans.

§48-9-209. Parenting plan; limiting factors.

(a) If either of the parents so requests, or upon receipt of

1 credible information thereof, the court shall determine whether a
2 parent who would otherwise be allocated responsibility under a
3 parenting plan:

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

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

9 (3) Has committed domestic violence, as defined in section
10 27-202;

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

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

18 (6) Has abused prescription or nonprescription drugs or
19 alcohol or is addicted to prescription or nonprescription drugs or
20 alcohol.

21 (b) If a parent is found to have engaged in any activity
22 specified by subsection (a) of this section, the court shall impose
23 limits that are reasonably calculated to protect the child or

1 child's parent from harm. The limitations that the court shall
2 consider include, but are not limited to:

3 (1) An adjustment of the custodial responsibility of the
4 parents, including but not limited to:

5 (A) Increased parenting time with the child to make up for any
6 parenting time the other parent lost as a result of the proscribed
7 activity;

8 (B) An additional allocation of parenting time in order to
9 repair any adverse effect upon the relationship between the child
10 and the other parent resulting from the proscribed activity; or

11 (C) The allocation of exclusive custodial responsibility to
12 one of them;

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

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

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

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

23 (6) Denial of overnight custodial responsibility;

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

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

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

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

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

1 (d) If the court determines, based on the investigation
2 described in part three of this article or other evidence presented
3 to it, that an accusation of child abuse or neglect, or domestic
4 violence made during a child custody proceeding is false and the
5 parent making the accusation knew it to be false at the time the
6 accusation was made, the court may order reimbursement to be paid
7 by the person making the accusations of costs resulting from
8 defending against the accusations. Such reimbursement may not
9 exceed the actual reasonable costs incurred by the accused party as
10 a result of defending against the accusation and reasonable
11 attorney's fees incurred.

12 (e) (1) A parent who believes he or she is the subject of
13 activities by the other parent described in subdivision (5) of
14 subsection (a), may move the court pursuant to subdivision (4),
15 subsection (b), section one, article seven, chapter forty-nine of
16 this code for the Department of Health and Human Resources to
17 disclose whether the other parent was the source of the allegation
18 and, if so, whether the Department found the report to be:

19 (A) Substantiated;

20 (B) Unsubstantiated;

21 (C) Inconclusive; or

22 (D) Still under investigation.

23 (2) If the court grants a motion pursuant to this subsection,

1 disclosure by the Department of Health and Human Resources shall be
2 in camera. The court may disclose to the parties information
3 received from the Department only if it has reason to believe a
4 parent knowingly made a false report.

NOTE: The purpose of this bill is to permit a court to take into consideration a parent's drug or alcohol abuse to impose limits that are reasonably calculated to protect a child or child's parent from harm when implementing a parenting plan.

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