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2014 MAR 24 P 4: 05

OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2014

HB4139

ENROLLED

COMMITTEE SUBSTITUTE
FOR

House Bill No. 4139

(By Delegates Guthrie, L. Phillips, Rowan,
Fleischauer, Border, Lawrence, Marshall,
Staggers, Poore and P. Smith)

Passed March 8, 2014

In effect ninety days from passage.

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H. B. 4139

(BY DELEGATES GUTHRIE, L. PHILLIPS, ROWAN,
FLEISCHAUER, BORDER, LAWRENCE, MARSHALL,
STAGGERS, POORE AND P. SMITH)

[Passed March 8, 2014; in effect ninety days from passage.]

AN ACT to amend the Code of West Virginia, 1931, as amended by adding thereto a new section, designated §48-9-209a, relating to restricted parental rights of child custodial responsibility and parenting time when a child was conceived as a result of a sexual assault or certain sexual abuse; denying custodial responsibility and parenting time rights to a natural parent convicted of sexual assault when a child is produced as a result of the offense; providing limited exceptions when the biological parents cohabit; creating a rebuttable presumption against the allocation of exclusive or shared custodial responsibility or parenting time to the perpetrator of the offense after cohabitation with the other parent under certain circumstances; requiring the court to find by clear and convincing evidence that custodial responsibility or parenting time by a person convicted of sexual assault or certain sexual abuse is in the best interest of the child, victim, that the victim

FILED

Enr. Com. Sub. For H. B. No. 4139] 2

consents and certain other facts in order to allocate such custodial responsibility or parenting time; and clarifying the natural parent's continuing support obligations.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §48-9-209a, to read as follows:

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

Part 2 – Parenting Plans

§48-9-209a. Child conceived as result of sexual assault or sexual abuse by a parent; rights of a biological parent convicted of sexual assault or abuse; post-conviction cohabitation; rebuttable presumption upon separation or divorce.

1 (a) Except as otherwise provided in this section, if a child
2 custodial responsibility or parenting time dispute involves a
3 child who is conceived as a result of acts by which one of the
4 child's biological parents has been convicted of sexual assault,
5 pursuant to section three, four or five, article eight-b, chapter
6 sixty-one of this code, or of sexual abuse by a parent, guardian
7 or custodian, pursuant to section five, article eight-d, chapter
8 sixty-one of this code, the court shall not allocate custodial
9 responsibility to the biological parent convicted of the sexual
10 assault, and the convicted parent has no right to parenting time
11 with the child unless the court finds by clear and convincing
12 evidence set forth in written findings that it is in the best
13 interests of the child, adequately protects the child and the victim
14 of the sexual offense and that the person or persons with
15 custodial responsibility of the child consent thereto.

16 (b) Subsection (a) does not apply if:

17 (1) The biological parents are husband and wife at the time
18 of the offense and, after the date of conviction, cohabit and
19 establish a mutual custodial environment for the child; or

20 (2) After the date of conviction, the unmarried biological
21 parents cohabit and establish a mutual custodial environment for
22 the child.

23 (c) If persons described by subsection (b) of this section later
24 separate or divorce, the conviction of sexual assault, pursuant to
25 section three, four or five, article eight-b, chapter sixty-one of
26 this code, or of sexual abuse by a parent, guardian or custodian,
27 pursuant to section five, article eight-d, chapter sixty-one of this
28 code creates a rebuttable presumption that exclusive or shared
29 custodial responsibility of the child by the perpetrator of the
30 offense is not in the best interests of the child. The convicted
31 parent has no right to parenting time with the child unless the
32 court finds by clear and convincing evidence set forth in written
33 findings that, despite the rebuttable presumption required by this
34 subsection, a custodial responsibility or parenting time arrange-
35 ment with the convicted parent is in the best interests of the
36 child, adequately protects the child and the victim of the sexual
37 offense, and that the victim of the sexual offense consents
38 thereto.

39 (d) A denial of custodial responsibility or parenting time
40 under this section does not by itself terminate the parental rights
41 of the person denied custodial responsibility or parenting time,
42 nor does it affect the obligation of the person to support the
43 minor child.

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Danny Wells
Chairman, House Committee

Rocky Fitzsimmons
Member ~~Chairman~~, Senate Committee

Originating in the House.
In effect ninety days from passage.

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Bryan D. Reed
Clerk of the House of Delegates

Joseph M. Minard
Clerk of the Senate

[Signature]
Speaker of the House of Delegates

[Signature]
President of the Senate

The within *is approved* this the *24th*
day of *March*, 2014.

Earl Ray Tomblin
Governor

PRESENTED TO THE GOVERNOR

MAR 20 2014

Time _____