

# **WEST VIRGINIA LEGISLATURE**

## **2021 REGULAR SESSION**

**Introduced**

### **House Bill 3025**

BY DELEGATE PRITT

[Introduced March 09, 2021; Referred to the Committee on  
the Judiciary]

1 A BILL to amend and reenact §48-9-501 of the Code of West Virginia, 1931, as amended, relating  
 2 to making a de facto parenting plan an affirmative defense to the violation of a parenting  
 3 plan.

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

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

**PART 5. ENFORCEMENT OF PARENTING PLANS.**

**§48-9-501. Enforcement of parenting plans.**

1 (a) If, upon a parental complaint, the court finds a parent intentionally and without good  
 2 cause violated a provision of the court-ordered parenting plan, it shall enforce the remedy  
 3 specified in the plan or, if no remedies are specified or they are clearly inadequate, it shall find  
 4 the plan has been violated and order an appropriate remedy, which may include:

5 (1) In the case of interference with the exercise of custodial responsibility for a child by the  
 6 other parent, substitute time for that parent to make up for time missed with the child;

7 (2) In the case of missed time by a parent, costs in recognition of lost opportunities by the  
 8 other parent, in child care costs and other reasonable expenses in connection with the missed  
 9 time;

10 (3) A modification of the plan, if the requirements for a modification are met under section  
 11 9-209, section 9-401, 402 or 403 of this article, including an adjustment of the custodial  
 12 responsibility of the parents or an allocation of exclusive custodial responsibility to one of them;

13 (4) An order that the parent who violated the plan obtain appropriate counseling;

14 (5) A civil penalty, in an amount of not more than \$100 for a first offense, not more than  
 15 \$500 for a second offense, or not more than \$1,000 for a third or subsequent offense, to be paid  
 16 to the parent education fund as established under section 9-104;

17 (6) Court costs, reasonable attorney's fees and any other reasonable expenses in

18 enforcing the plan; and

19 (7) Any other appropriate remedy.

20 (b) Except as provided in a jointly submitted plan that has been ordered by the court,  
21 obligations established in a parenting plan are independent obligations, and it is not a defense to  
22 an action under this section by one parent that the other parent failed to meet obligations under  
23 a parenting plan or child support order.

24 (c) An agreement between the parents to depart from the parenting plan can be a defense  
25 to a claim that the plan has been violated, even though the agreement was not made part of a  
26 court order, but only as to acts or omissions consistent with the agreement that occur before the  
27 agreement is disaffirmed by either parent.

28 (d) A “de facto” parenting plan shall be an affirmative defense to the violation of a parenting  
29 plan.

NOTE: The purpose of this bill is to ensure that a “de facto” parenting plan is an affirmative defense to violation of a parenting plan.

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