

HB 3065

FILED

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OFFICE OF THE
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2008



ENROLLED

**COMMITTEE SUBSTITUTE
FOR
House Bill No. 3065**

(By Delegates Eldridge, Rodighiero, Ellis, Stemple,
Williams, Perry, Beach, Shook, Argento and Reynolds)



Passed March 6, 2008

In Effect Ninety Days from Passage

E N R O L L E D

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H. B. 3065

(DELEGATES ELDRIDGE, RODIGHIERO, ELLIS, STEMPLER,
WILLIAMS, PERRY, BEACH, SHOOK, ARGENTO AND REYNOLDS)

[Passed March 6, 2008; in effect ninety days from passage.]

AN ACT to amend and reenact §48-9-209 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §48-9-301a; and to amend said code by adding thereto a new section, designated §61-6-25, all relating false allegations of child abuse and/or neglect; relief from false allegations on allocation of custodial responsibility under a parenting plan; imposition of reasonable costs and reasonable attorney's fees for defending against false allegations; request for disclosure of source of allegations by Department of Health and Human Resources; investigation of allegations of child sexual abuse by family courts; and new misdemeanor offense for falsely reporting child abuse.

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; that said code be amended by adding thereto a new section, designated §48-9-301a; and that said

code be amended by adding thereto a new section, designated §61-6-25, all to read as follows:

CHAPTER 48. DOMESTIC RELATIONS.

ARTICLE 9. CUSTODY OF CHILDREN.

PART 2 – PARENTING PLANS.

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

1 (a) If either of the parents so requests, or upon receipt of
2 credible information thereof, the court shall determine
3 whether a parent who would otherwise be allocated
4 responsibility under a parenting plan:

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

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

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

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

17 (5) Has repeatedly made fraudulent reports of domestic
18 violence or child abuse.

19 (b) If a parent is found to have engaged in any activity
20 specified by subsection (a) of this section, the court shall
21 impose limits that are reasonably calculated to protect the
22 child or child's parent from harm. The limitations that the
23 court shall consider include, but are not limited to:

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

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

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

33 (C) The allocation of exclusive custodial responsibility
34 to one of them;

35 (2) Supervision of the custodial time between a parent
36 and the child;

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

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

41 (5) A requirement that the parent abstain from
42 possession or consumption of alcohol or nonprescribed drugs
43 while exercising custodial responsibility and in the
44 twenty-four hour period immediately preceding such
45 exercise;

46 (6) Denial of overnight custodial responsibility;

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

49 (8) A requirement that the parent post a bond to secure
50 return of the child following a period in which the parent is
51 exercising custodial responsibility or to secure other
52 performance required by the court;

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

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

61 (c) If a parent is found to have engaged in any activity
62 specified in subsection (a) of this section, the court may not
63 allocate custodial responsibility or decision-making
64 responsibility to that parent without making special written
65 findings that the child and other parent can be adequately
66 protected from harm by such limits as it may impose under
67 subsection (b) of this section. The parent found to have
68 engaged in the behavior specified in subsection (a) of this
69 section has the burden of proving that an allocation of
70 custodial responsibility or decision-making responsibility to
71 that parent will not endanger the child or the other parent.

72 (d) If the court determines, based on the investigation
73 described in part three of this article or other evidence
74 presented to it, that an accusation of child abuse or neglect,
75 or domestic violence made during a child custody proceeding

76 is false and the parent making the accusation knew it to be
77 false at the time the accusation was made, the court may
78 order reimbursement to be paid by the person making the
79 accusations of costs resulting from defending against the
80 accusations. Such reimbursement may not exceed the actual
81 reasonable costs incurred by the accused party as a result of
82 defending against the accusation and reasonable attorney's
83 fees incurred.

84 (e) (1) A parent who believes he or she is the subject of
85 activities by the other parent described in subdivision (5) of
86 subsection (a), may move the court pursuant to subdivision
87 (4), subsection (b), section one, article seven, chapter forty-
88 nine of this code for the Department of Health and Human
89 Resources to disclose whether the other parent was the source
90 of the allegation and, if so, whether the Department found the
91 report to be:

92 (A) Substantiated;

93 (B) Unsubstantiated;

94 (C) Inconclusive; or

95 (D) Still under investigation.

96 (2) If the court grants a motion pursuant to this
97 subsection, disclosure by the Department of Health and
98 Human Resources shall be in camera. The court may
99 disclose to the parties information received from the
100 Department only if it has reason to believe a parent
101 knowingly made a false report.

PART 3 - FACT FINDING.

§48-9-301a. Child abuse allegations.

1 (a) If allegations of child abuse are made during a child
2 custody proceeding and the court has concerns regarding the
3 child's safety, the court may take any reasonable, temporary
4 steps as the court, in its discretion, deems appropriate under
5 the circumstances to protect the child's safety until an
6 investigation can be completed. Nothing in this subsection
7 shall affect the applicability of sections two and nine of
8 article six-A, chapter forty-nine of this Code.

9 (b) If allegations of child abuse are made during a child
10 custody proceeding, the court may request that the local child
11 protective service conduct an investigation of the allegations
12 pursuant to article six-A, chapter forty-nine of this Code.
13 Upon completion of the investigation, the agency shall report
14 its findings to the court.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 6. CRIMES AGAINST THE PEACE.

§61-6-25. Falsely reporting child abuse.

1 (a) Any person who knowingly and intentionally reports
2 or causes to be reported to a law enforcement officer, child
3 protective service worker or judicial officer that another has
4 committed child sexual abuse, child abuse or neglect as such
5 are defined in section three, article one, chapter forty-nine of
6 this code who when doing so knows or has reason to know
7 such accusation is false and who does it with the intent to
8 influence a child custody decision shall be guilty of a
9 misdemeanor, and, upon conviction, shall be fined not more
10 than one thousand dollars, sentenced to not more than sixty
11 hours of court-approved community service, or both.

12 (b) In addition to any other sanctions imposed by the
13 provisions of this section, any person convicted of a violation
14 of this section shall be required to attend and complete a
15 court-approved parenting class.

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



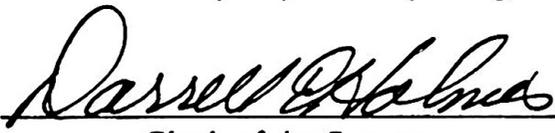
Chairman Senate Committee



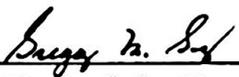
Chairman House Committee

Originating in the House.

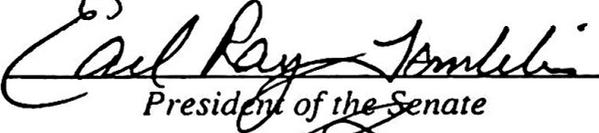
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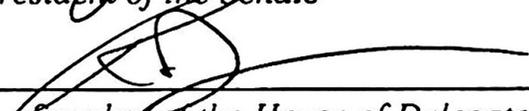
Clerk of the Senate



Clerk of the House of Delegates

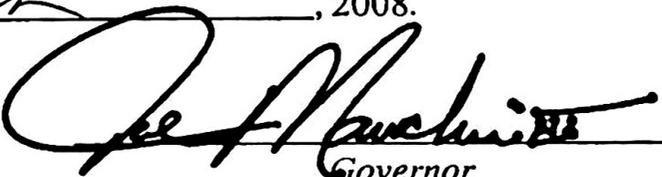


President of the Senate



Speaker of the House of Delegates

The within is approved this the 15th
day of March, 2008.



Governor

PRESENTED TO THE
GOVERNOR

MAR 11 2008

Time 1:55 pm