WEST VIRGINIA CODE: §48-9-209A

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.

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

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

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

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

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

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

www.Legislature