

HB 3065

FILED

2008 MAR 15 PM 12: 49

OFFICE OF THE  
SECRETARY OF STATE

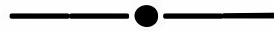
**WEST VIRGINIA LEGISLATURE**  
SECOND REGULAR SESSION, 2008



**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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COMMITTEE SUBSTITUTE

FOR

SECRETARY OF STATE

**H. B. 3065**

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

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[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.



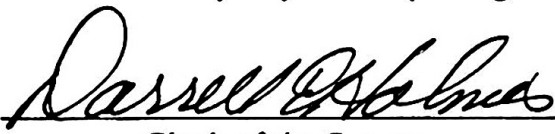
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

  
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Chairman Senate Committee

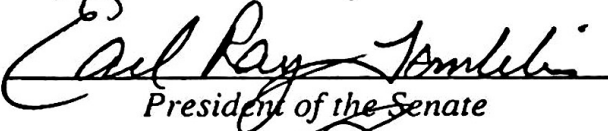
  
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Chairman House Committee

Originating in the House.

In effect ninety days from passage.

  
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Clerk of the Senate

  
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Clerk of the House of Delegates

  
\_\_\_\_\_  
President of the Senate

  
\_\_\_\_\_  
Speaker of the House of Delegates

The within is approved this the 15<sup>th</sup>  
day of March, 2008.

  
\_\_\_\_\_  
Governor

PRESENTED TO THE  
GOVERNOR

MAR 11 2008

Time 1:55 pm