

1 **ENROLLED**

2 **COMMITTEE SUBSTITUTE**

3 **FOR**

4 **H. B. 4139**

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

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

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

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

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

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

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

10 Part 2 - Parenting Plans

11 **§48-9-209a. Child conceived as result of sexual assault or sexual**
12 **abuse by a parent; rights of a biological parent**
13 **convicted of sexual assault or abuse; post-**
14 **conviction cohabitation; rebuttable presumption upon**
15 **separation or divorce.**

16 (a) Except as otherwise provided in this section, if a child
17 custodial responsibility or parenting time dispute involves a child
18 who is conceived as a result of acts by which one of the child's
19 biological parents has been convicted of sexual assault, pursuant
20 to section three, four or five, article eight-b, chapter sixty-one
21 of this code, or of sexual abuse by a parent, guardian or
22 custodian, pursuant to section five, article eight-d, chapter
23 sixty-one of this code, the court shall not allocate custodial
24 responsibility to the biological parent convicted of the sexual
25 assault, and the convicted parent has no right to parenting time

1 with the child unless the court finds by clear and convincing
2 evidence set forth in written findings that it is in the best
3 interests of the child, adequately protects the child and the
4 victim of the sexual offense and that the person or persons with
5 custodial responsibility of the child consent thereto.

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

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

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

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

1 victim of the sexual offense, and that the victim of the sexual
2 offense consents thereto.

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