

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

ENROLLED

Committee Substitute

for

House Bill 4317

(BY DELEGATES FOSTER, MCGEEHAN, BUTLER, IHLE,
AZINGER, FAST, MOFFATT, J. NELSON, SUMMERS,
WAXMAN AND MILLER)

[Passed March 12, 2016; in effect ninety days from passage.]

1 AN ACT to amend and reenact §48-9-209 of the Code of West Virginia, 1931, as amended,
2 relating to limiting factors in parenting plans; clarifying the court's consideration of
3 fraudulent reports of domestic violence and child abuse in imposing limits on a parenting
4 plan in order to protect a child from harm; clarifying that a person's withdrawal of or failure
5 to pursue a report of domestic violence or child abuse is not alone sufficient to establish
6 that report as fraudulent; requiring court to impose limits that are reasonably calculated to
7 protect the child or the child's parent from harm if a parent who would otherwise be
8 allocated responsibility under a parenting plan has made one or more fraudulent reports
9 of domestic violence or child abuse; and correcting an internal code reference to clarify a
10 parent's ability to move the court to disclose whether other parent was the source of
11 fraudulent reports of domestic violence or child abuse.

Be it enacted by the Legislature of West Virginia:

1 That §48-9-209 of the Code of West Virginia, 1931, as amended, be amended and
2 reenacted to read as follows:

**ARTICLE 9. ALLOCATION OF CUSTODIAL RESPONSIBILITY AND DECISION-
MAKING RESPONSIBILITY 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 credible information thereof, the
2 court shall determine whether a parent who would otherwise be allocated responsibility under a
3 parenting plan:

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

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

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

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

11 (5) Has made one or more fraudulent reports of domestic violence or child abuse:
12 *Provided*, That a person's withdrawal of or failure to pursue a report of domestic violence or child
13 abuse shall not alone be sufficient to consider that report fraudulent.

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

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

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

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

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

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

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

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

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

31 (6) Denial of overnight custodial responsibility;

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

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

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

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

41 (c) If a parent is found to have engaged in any activity specified in subsection (a) of this
42 section, the court may not allocate custodial responsibility or decision-making responsibility to
43 that parent without making special written findings that the child and other parent can be
44 adequately protected from harm by such limits as it may impose under subsection (b) of this
45 section. The parent found to have engaged in the behavior specified in subsection (a) of this
46 section has the burden of proving that an allocation of custodial responsibility or decision-making
47 responsibility to that parent will not endanger the child or the other parent.

48 (d) If the court determines, based on the investigation described in part three of this article
49 or other evidence presented to it, that an accusation of child abuse or neglect, or domestic
50 violence made during a child custody proceeding is false and the parent making the accusation
51 knew it to be false at the time the accusation was made, the court may order reimbursement to
52 be paid by the person making the accusations of costs resulting from defending against the
53 accusations. Such reimbursement may not exceed the actual reasonable costs incurred by the
54 accused party as a result of defending against the accusation and reasonable attorney's fees
55 incurred.

56 (e) (1) A parent who believes he or she is the subject of activities by the other parent
57 described in subdivision (5) of subsection (a), may move the court pursuant to subdivision (4),
58 subsection (b), section one hundred and one, article five, chapter forty-nine of this code for the

59 Department of Health and Human Resources to disclose whether the other parent was the source
60 of the allegation and, if so, whether the department found the report to be:

61 (A) Substantiated;

62 (B) Unsubstantiated;

63 (C) Inconclusive; or

64 (D) Still under investigation.

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

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

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Chairman, House Committee

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Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

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Clerk of the House of Delegates

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Clerk of the Senate

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Speaker of the House of Delegates

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President of the Senate

The within this the.....
day of, 2016.

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Governor