

2008 Legislative Update

ADVOCATES' GUIDE



West Virginia Coalition

**AGAINST
DOMESTIC
VIOLENCE**

for a safer state of family

5004 Elk River Rd., S. ♦ Elkview, WV 25071
(304) 965-3552 voice ♦ (304) 965-3572 fax
www.wvcadv.org

2008 Legislative Update

TABLE OF CONTENTS

General Highlights.....	3
HB 3065: “False Allegations Bill” Overview.....	4
“False Allegations” Completed Legislation.....	5
HB 4484: Stalking Overview.....	8
Stalking Completed Legislation.....	19
Stalking Law Side-by-Side Comparison.....	11
Update from WV Prosecuting Attorneys Institute.....	15

2008 Legislative Update

GENERAL HIGHLIGHTS

Coalition for Safe Families

WVCADV led the formation of the Coalition for Safe Families, a broad-based ad hoc group consisting of concerned organizations and individuals who are committed to ensuring that West Virginia families and children remain safe. The Coalition for Safe Families worked intensely to organize a collective response strategy to proposed legislation that would further endanger victims of abuse.

Namely, current legislation that promotes:

- “One size fits all” **presumption of 50/50 custody**
- Additional and excessive criminal and civil penalties for **false allegations** of domestic violence and child abuse & neglect

Stalking Workgroup

WVCADV joined with FRIS, WV Division of Criminal Justice Services and WV Prosecuting Attorneys’ Institute to support the drafting and passage of a new and improved criminal anti-stalking law.

Funding Campaign

The WVCADV Public Policy Committee organized a multi-approach campaign in an effort to increase state funding to licensed domestic violence programs.

Domestic Violence Prevention Day at the Legislature

January 30, 2008 marked the rebirth of “DV Prevention Day at the Legislature” when purple-scarved advocates convened at the State Capitol to raise awareness among policy makers on the needs and concerns of victims and DV Programs.

HB 3065: “False Allegations Bill”

OVERVIEW OF CHANGES

Parenting “make-up time” due to false allegations

Parenting time can be limited if a parent is found to have engaged in making repeated fraudulent reports of domestic violence or child abuse:

1. Increased time to make up for lost time as a result of the fraudulent reports
2. Additional time to repair any adverse effect

Reimbursement due to false allegations

The court may order reimbursement of expenses to be paid by the accuser to the falsely accused parent to defend the accusation, such as attorney’s fees.

DHHR disclosure of source and status of a report

A parent may move the court for DHHR to disclose whether the other parent was the source of an allegation and the status of that report (substantiated, unsubstantiated, inconclusive or still under investigation).

Disclosure shall be in camera and court may only reveal information to parties if it has reason to believe a parent knowingly made a false report.

Request to DHHR to investigate

The court may request CPS conduct an investigation of child abuse allegations made during a child custody proceeding.

New misdemeanor crime for falsely reporting child abuse

A person can be charged with the new misdemeanor “Falsely reporting child abuse” if:

1. A false report of child abuse or neglect was made knowingly and intentionally;
2. To a law enforcement officer, CPS worker or judicial officer;
3. At the time of making the report knew it was false; and
4. Made the report with the intent to influence a child custody decision.

Penalties include a fine, community service and required court-approved parenting classes.

2008 “False Allegations” Bill

Takes effect June 4, 2008

ENGROSSED
COMMITTEE SUBSTITUTE
FOR
H. B. 3065

(Delegates Eldridge, Rodighiero, Ellis, Stemple,
Williams, Perry, Beach, Shook, Argento and Reynolds)
(Originating in the Committee on the Judiciary)

[February 22, 2008]

A BILL 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; impact of allegations on allocation of custodial responsibility under a parenting plan; imposition of reasonable money sanctions and reasonable attorney's fees for 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 ; that §48-9-401 of said code be amended and reenacted; 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.

- (a) If either of the parents so requests, or upon receipt of credible information thereof, the court shall determine whether a parent who would otherwise be allocated responsibility under a parenting plan:
- (1) Has abused, neglected or abandoned a child, as defined by state law;
 - (2) Has sexually assaulted or sexually abused a child as those terms are defined in articles eight-b and eight-d, chapter sixty-one of this code;
 - (3) Has committed domestic violence, as defined in section 27-202;
 - (4) Has interfered persistently with the other parent's access to the child, except in the case of actions taken for the purpose of protecting the safety of the child or the interfering parent or another family member, pending adjudication of the facts underlying that belief; or
 - (5) Has repeatedly made fraudulent reports of domestic violence or child abuse.

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

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

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

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

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

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

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

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

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

(6) Denial of overnight custodial responsibility;

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

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

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

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

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

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

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

(A) substantiated;

(B) unsubstantiated;

(C) inconclusive; or

(D) still under investigation.

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

Part 3 - Fact Finding.

§48-9-301a. Child abuse allegations.

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

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

CHAPTER 61. CRIMES AND THEIR PUNISHMENT

ARTICLE 6. CRIMES AGAINST THE PEACE

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

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

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

HB 4484: Stalking

OVERVIEW OF CHANGES

Relationship Element Eliminated

There is no longer a requirement that the stalker have a prior personal or social relationship or is seeking a relationship with the victim.

Only One Type of Stalking Conduct Required

If a person **follows** or **repeatedly harasses** or **makes a credible threat** against another, they can be charged with stalking. No longer does there have to be a combination of conducts to constitute stalking.

Provides for Rules for Enforcement

WVCADV and FRIS will be consulted in the development of legislative rules that will provide standards for the enforcement of stalking for law enforcement.

Little Known Facts:

- Stalking while a DVPO is in effect is a felony.
- Upon conviction, the court may issue a restraining order to be in effect for up to 10 yrs.

ENROLLED

COMMITTEE SUBSTITUTE

FOR

H. B. 4484

(By Delegates Webster, Mahan, Fleischauer, Hrutkay, Guthrie, Long, Staggers, Shook, Varner, Brown and Pino)

[Passed March 8, 2008; in effect ninety days from passage.]

AN ACT to amend and reenact §61-2-9a of the Code of West Virginia, 1931, as amended , all relating to the criminal offense of stalking, including penalties.

Be it enacted by the Legislature of West Virginia:

That §61-2-9a of the Code of West Virginia, 1931, as amended, be amended and reenacted , all to read as follows:

ARTICLE 2. CRIMES AGAINST THE PERSON.

§61-2-9a. Stalking; harassment; penalties; definitions.

(a) Any person who repeatedly follows another knowing or having reason to know that the conduct causes the person followed to reasonably fear for his or her safety or suffer significant emotional distress, is guilty of a misdemeanor and, upon conviction thereof, shall be incarcerated in the county or regional jail for not more than six months or fined not more than one thousand dollars, or both.

(b) Any person who repeatedly harasses or repeatedly makes credible threats against another is guilty of a misdemeanor and, upon conviction thereof, shall be incarcerated in the county or regional jail for not more than six months or fined not more than one thousand dollars, or both.

(c) Notwithstanding any provision of this code to the contrary, any person who violates the provisions of subsection (a) or (b) of this section in violation of an order entered by a circuit court, magistrate court or family court judge, in effect and entered pursuant to part 48-5-501, et seq., part 48-5-601, et seq. or 48-27-403 of this code is guilty of a misdemeanor and, upon conviction thereof, shall be incarcerated in the county jail for not less than ninety days nor more than one year or fined not less than two thousand dollars nor more than five thousand dollars, or both.

(d) A second or subsequent conviction for a violation of this section occurring within five years of a prior conviction is a felony punishable by incarceration in a state correctional facility for not less than one year nor more than five years or fined not less than three thousand dollars nor more than ten thousand dollars, or both.

(e) Notwithstanding any provision of this code to the contrary, any person against whom a protective order for injunctive relief is in effect pursuant to the provisions of section five hundred one, article twenty-seven, chapter forty-eight of this code who has been served with a copy of said order or section six hundred

eight, article five, chapter forty-eight of this code who is convicted of a violation of the provisions of this section shall be guilty of a felony and punishable by incarceration in a state correctional facility for not less than one year nor more than five years or fined not less than three thousand dollars nor more than ten thousand dollars, or both.

(f) For the purposes of this section:

(1) "Bodily injury" means substantial physical pain, illness or any impairment of physical condition;

(2) "Credible threat" means a threat of bodily injury made with the apparent ability to carry out the threat and with the result that a reasonable person would believe that the threat could be carried out;

(3) "Harasses" means willful conduct directed at a specific person or persons which would cause a reasonable person mental injury or emotional distress

(4) "Immediate family" means a spouse, parent, stepparent, mother-in-law, father-in-law, child, stepchild, sibling, or any person who regularly resides in the household or within the prior six months regularly resided in the household; and

(5) "Repeatedly" means on two or more occasions.

(g) Nothing in this section shall be construed to prevent lawful assembly and petition for the lawful redress of grievances, including, but not limited to: Any labor or employment relations issue; demonstration at the seat of federal, state, county or municipal government; activities protected by the West Virginia constitution or the United States Constitution or any statute of this state or the United States.

(h) Any person convicted under the provisions of this section who is granted probation or for whom execution or imposition of a sentence or incarceration is suspended is to have as a condition of probation or suspension of sentence that he or she participate in counseling or medical treatment as directed by the court.

(i) Upon conviction, the court may issue an order restraining the defendant from any contact with the victim for a period not to exceed ten years. The length of any restraining order shall be based upon the seriousness of the violation before the court, the probability of future violations, and the safety of the victim or his or her immediate family. The duration of the restraining order may be longer than five years only in cases when a longer duration is necessary to protect the safety of the victim or his or her immediate family.

(j) It is a condition of bond for any person accused of the offense described in this section that the person is to have no contact, direct or indirect, verbal or physical, with the alleged victim.

(k) Nothing in this section may be construed to preclude a sentencing court from exercising its power to impose home confinement with electronic monitoring as an alternative sentence.

(l) The Governor's Committee on Crime, Delinquency and Correction, after consultation with representatives of labor, licensed domestic violence programs and rape crisis centers which meet the standards of the West Virginia Foundation for Rape Information and Services, is authorized to promulgate legislative rules and emergency rules pursuant to article three, chapter twenty-nine-a of this code, establishing appropriate standards for the enforcement of this section by state, county, and municipal law-enforcement officers and agencies.

STALKING LAW

SIDE-BY SIDE COMPARISONS

Prepared by Gayle Midkiff

MODEL CODE	CURRENT WV STATUTE	H B 4484 enr. (New Law)
<p>Legislative Intent</p> <p><i>Recognize stalking as a serious crime Encourage early intervention by the criminal justice system Encompass a wide range of stalking behaviors</i></p>	<p><i>(No Legislative Intent)</i></p>	<p><i>(No Legislative Intent)</i></p>
<p>Offense</p> <p>Any person who purposefully engages in a course of conduct and knows or should know that the course of conduct would cause a reasonable person to:</p> <p>(a) fear for his or her person or the safety of a third person; or</p> <p>(c) suffer emotional distress</p> <p><i>“general intent” instead of “specific intent”</i></p> <p><i>“reasonable person” instead of “actual fear”</i></p> <p><i>Lack of credible threat requirement Inclusion of “third person” as target of stalker’s acts</i></p>	<p>Offense</p> <p>Any person who</p> <p>(a) willfully and repeatedly follows and harasses</p> <p>(b) willfully and repeatedly follows and makes a credible threat intent to place or placing him or her in reasonable apprehension that he or she or a member of his or her immediate family will suffer death, sexual assault, kidnapping, bodily injury or battery</p> <p>(c) repeatedly harasses or repeatedly makes credible threats <i>against</i> a person with whom he or she has, or in the past has had or with whom he or she seeks to establish a personal or social relationship, whether or not the intention is reciprocated, or against a member of that person’s immediate family, his or her current social companion, his or her professional counselor or attorney</p> <p><i>This includes <u>some form of third person</u></i></p> <p><i>Does not include “course of conduct” or reasonable person-more of “specific intent”</i></p>	<p>Offense</p> <p>Any person who</p> <p>(a) follows another, knowing or having reason to know that the conduct causes the person followed to reasonably fear for his or her safety or suffer significant emotional distress</p> <p><i>“another”- the convoluted piece relationship has been eliminated</i></p> <p><i>There must be actual fear or suffering of “significant emotional distress” and the stalker must know or have reason to know that the following causes fear or significant emotional distress</i></p> <p>(b) Repeatedly harasses or repeatedly makes a credible threat against another</p> <p><i>“another”- the convoluted piece relationship has been eliminated</i></p> <p><i>There is no inclusion of a “third person” as target of the stalker’s acts</i></p> <p><i>It only takes one type of conduct (follow, harass or credible threat instead of a combination of conducts to constitute stalking.)</i></p>

MODEL CODE	CURRENT WV STATUTE	H B 4484 enr. (New Law)
<p>Definitions</p> <p>Course of conduct <i>Number of Acts required-repeatedly-two or more acts</i> <i>Some guidance regarding breadth of acts-inclusion of a list of prohibited acts-coverage of emerging forms of technology or surveillance</i> Emotional distress <i>Does not necessarily require medical or other professional treatment or counseling</i> Reasonable person <i>Reasonable person in the victim's circumstances"</i></p>	<p>Definitions</p> <p>(a) "Harasses" means willful conduct directed at a specific person or persons which would cause a reasonable person mental injury or emotional distress; (b) "Credible threat" means a threat of bodily injury made with the apparent ability to carry out the threat and with the result that a reasonable person would believe that the threat could be carried out; (c) "Bodily injury" means substantial physical pain, illness or any impairment of physical condition; and (d) "Immediate family" means a spouse, parent, stepparent, mother-in-law, father-in-law, child, stepchild, sibling, or any person who regularly resides in the household or within the prior six months regularly resided in the household. <i>Definitions do not include any from model code</i> <i>except mention of reasonable person and emotional distress</i></p>	<p>Definitions</p> <p><i>(same as current law)</i> (a) "Harasses" means willful conduct directed at a specific person or persons which would cause a reasonable person mental injury or emotional distress; (b) "Credible threat" means a threat of bodily injury made with the apparent ability to carry out the threat and with the result that a reasonable person would believe that the threat could be carried out; (c) "Bodily injury" means substantial physical pain, illness or any impairment of physical condition; and (d) "Immediate family" means a spouse, parent, stepparent, mother-in-law, father-in-law, child, stepchild, sibling, or any person who regularly resides in the household or within the prior six months regularly resided in the household. <i>(Immediate family definition does not apply to any section of the code)</i> <i>Definitions do not include any from model code</i> <i>except mention of reasonable person and emotional distress</i> <i>There is no definition for "significant emotional distress"</i></p>
<p>Defenses</p> <p>Not a defense that: actor was not given actual notice that the course of conduct was unwanted; or actor did not intend to cause the victim fear or other emotional distress <i>Relieves prosecutors of the burden of refuting that actor did not intend to cause the victim fear, but instead intended to form a relationship with the victim or did not intend to cause fear or did not know actions were unwanted</i> <i>Supports general instead of specific intent</i> <i>Recommends no exemptions-if Constitutionally protected behavior such as labor picketing or political demonstrations is already covered and would not be criminalized by stalking law</i></p>	<p>Defenses</p> <p><i>Nothing in this section shall be construed to prevent lawful assembly and petition for the redress of grievances, including, but not limited to: Any labor dispute; demonstration at the seat of federal, state, county or municipal government; activities protected by the West Virginia Constitution or the United States Constitution or any statute of this state or the United States</i></p>	<p>Defenses</p> <p><i>Nothing in this section shall be construed to prevent lawful assembly and petition for the redress of grievances, including, but not limited to: <u>any labor or employment relations issue</u>; demonstration at the seat of federal, state, county or municipal government; activities protected by the West Virginia Constitution or the United States Constitution or any statute of this state or the United States</i></p>

MODEL CODE	CURRENT WV STATUTE	H B 4484 enr. (New Law)
<p>Classification</p> <p>Felony or (Optional) Tiered system involving aggravating factors</p> <p>stalking would become a felony (or higher class felony) for the commission of a second offense or if any other aggravating factors were present.</p> <p>(a) the defendant violated a protective order prohibiting contact with the victim; or</p> <p>(b) the defendant was convicted of stalking any person within the previous 10 years; or</p> <p>(c) the defendant used force or a weapon or threatened to use force or a weapon; or</p> <p>(d) the victim is a minor.</p>	<p>Classification</p> <p>Misdemeanor but have</p> <p>aggravating factors second or subsequent conviction for a violation of this section occurring within five years of a prior conviction is a felony</p> <p>any person who violates the provisions of subsection (a), (b) or (c) of this section in violation of an order entered by a circuit court, magistrate court or family law master is guilty of a misdemeanor</p> <p>Any person against whom a protective order is in effect who is convicted of a violation of the provisions of this section shall be guilty of a felony</p>	<p>Classification</p> <p>Misdemeanor but have</p> <p>aggravating factors second or subsequent conviction for a violation of this section occurring within five years of a prior conviction is a felony</p> <p>any person who violates the provisions of subsection (a) or (b) of this section in violation of an order entered by a circuit court, magistrate court or family law master is guilty of a misdemeanor</p> <p>Any person against whom a protective order is in effect who is convicted of a violation of the provisions of this section shall be guilty of a felony</p>
<p>Jurisdiction</p> <p>As long as one of the acts that is part of the course of conduct was initiated in or had an effect on the victim in this jurisdiction, the defendant may be prosecuted in this jurisdiction.</p> <p><i>This provision ensures that stalkers cannot evade prosecution simply by committing acts in different jurisdictions. The jurisdiction provision of the model stalking code is not intended to supplant the Federal law; rather, it provides additional protections for stalking victims.</i></p>	<p><i>(No inclusion of jurisdiction)</i></p>	<p><i>(No inclusion of jurisdiction)</i></p>

MODEL CODE	CURRENT WV STATUTE	H B 4484 enr. (New Law)
<p>Other Statutory Revision</p> <p>(1) Maintain confidentiality of information, the disclosure of which could endanger the victim</p> <p>(2) Setting stricter bail conditions</p> <p>(3) Issue an order while a case is pending or at sentencing that prohibits the defendant from contacting the victim, the victim's family or associates of the victim</p> <p>(4) Order the stalker to pay restitution to the victim</p> <p>(5) Require that a detention facility notify the victim or the victim's designee upon the release of the victim Order supervised probation upon the stalker's release from jail Re-evaluate harassment and cyberstalking laws</p> <p><i>Enact one solid stalking law not separate cyber stalking or technology related law</i></p>	<p>Other Statutory Revision</p> <p>(1) Any person convicted who is granted probation or for whom execution or imposition of a sentence or incarceration is suspended is to have as a condition of probation or suspension of sentence that he or she participate in counseling or medical treatment as directed by the court.</p> <p>(2) Upon conviction, the court may issue an order restraining the defendant from any contact with the victim for a period not to exceed ten years. The duration of the restraining order may be longer than five years only in cases when a longer duration is necessary to protect the safety of the victim or his or her immediate family.</p> <p>(3) It is a condition of bond for any person accused of the offense described in this section that the person is to have no contact, direct or indirect, verbal or physical, with the alleged victim.</p>	<p>Other Statutory Revision</p> <p>(1) Any person convicted who is granted probation or for whom execution or imposition of a sentence or incarceration is suspended is to have as a condition of probation or suspension of sentence that he or she participate in counseling or medical treatment as directed by the court.</p> <p>(2) Upon conviction, the court may issue an order restraining the defendant from any contact with the victim for a period not to exceed ten years. The duration of the restraining order may be longer than five years only in cases when a longer duration is necessary to protect the safety of the victim or his or her immediate family.</p> <p>(3) It is a condition of bond for any person accused of the offense described in this section that the person is to have no contact, direct or indirect, verbal or physical, with the alleged victim.</p> <p>(4) The Governor's Committee on Crime, Delinquency and Correction, after consultation with representatives of labor, licensed domestic violence programs and rape crisis centers which meet the standards of the West Virginia Foundation for Rape Information and Services, is authorized to promulgate legislative rules and emergency rules pursuant to article three, chapter twenty-nine-a of this code, establishing appropriate standards for the enforcement of this section by state, county, and municipal law-enforcement officers and agencies.</p>

Color Code:

Similar or same as model code

Not recommended as per model code

Not in model code, but should be helpful in implementing the code

2008 Legislative Update
Philip Morrison, Executive Director
West Virginia Prosecuting Attorneys Institute

FALSE REPORTING

H. B. 3065 CS (Delegates Eldridge, Rodighiero, Ellis, Stemple, Williams, Perry, Beach, Shook, Argento and Reynolds) [Passed March 6, 2008; in effect ninety days from passage.] Amends and reenacts §48-9-209 of the Code and adds two new sections, §48-9-301a and §61-6-25. Relates to false allegations of child abuse and/or neglect; provides relief from false allegations on allocation of custodial responsibility under a parenting plan; imposes reasonable costs and attorney's fees for defending against false allegations; allows request for disclosure of source of allegations by Department of Health and Human Resources; provides for investigation of allegations of child sexual abuse by family courts; and creates a new misdemeanor offense for falsely reporting child abuse to authorities with the intent to influence a child custody decision shall be guilty of a misdemeanor, and which includes a potential sentence of a fine of not more than one thousand dollars and a sentence of not more than sixty hours of court-approved community service, or both. Additionally any person so convicted is required to attend and complete a court- approved parenting class.

STALKING

H. B. 4484 CS (By Delegates Webster, Mahan, Fleischauer, Hrutkay, Guthrie, Long, Staggers, Shook, Varner, Brown and Pino) [Passed March 8, 2008; in effect ninety days from passage.] Amends and reenacts §61-2-9a of the Code relating to the criminal offense of stalking, including penalties. Essentially this bill completely rewrites the bulk of the Stalking statute. Changes include dispensing with the archaic social relationship requirement in the current statute and substituting 'repeatedly (two or more occasions) following another' and/or 'repeatedly harasses or makes credible threats' in it's place, revising the specific intent required to that of 'knowing or having reason to know' that the conduct causes the stalked person to 'reasonably fear for his/her safety' or 'suffer significant emotional distress', places an initial penalty of incarceration for not more than 6 months and/or a fine of not more than \$1,000.00, a penalty for Stalking in violation of a Magistrate or Domestic Court Order of between 90 days and one year and/or a fine of between \$2,000 and \$5,000. The penalty for a second offense (committed within 5 years of the first conviction) graduates to a felony with a potential penalty of incarceration of one to three years indeterminate and/or a fine of between \$3,000 and \$10,000. Additionally there is a penalty for Stalking in Violation of an Injunction which is between one and five years and/or between \$3000 and \$10,000.

Anyone granted probation will face a condition of probation or suspension of sentence that he or she participate in counseling or medical treatment as directed by the court and may have an order restraining them from any contact with the victim for a period of up to ten years. A mandatory condition of bond for any person accused of the offense described in this section that the person is to have no contact, direct or indirect, verbal or physical, with the alleged victim. Legislative rules for enforcement standards will follow.

Reminders from the 2007 Legislative Session. These are already in effect:

SB 512 (Senators Kessler and Oliverio) *Passed March 6, 2007; effective 90 days from passage* **Purpose: Prohibit law enforcement officers or prosecutors from asking or requiring an adult, youth, or child victim of an alleged sexual offense to submit to a polygraph exam** **Code Affected: Adds new section §62-6-8** **Summary:** No law enforcement officer, prosecutor or any other government official may ask or require the adult, youth, or child victim of an alleged sexual offense to submit to a polygraph or other truth-testing examination as a condition for proceeding with the investigation. No law-enforcement officer, prosecutor or any other government official may refuse to proceed with an investigation, warrant, indictment, information or prosecution of the alleged offense because the alleged victim refused to submit to such an examination.

SB 529 (Senators Kessler, Sprouse, Minard, Plymale, Jenkins) *Passed March 10, 2007; effective 90 days from passage* **Purpose: Prohibit any requirement that an alleged victim of a sexual offense must pay for the costs of a forensic medical examination** **Code Affected: Amends §61-8B-16** **Summary:** An alleged victim of a sexual offense must not be required to pay for the costs of a forensic medical examination, participate in the criminal justice system or cooperate with law enforcement in order to receive a forensic medical examination. A medical facility may seek payment for non-forensic services from the alleged victim or insurer.