

## **2008 Legislative Update**

**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.

**H. B. 4296 CS** (By Delegates Canterbury, Campbell and Crosier) [Passed March 8, 2008; in effect ninety days from passage.] Amends and reenacts §53-4A-7 of the Code. Relates to the rights of crime victims and requires that prosecuting attorneys (in the county of prosecution) provide notice to victims of crimes of violence or next of kin in homicides when a Judge in a habeas corpus proceeding vacates a conviction or sentence where the victim or next of kin previously provides the prosecutor appropriate contact information. This notification must occur prior to a retrial or entering into any plea negotiations or sentence negotiations to resolve the matter.

**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.

**H. B. 4344 CS** (By Delegates Webster, Overington, Pino, Schadler, Brown, Fleischauer and Shook) [Passed March 6, 2008; in effect ninety days from passage.] Amends and reenacts §61-8-19 of the Code and, to avoid the misdemeanor penalty found in the criminal offense of cruelty to animals, requires that animals be adequately sheltered and prohibits tethering or chaining of animals in a cruel manner.

**SB No. 305 CS** (Senators Kessler, Unger, Jenkins, White and Hunter, *original sponsors*) [Passed March 5, 2008; in effect ninety days from passage.] The bill amends the Code by adding a new section, §7-1-14 and amending and reenacting §7-10-4. It relates generally to custody and care of animals abandoned, neglected or cruelly treated. It also authorizes, and provides guidance for, county commissions to adopt ordinances, rules and regulations for protection of such animals and the public's health, safety and the environment (by allowing the County Commissions to limit the number of animals owned or kept based on ability to care for the animals among other things), authorizes the county commissions to establish penalties in such ordinances, rules and regulations; and clarifying evidentiary standards in hearings before magistrates involving in the seizure of abandoned, neglected or cruelly treated animals.

**Senate Bill No. 142 CS** (Senator Kessler, *original sponsor*) [Passed March 8, 2008; in effect ninety days from passage.] Amends and reenacts §5-1-16a of the Code and adds a new section, §61-11-26. It relates to expungement of certain criminal records. It changes the time frames for petitions for expungement after gubernatorial pardons, authorizes expungement of certain criminal convictions committed between the ages of eighteen and twenty-six, provides for the petition for expungement fee, establishes the time frame for eligibility for expungement, delineates the contents of the petition for expungement & the service, notice and publication requirements, It further delineates the procedure for prosecutor and state agency opposition to the petition for expungement, the burden of proof, the court procedure for hearing and ruling upon the petition and establishes procedures for sealing and later use of expunged records. It also establishes certain crimes which are not eligible for expungement.

In the case of a petition for expungement after a pardon this bill reduced the 'waiting' period prior to filing to one year after the pardon and five years after discharge of sentence. The bill adds "**§61-11-26. Expungement of certain criminal convictions: procedures: effect.**" to the code. Essentially this section allows persons convicted of misdemeanor offenses (committed between the ages of 18 and 26) to petition for expungement of those offenses upon expiration of a period of one year after conviction, release from incarceration or completion of probation whichever is later. There is no eligibility for expungement under this section where the misdemeanor crime(s) sought to be expunged are:

- 1) Any violation involving the infliction of serious physical injury.
- 2) Any violation involving §61-8B et seq. where the petitioner was eighteen years old, or older, at the time the violation occurred and the victim was twelve years of age, or younger, at the time the violation occurred.
- 3) Any violation of involving the use or exhibition of a deadly weapon or dangerous instrument
- 4) Any violation of §61-2 -9 (b) or (c) [assault/battery] where the victim was a spouse, a person with whom the person seeking expungement had a child in common or with whom the person seeking expungement ever cohabitated prior to the offense.
- 5) Any violation of §61-2 -28 [Domestic Assault/Battery]
- 6) A conviction for driving under the influence of alcohol or controlled substances or a conviction for driving suspended or revoked.
- 7) Any violation of §61-8 -19 [Cruelty to Animals].

**Senate Bill No. 535 CS** (Senators Foster, Jenkins, Kessler, Green, Hunter, Wells, Hall, McKenzie and White, *original sponsors*) [Passed March 8, 2008; in effect ninety days from passage.] Amends and reenacts §17B-4-3, §17C-5-2, §17C-5-7, §17C-5A-1, §17C-5A-2, §17C-5A-3 and §17C-5A-3a of the Code. It relates to modifications to administrative and criminal penalties for driving a motor vehicle under the influence of alcohol and/or drugs, reduces criminal and administrative sanctions for driving with a suspended or revoked license and provides for concurrent sentences.

It removes the mandatory 24-hour incarceration for first offense driving under the influence and creates the offense of aggravated DUI and provides enhanced administrative sanctions as well (driving with a blood alcohol concentration of fifteen hundredths of one percent or more, by weight). It also clarifies the process for rejecting or modifying hearing examiner's proposed

findings, excuses law- enforcement officers from DMV hearings unless presence is requested by party whose license is at issue (adopts law- enforcement affidavit where officer does not attend hearing).

Further, it permits participation in the Motor Vehicle Alcohol Test and Lock Program for first offense driving under the influence and mandates it for a subsequent offender. It reduces the minimum period of revocation for participation in the test and lock program, increases minimum periods of participation in the ignition interlock device for aggravating offenses and denying participation in the Motor Vehicle Alcohol Test and Lock Program for person whose driver's license is revoked for driving under the influence of drugs. It further provides that a person whose driver's license is revoked for refusing to take a secondary chemical test is not eligible to reduce the revocation period by completing the Safety and Treatment Program.

Graphically (Thanks to Brian Lanham) the criminal changes are as follows:

17B-4-3

(a) Driving suspended non-DUI

1st offense	Fine of \$100-500 [not changed]
2nd offense	was: 10 days in jail plus fine of \$100-500. now: no jail, only fine of \$100-500.
3rd + offense	was: 6 months in jail plus fine of \$150-500. now: 30-90 days in jail plus fine of \$150-500.

(b) Driving revoked for DUI

1st offense	was: 6 months in jail plus fine of \$100-500. now: 30 days – 6 months in jail plus \$100-500.
2nd offense	was: 1 year in jail plus fine of \$1,000-3,000. now: 6 months – 1 year in jail, plus fine of \$1,000-3,000.
3rd + offense	Felony, 1-3 years in prison plus fine of \$3,000-5000 [not changed]

(d) Driving revoked for DUI under 21 .02-.08 BAC

24 hours in jail or fine of \$50-500, or both [not changes]

17C-5-2

(a) DUI with reckless disregard causing death

Felony, 2-10 years in prison plus fine \$1,000-3,000 [not changed]

(b) DUI causing death

90 days to 1 year in jail plus fine \$500-1,000 [not changed]

(c) DUI causing bodily injury

1 day – 1 year in jail plus fine \$200-1,000 [not changed]

(d) DUI .08 - .14 BAC

was: .08 and higher.

now: .08 - .14 BAC.

was: 24 hours – 6 months in jail plus fine \$100-500.

now: 0 hours up to 6 months in jail plus fine \$100-500.

Mandatory credit for time served of actual confinement served upon arrest.

(e) DUI .15+ BAC

New offense. 2 days – 6 months in jail, includes actual confinement

of at least 24 hours plus fine \$200-1,000.

Mandatory credit for time served of actual confinement served upon arrest.

**Senate Bill No. 185 CS** (By Senators Tomblin, Mr. President, and Caruth, By Request of the Executive) [Passed March 6, 2008; in effect ninety days from passage.] Amends and reenacts §27-3-1 & §61-7-7 of the Code and adds a new article, §61-7A-1 through 5, all relating to clarifying mental conditions which prohibit firearms' possession and disclosure of prohibited firearm possession, disclosure of confidential information, notice of surrender of firearms under certain conditions, right to petition to regain ability to possess firearms, legislative intent; definitions, requires a state registry of persons precluded firearms' possession due to mental condition, authorizes reporting of information to national registry, limits the use of such information and establishes a procedure for petitioning to regain right to possess a firearm. It basically adds alcohol addiction, drug addiction and commitment to a mental health facility as a mental defective to the myriad reasons one cannot possess firearms and provides for immediate surrender of any firearms upon notification.

**Senate Bill No. 659** (By Senators Tomblin, Mr. President, Plymale and Kessler) [Passed March 8, 2008; to take effect July 1, 2008.] Amends and reenacts §14-2A-3 and §14-2A-14 of the Code relating to crime victims' compensation by increasing the allowable expense for funerals, cremations and burials from \$6,000 to \$7,000 and increasing the compensation to all claimants because of the victim's death from \$35,000 to \$50,000.

**Senate Bill No. 145 CS** (Senators Love, Green, Prezioso, Sypolt, Boley, Unger, Jenkins, Bowman, Tomblin, Mr. President, Plymale, Kessler, Chafin, Wells, Oliverio, Guills, Facemyer, McKenzie, Edgell, Foster, Deem, Fanning, Barnes, McCabe, Caruth, Hunter, Helmick, Bailey, Yoder, Sharpe, Minard, White, Stollings, Hall and Sprouse, *original sponsors*) [Passed February 28, 2008; in effect from passage.] Amends and reenacts §55-7-22 of the Code relating to reasonable and proportionate force used to protect one's self or another from an intruder or attacker while lawfully in one's residence or that of another. It codifies the common law doctrine that a lawful occupant within a home or residence has no duty to retreat from an intruder or attacker, clarifies that the use of reasonable and proportionate force, including deadly force, may be used against an intruder or attacker by one not engaged in unlawful activity outside the home or in public where the person reasonably believes the intruder or attacker intends to kill or inflict serious bodily harm. It establishes that use of reasonable and proportionate force to defend oneself is a full and complete defense civilly to an action brought by the intruder based upon the use of such force; and exceptions. This 'immunity' does not appear to be applicable to criminal sanctions.

**Senate Bill No. 150 CS** (By Senators Tomblin, Mr. President, and Caruth, By Request of the Executive) [Passed March 16, 2008; in effect from passage.] The Budget Bill included funding for Child Advocacy Centers to be managed by the Division for Criminal Justice Services, a Division of Military Affairs & Public Safety, in the amount of \$1,000,000 (5% of which can be retained by WVDCJS for oversight of the money)

**Senate Bill No. 286 CS** (Senators Prezioso, Bailey, Edgell, Foster, Hunter, Kessler, Minard, Unger, Deem, Guills, Yoder, Love, McCabe, Plymale and Jenkins, *original sponsors*) [Passed March 6, 2008; in effect from passage.] Amends and reenacts §9-6-2 & §49-6A-9 of the Code to provide personal immunity from civil liability for adult protective services workers and child protective services workers performing employment-related duties and responsibilities within their official capacity.

## 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.