

FALSE SWEARING

Clarification of Issues and Current Remedies Available

Remedies for false allegations of child abuse and domestic violence are available under current WV code.

Creating special remedies is not necessary and can deter reporting of these under-reported crimes.

In the wake of the recent fatalities in WV related to domestic violence and child abuse and the known risks and damage caused by family violence, any changes that deters reporting of abuse or seeking assistance for victimization would be dangerous.

Behavior	Description of Behavior	Current Legal Remedies Available in WV Code
Unsubstantiated Allegations	Sufficient evidence is not presented to prove allegations as true or false.	No legal recourse needed—allegations are unfounded. Legal recourse would cause conflict for mandatory reporters of child abuse.
Recanted Allegations	Withdrawal of allegations due to fear and threats of retaliation by abuser.	No legal recourse safe—penalizing victims for recanting out of fear would jeopardize victim safety.
False Swearing in a civil matter	Intentionally affirming fraudulent allegations or denying true allegations when there is evidence to the contrary.	§48-9-209 Limiting parenting time §48-9-501 Issuing fines §61-5-2 Prosecuting as a criminal offense punishable up to a year in jail
False Swearing in a criminal matter	Intentionally affirming fraudulent allegations or denying true allegations when there is evidence to the contrary.	§61-5-2 Prosecuting as a criminal offense punishable up to a year in jail



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**CURRENT WV CODE TO PROTECT AGAINST AND PROVIDE
REMEDIES FOR FALSE ALLEGATIONS AND DENIALS OF ABUSE**

Context of Allegations or Denials	Current WV Code
<p>Domestic Violence Protective Order & Child Abuse Proceedings</p>	<p>Allegations of abuse made in emergency Domestic Violence Protective Order (DVPO) and child abuse and neglect proceedings must be proved by, "clear and convincing" evidence. This is the <u>highest civil evidentiary standard</u>.</p> <p>§48-27-403 Emergency DVPO in the Magistrate Court proceedings</p> <p>§49-6-2(c) Child abuse/neglect in Circuit Court proceedings</p>
<p>Family Court</p>	<p>Penalties for False Swearing in Family Court</p> <p>§48-9-209 Parenting plan; limiting factors The court shall determine whether a parent (5) Has repeatedly made fraudulent reports of domestic violence or child abuse. If a parent is found to have done so, the Family Court "shall impose limits that are responsibly calculated to protect the child or a child's parent from harm". These limits can include changing the allocation of custody or exclusively awarding custody to the non-offending parent, limiting the offending parent to only supervised custodial time, or denial of overnight custody.</p> <p>If the fraudulent reports of domestic violence or child abuse constituted an intentional violation of an existing, court ordered parenting plan, the court can a) order substitute or make up time for the non-offending parent and the child, b) order the offending parent to attend counseling, and c) fine the offending parent.</p> <p>§61-5-2 False swearing (by making allegations that are not true or denying allegations that are true) in a Family Court proceeding is a misdemeanor crime punishable up to a year in jail.</p>

**Current Law Adequately
Addresses False
Allegations**