

# FALSE SWEARING

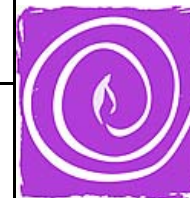
## Clarification of Issues and Current Remedies Available

**Remedies for false swearing 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 domestic violence and child abuse fatalities in WV and the known risks and damage caused by family violence, any change that deters reporting of abuse or seeking of assistance would be dangerous for victims.*

Behavior	Description of Behavior	Current Legal Remedies Available in WV Code
<b>Unproven Allegations</b>	Insufficient evidence to prove allegations as true or false.	No legal recourse needed—allegations are unfounded.
<b>Recanted Allegations</b>	Withdrawal of allegations due to fear and threats of retaliation by abuser.	No legal recourse—penalizing victims for recanting out of fear would jeopardize victim safety.
<b>False Swearing in a civil matter</b>	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 criminal offense
<b>False Swearing in a criminal matter</b>	Intentionally affirming fraudulent allegations or denying true allegations when there is evidence to the contrary.	§61-5-2 Lying in a criminal proceeding



West Virginia Coalition  
**AGAINST  
DOMESTIC  
VIOLENCE**  
*for a safer state of family*

Voice: 304-965-3552

**CURRENT LAW THAT PROTECTS AGAINST AND PROVIDES  
REMEDIES FOR FALSE SWEARING IN WEST VIRGINIA COURTS**

Context of Allegations or Denials	Current WV Code
<p><b>Domestic Violence Protective Order &amp; Child Abuse Proceedings</b></p>	<p>Allegations of abuse made in 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                      §49-62 (c): Child abuse/neglect in Circuit Court proceedings</p>
<p><b>False Swearing in Family Court</b></p>	<p><b>Penalties for False Swearing in a Family Court</b></p> <p>§48-9-209 - Parenting Plan                      The court shall determine whether a parent                      (5) <i>Has repeatedly made fraudulent reports of domestic violence or child abuse.</i>  <i>If a parent is found to have done so, the Family Court “shall impose limits . . . 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 supervised custodial time, or denial of overnight custody.</i></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) is a crime.</p>
<p><b>False Swearing In Criminal Matters</b></p>	<p><b>§61-5-2. False swearing</b></p> <p>False swearing in a criminal proceeding is a misdemeanor.</p>

**West Virginia Law  
Adequately Addresses  
False Swearing**