

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 FOR

4 **Senate Bill No. 216**

5 (SENATORS PREZIOSO, PALUMBO, EDGELL, FOSTER,

6 KESSLER (ACTING PRESIDENT), MINARD, UNGER,

7 WILLIAMS, BOLEY, JENKINS, SNYDER, BROWNING, MCCABE, STOLLINGS, PLYMALE,

8 LAIRD, MILLER, KLEMPA AND NOHE, *original sponsors*)

9 _____
10 [Passed March 7, 2011; in effect ninety days from passage.]

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12
13 AN ACT to amend and reenact §49-1-3 of the Code of West Virginia,
14 1931, as amended, relating to modifying the definition of
15 "imminent danger to the physical well-being of a child" with
16 regard to child abuse and neglect to include alcohol and
17 substance abuse on the part of the parent, guardian or
18 custodian.

19 *Be it enacted by the Legislature of West Virginia:*

20 That §49-1-3 of the Code of West Virginia, 1931, as amended,
21 be amended and reenacted to read as follows:

22 **ARTICLE 1. PURPOSES; DEFINITIONS.**

23 **§49-1-3. Definitions relating to abuse and neglect.**

24 As used in this chapter:

25 (1) "Abused child" means a child whose health or welfare is
26 harmed or threatened by:

27 (A) A parent, guardian or custodian who knowingly or

1 intentionally inflicts, attempts to inflict or knowingly allows
2 another person to inflict, physical injury or mental or emotional
3 injury, upon the child or another child in the home; or

4 (B) Sexual abuse or sexual exploitation; or

5 (C) The sale or attempted sale of a child by a parent,
6 guardian or custodian in violation of section sixteen, article
7 four, chapter forty-eight of this code; or

8 (D) Domestic violence as defined in section two hundred two,
9 article twenty-seven, chapter forty-eight of this code.

10 In addition to its broader meaning, physical injury may
11 include an injury to the child as a result of excessive corporal
12 punishment.

13 (2) "Abusing parent" means a parent, guardian or other
14 custodian, regardless of his or her age, whose conduct, as alleged
15 in the petition charging child abuse or neglect, has been adjudged
16 by the court to constitute child abuse or neglect.

17 (3) "Battered parent" means a parent, guardian or other
18 custodian who has been judicially determined not to have condoned
19 the abuse or neglect and has not been able to stop the abuse or
20 neglect of the child or children due to being the victim of
21 domestic violence as defined by section two hundred two, article
22 twenty-seven, chapter forty-eight of this code, which domestic
23 violence was perpetrated by the person or persons determined to
24 have abused or neglected the child or children.

25 (4) "Child abuse and neglect" or "child abuse or neglect"
26 means physical injury, mental or emotional injury, sexual abuse,
27 sexual exploitation, sale or attempted sale or negligent treatment
28 or maltreatment of a child by a parent, guardian or custodian who

1 is responsible for the child's welfare, under circumstances which
2 harm or threaten the health and welfare of the child.

3 (5) "Child abuse and neglect services" means social services
4 which are directed toward:

5 (A) Protecting and promoting the welfare of children who are
6 abused or neglected;

7 (B) Identifying, preventing and remedying conditions which
8 cause child abuse and neglect;

9 (C) Preventing the unnecessary removal of children from their
10 families by identifying family problems and assisting families in
11 resolving problems which could lead to a removal of children and a
12 breakup of the family;

13 (D) In cases where children have been removed from their
14 families, providing services to the children and the families so as
15 to reunify such children with their families or some portion
16 thereof;

17 (E) Placing children in suitable adoptive homes when
18 reunifying the children with their families, or some portion
19 thereof, is not possible or appropriate; and

20 (F) Assuring the adequate care of children who have been
21 placed in the custody of the department or third parties.

22 (6) "Child advocacy center" means a community-based
23 organization that is a member in good standing with the West
24 Virginia Child Abuse Network, Inc., and is working to implement the
25 following program components:

26 (A) Child-appropriate/child-friendly facility: A child
27 advocacy center provides a comfortable, private, child-friendly
28 setting that is both physically and psychologically safe for

1 clients.

2 (B) Multidisciplinary team (MDT): A multidisciplinary team for
3 response to child abuse allegations includes representation from
4 the following: Law enforcement; child protective services;
5 prosecution; mental health; medical; victim advocacy; child
6 advocacy center.

7 (C) Organizational capacity: A designated legal entity
8 responsible for program and fiscal operations has been established
9 and implements basic sound administrative practices.

10 (D) Cultural competency and diversity: The CAC promotes
11 policies, practices and procedures that are culturally competent.
12 Cultural competency is defined as the capacity to function in more
13 than one culture, requiring the ability to appreciate, understand
14 and interact with members of diverse populations within the local
15 community.

16 (E) Forensic interviews: Forensic interviews are conducted in
17 a manner which is of a neutral, fact finding nature and coordinated
18 to avoid duplicative interviewing.

19 (F) Medical evaluation: Specialized medical evaluation and
20 treatment are to be made available to CAC clients as part of the
21 team response, either at the CAC or through coordination and
22 referral with other specialized medical providers.

23 (G) Therapeutic intervention: Specialized mental health
24 services are to be made available as part of the team response,
25 either at the CAC or through coordination and referral with other
26 appropriate treatment providers.

27 (H) Victim support/advocacy: Victim support and advocacy are
28 to be made available as part of the team response, either at the

1 CAC or through coordination with other providers, throughout the
2 investigation and subsequent legal proceedings.

3 (I) Case review: Team discussion and information sharing
4 regarding the investigation, case status and services needed by the
5 child and family are to occur on a routine basis.

6 (J) Case tracking: CACs must develop and implement a system
7 for monitoring case progress and tracking case outcomes for team
8 components: *Provided*, That a child advocacy center may establish a
9 safe exchange location for children and families who have a
10 parenting agreement or an order providing for visitation or custody
11 of the children that require a safe exchange location.

12 (7) "Imminent danger to the physical well-being of the child"
13 means an emergency situation in which the welfare or the life of
14 the child is threatened. Such emergency situation exists when
15 there is reasonable cause to believe that any child in the home is
16 or has been sexually abused or sexually exploited, or reasonable
17 cause to believe that the following conditions threaten the health
18 or life of any child in the home:

19 (A) Nonaccidental trauma inflicted by a parent, guardian,
20 custodian, sibling or a babysitter or other caretaker;

21 (B) A combination of physical and other signs indicating a
22 pattern of abuse which may be medically diagnosed as battered child
23 syndrome;

24 (C) Nutritional deprivation;

25 (D) Abandonment by the parent, guardian or custodian;

26 (E) Inadequate treatment of serious illness or disease;

27 (F) Substantial emotional injury inflicted by a parent,
28 guardian or custodian;

1 (G) Sale or attempted sale of the child by the parent,
2 guardian or custodian; or

3 (H) The parent, guardian or custodian's abuse of alcohol, or
4 drugs or other controlled substance as defined in section
5 one-hundred one, article one, chapter sixty-a of this code, has
6 impaired his or her parenting skills to a degree as to pose an
7 imminent risk to a child's health or safety.

8 (8) "Legal guardianship" means the permanent relationship
9 between a child and caretaker, established by order of the circuit
10 court having jurisdiction over the child, pursuant to the
11 provisions of this chapter and chapter forty-eight of this code.

12 (9) "Multidisciplinary team" means a group of professionals
13 and paraprofessionals representing a variety of disciplines who
14 interact and coordinate their efforts to identify, diagnose and
15 treat specific cases of child abuse and neglect. Multidisciplinary
16 teams may include, but are not limited to, medical, educational,
17 child care and law-enforcement personnel, social workers,
18 psychologists and psychiatrists. Their goal is to pool their
19 respective skills in order to formulate accurate diagnoses and to
20 provide comprehensive coordinated treatment with continuity and
21 follow-up for both parents and children. "Community team" means a
22 multidisciplinary group which addresses the general problem of
23 child abuse and neglect in a given community and may consist of
24 several multidisciplinary teams with different functions.

25 (10) (A) "Neglected child" means a child:

26 (i) Whose physical or mental health is harmed or threatened by
27 a present refusal, failure or inability of the child's parent,
28 guardian or custodian to supply the child with necessary food,

1 clothing, shelter, supervision, medical care or education, when
2 such refusal, failure or inability is not due primarily to a lack
3 of financial means on the part of the parent, guardian or
4 custodian; or

5 (ii) Who is presently without necessary food, clothing,
6 shelter, medical care, education or supervision because of the
7 disappearance or absence of the child's parent or custodian;

8 (B) "Neglected child" does not mean a child whose education is
9 conducted within the provisions of section one, article eight,
10 chapter eighteen of this code.

11 (11) "Parent" means an individual defined as a parent by law
12 or on the basis of a biological relationship, marriage to a person
13 with a biological relationship, legal adoption or other recognized
14 grounds.

15 (12) "Parental rights" means any and all rights and duties
16 regarding a parent to a minor child, including, but not limited to,
17 custodial rights and visitational rights and rights to participate
18 in the decisions affecting a minor child.

19 (13) "Parenting skills" means a parent's competencies in
20 providing physical care, protection, supervision and psychological
21 support appropriate to a child's age and state of development.

22 (14) "Sexual abuse" means:

23 (A) As to a child who is less than sixteen years of age, any
24 of the following acts which a parent, guardian or custodian shall
25 engage in, attempt to engage in, or knowingly procure another
26 person to engage in, with such child, notwithstanding the fact that
27 the child may have willingly participated in such conduct or the
28 fact that the child may have suffered no apparent physical injury

1 or mental or emotional injury as a result of such conduct:

2 (i) Sexual intercourse;

3 (ii) Sexual intrusion; or

4 (iii) Sexual contact;

5 (B) As to a child who is sixteen years of age or older, any of
6 the following acts which a parent, guardian or custodian shall
7 engage in, attempt to engage in, or knowingly procure another
8 person to engage in, with such child, notwithstanding the fact that
9 the child may have consented to such conduct or the fact that the
10 child may have suffered no apparent physical injury or mental or
11 emotional injury as a result of such conduct:

12 (i) Sexual intercourse;

13 (ii) Sexual intrusion; or

14 (iii) Sexual contact.

15 (C) Any conduct whereby a parent, guardian or custodian
16 displays his or her sex organs to a child, or procures another
17 person to display his or her sex organs to a child, for the purpose
18 of gratifying the sexual desire of the parent, guardian or
19 custodian, of the person making such display, or of the child, or
20 for the purpose of affronting or alarming the child.

21 (15) "Sexual contact" means sexual contact as that term is
22 defined in section one, article eight-b, chapter sixty-one of this
23 code.

24 (16) "Sexual exploitation" means an act whereby:

25 (A) A parent, custodian or guardian, whether for financial
26 gain or not, persuades, induces, entices or coerces a child to
27 engage in sexually explicit conduct as that term is defined in
28 section one, article eight-c, chapter sixty-one of this code; or

1 (B) A parent, guardian or custodian persuades, induces,
2 entices or coerces a child to display his or her sex organs for the
3 sexual gratification of the parent, guardian, custodian or a third
4 person, or to display his or her sex organs under circumstances in
5 which the parent, guardian or custodian knows such display is
6 likely to be observed by others who would be affronted or alarmed.

7 (17) "Sexual intercourse" means sexual intercourse as that
8 term is defined in section one, article eight-b, chapter sixty-one
9 of this code.

10 (18) "Sexual intrusion" means sexual intrusion as that term is
11 defined in section one, article eight-b, chapter sixty-one of this
12 code.

13 (19) "Placement" means any temporary or permanent placement of
14 a child who is in the custody of the state in any foster home,
15 group home or other facility or residence. (20) "Serious
16 physical abuse" means bodily injury which creates a substantial
17 risk of death, which causes serious or prolonged disfigurement,
18 prolonged impairment of health or prolonged loss or impairment of
19 the function of any bodily organ.

20 (21) "Siblings" means children who have at least one
21 biological parent in common or who have been legally adopted by the
22 same parents or parent.

23 (22) "Time-limited reunification services" means individual,
24 group and family counseling, inpatient, residential or outpatient
25 substance abuse treatment services, mental health services,
26 assistance to address domestic violence, services designed to
27 provide temporary child care and therapeutic services for families,
28 including crisis nurseries and transportation to or from any such

1 services, provided during fifteen of the most recent twenty-two
2 months a child has been in foster care, as determined by the
3 earlier date of the first judicial finding that the child is
4 subjected to abuse or neglect, or the date which is sixty days
5 after the child is removed from home.