

H. B. 2707

(By Delegates Mahan, Fleischauer, Brown, Ennis,
Ferro, Frazier, Longstreth, Stowers, L. Phillips,
Ashley and Rowan)

[Introduced January 21, 2011; referred to the
Committee on the Judiciary.]

A BILL to amend and reenact §49-1-3 of the Code of West Virginia,
1931, as amended, relating to the expansion of the definition
of "imminent danger to the physical well-being of a child"
with regard to child abuse and neglect to include alcohol and
substance abuse on the part of the parent, guardian or
custodian.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. PURPOSES; DEFINITIONS.

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

As used in this chapter:

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

~~(1)~~ (A) A parent, guardian or custodian who knowingly or
intentionally inflicts, attempts to inflict or knowingly allows
another person to inflict, physical injury or mental or emotional
injury, upon the child or another child in the home; or

1 ~~(2)~~ (B) Sexual abuse or sexual exploitation; or

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

5 ~~(4)~~ (D) Domestic violence as defined in section two hundred
6 two, article twenty-seven, chapter forty-eight of this code.

7 In addition to its broader meaning, physical injury may
8 include an injury to the child as a result of excessive corporal
9 punishment.

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

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

22 ~~(d)~~ (4) "Child abuse and neglect" or "child abuse or neglect"
23 means physical injury, mental or emotional injury, sexual abuse,
24 sexual exploitation, sale or attempted sale or negligent treatment
25 or maltreatment of a child by a parent, guardian or custodian who
26 is responsible for the child's welfare, under circumstances which

1 harm or threaten the health and welfare of the child.

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

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

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

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

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

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

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

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

25 ~~(1)~~ (A) Child-appropriate/child-friendly facility: A child
26 advocacy center provides a comfortable, private, child-friendly

1 setting that is both physically and psychologically safe for
2 clients.

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

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

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

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

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

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

1 appropriate treatment providers.

2 ~~(8)~~ (H) Victim support/advocacy: Victim support and advocacy
3 are to be made available as part of the team response, either at
4 the CAC or through coordination with other providers, throughout
5 the investigation and subsequent legal proceedings.

6 ~~(9)~~ (I) Case review: Team discussion and information sharing
7 regarding the investigation, case status and services needed by the
8 child and family are to occur on a routine basis.

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

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

22 ~~(1)~~ (A) Nonaccidental trauma inflicted by a parent, guardian,
23 custodian, sibling or a babysitter or other caretaker;

24 ~~(2)~~ (B) A combination of physical and other signs indicating
25 a pattern of abuse which may be medically diagnosed as battered
26 child syndrome;

1 ~~(3)~~ (C) Nutritional deprivation;

2 ~~(4)~~ (D) Abandonment by the parent, guardian or custodian;

3 ~~(5)~~ (E) Inadequate treatment of serious illness or disease;

4 ~~(6)~~ (F) Substantial emotional injury inflicted by a parent,
5 guardian or custodian; ~~or~~

6 ~~(7)~~ (G) Sale or attempted sale of the child by the parent,
7 guardian or custodian; or

8 (H) The abusing parent, guardian or custodian's abuse of
9 alcoholic liquor, as defined in section five, article one, chapter
10 sixty of this code, or drugs or other controlled substance, as
11 those terms are defined in section one-hundred one, article one,
12 chapter sixty-a of this code, has seriously impaired his or her
13 parenting skills.

14 ~~(h)~~ (8) "Legal guardianship" means the permanent relationship
15 between a child and caretaker, established by order of the circuit
16 court having jurisdiction over the child, pursuant to the
17 provisions of this chapter and chapter forty-eight of this code.

18 ~~(i)~~ (9) "Multidisciplinary team" means a group of
19 professionals and paraprofessionals representing a variety of
20 disciplines who interact and coordinate their efforts to identify,
21 diagnose and treat specific cases of child abuse and neglect.
22 Multidisciplinary teams may include, but are not limited to,
23 medical, educational, child care and law-enforcement personnel,
24 social workers, psychologists and psychiatrists. Their goal is to
25 pool their respective skills in order to formulate accurate
26 diagnoses and to provide comprehensive coordinated treatment with

1 continuity and follow-up for both parents and children. "Community
2 team" means a multidisciplinary group which addresses the general
3 problem of child abuse and neglect in a given community and may
4 consist of several multidisciplinary teams with different
5 functions.

6 ~~(j)~~ ~~(1)~~ (10) (A) "Neglected child" means a child:

7 ~~(A)~~ (i) Whose physical or mental health is harmed or
8 threatened by a present refusal, failure or inability of the
9 child's parent, guardian or custodian to supply the child with
10 necessary food, clothing, shelter, supervision, medical care or
11 education, when such refusal, failure or inability is not due
12 primarily to a lack of financial means on the part of the parent,
13 guardian or custodian; or

14 ~~(B)~~ (ii) Who is presently without necessary food, clothing,
15 shelter, medical care, education or supervision because of the
16 disappearance or absence of the child's parent or custodian;

17 ~~(2)~~ (B) "Neglected child" does not mean a child whose
18 education is conducted within the provisions of section one,
19 article eight, chapter eighteen of this code.

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

24 (12) "Parental rights" means any and all rights and duties
25 regarding a parent to a minor child, including, but not limited to,
26 custodial rights and visitational rights and rights to participate

1 in the decisions affecting a minor child.

2 ~~(k)~~ (13) "Parenting skills" means a parent's competencies in
3 providing physical care, protection, supervision and psychological
4 support appropriate to a child's age and state of development.

5 ~~(l)~~ (14) "Sexual abuse" means:

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

13 (i) Sexual intercourse;

14 (ii) Sexual intrusion; or

15 (iii) Sexual contact;

16 (B) As to a child who is sixteen years of age or older, any of
17 the following acts which a parent, guardian or custodian shall
18 engage in, attempt to engage in, or knowingly procure another
19 person to engage in, with such child, notwithstanding the fact that
20 the child may have consented to such conduct or the fact that the
21 child may have suffered no apparent physical injury or mental or
22 emotional injury as a result of such conduct:

23 (i) Sexual intercourse;

24 (ii) Sexual intrusion; or

25 (iii) Sexual contact.

26 (C) Any conduct whereby a parent, guardian or custodian

1 displays his or her sex organs to a child, or procures another
2 person to display his or her sex organs to a child, for the purpose
3 of gratifying the sexual desire of the parent, guardian or
4 custodian, of the person making such display, or of the child, or
5 for the purpose of affronting or alarming the child.

6 ~~(m)~~ (15) "Sexual contact" means sexual contact as that term is
7 defined in section one, article eight-b, chapter sixty-one of this
8 code.

9 ~~(n)~~ (16) "Sexual exploitation" means an act whereby:

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

14 ~~(2)~~ (B) A parent, guardian or custodian persuades, induces,
15 entices or coerces a child to display his or her sex organs for the
16 sexual gratification of the parent, guardian, custodian or a third
17 person, or to display his or her sex organs under circumstances in
18 which the parent, guardian or custodian knows such display is
19 likely to be observed by others who would be affronted or alarmed.

20 ~~(o)~~ (17) "Sexual intercourse" means sexual intercourse as that
21 term is defined in section one, article eight-b, chapter sixty-one
22 of this code.

23 ~~(p)~~ (18) "Sexual intrusion" means sexual intrusion as that
24 term is defined in section one, article eight-b, chapter sixty-one
25 of this code.

26 ~~(q) "Parental rights" means any and all rights and duties~~

1 ~~regarding a parent to a minor child, including, but not limited to,~~
2 ~~custodial rights and visitational rights and rights to participate~~
3 ~~in the decisions affecting a minor child.~~

4 ~~(r) "Placement" means any temporary or permanent placement of~~
5 ~~a child who is in the custody of the state in any foster home,~~
6 ~~group home or other facility or residence.~~

7 ~~(s) "Serious physical abuse" means bodily injury which creates~~
8 ~~a substantial risk of death, which causes serious or prolonged~~
9 ~~disfigurement, prolonged impairment of health or prolonged loss or~~
10 ~~impairment of the function of any bodily organ.~~

11 ~~(t) (19) "Siblings" means children who have at least one~~
12 ~~biological parent in common or who have been legally adopted by the~~
13 ~~same parents or parent.~~

14 ~~(u) (20) "Time-limited reunification services" means~~
15 ~~individual, group and family counseling, inpatient, residential or~~
16 ~~outpatient substance abuse treatment services, mental health~~
17 ~~services, assistance to address domestic violence, services~~
18 ~~designed to provide temporary child care and therapeutic services~~
19 ~~for families, including crisis nurseries and transportation to or~~
20 ~~from any such services, provided during fifteen of the most recent~~
21 ~~twenty-two months a child has been in foster care, as determined by~~
22 ~~the earlier date of the first judicial finding that the child is~~
23 ~~subjected to abuse or neglect, or the date which is sixty days~~
24 ~~after the child is removed from home.~~

NOTE: The purpose of this bill is to expand the definition of "imminent danger to the physical well-being of the child" with

regard to child abuse and neglect to include alcohol and substance abuse on the part of th parent or parents.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.

This bill is recommended for passage during the 2011 Regular Session by Select Committee on Children, Juveniles and Other Matters.