

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 FOR

4 **Senate Bill No. 161**

5 (SENATORS FOSTER, PALUMBO, KLEMPA, FANNING, UNGER, KESSLER (MR. PRESIDENT),  
6 JENKINS, BROWNING, KIRKENDOLL, WILLS, YOST, STOLLINGS AND MCCABE, *original*  
7 *sponsors*)

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9 [Passed March 10, 2012; in effect ninety days from passage.]  
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12  
13 AN ACT to amend and reenact §49-6A-1, §49-6A-2, §49-6A-8 and  
14 §49-6A-10 of the Code of West Virginia, 1931, as amended, all  
15 relating to mandatory reporting of abuse and neglect of  
16 children; adding promoting adult responsibility and prevention  
17 to the purpose; adding certain persons to the mandatory  
18 reporting list for all abuse or neglect of children; creating  
19 a requirement that certain adults report sexual abuse of  
20 children when observed or when received credible reports;  
21 allowing for exceptions; requiring law enforcement who receive  
22 a report of sexual abuse to alert the Department of Health and  
23 Human Resources; encouraging law-enforcement agencies to  
24 coordinate in investigating a report; increasing the criminal  
25 penalties for failure to report; creating a crime and criminal  
26 penalties for all adults who fail to report sexual abuse of

1 children; and requiring and amending certain educational  
2 programs and trainings.

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

4 That §49-6A-1, §49-6A-2, §49-6A-8 and §49-6A-10 of the Code of  
5 West Virginia, 1931, as amended, be amended and reenacted, all to  
6 read as follows:

7 **ARTICLE 6A. REPORTS OF CHILDREN SUSPECTED TO BE ABUSED OR**  
8 **NEGLECTED.**

9 **§49-6A-1. Purpose.**

10 It is the purpose of this article, through the complete  
11 reporting of child abuse and neglect, to protect the best interests  
12 of the child, to offer protective services in order to prevent any  
13 further harm to the child or any other children living in the home,  
14 to stabilize the home environment, to preserve family life whenever  
15 possible, to promote adult responsibility for protecting children  
16 and to encourage cooperation among the states to prevent future  
17 incidents of child abuse and neglect and in dealing with the  
18 problems of child abuse and neglect.

19 **49-6A-2. Persons mandated to report suspected abuse and neglect.**

20 (a) Any medical, dental or mental health professional,  
21 Christian Science practitioner, religious healer, school teacher or  
22 other school personnel, social service worker, child care or foster  
23 care worker, emergency medical services personnel, peace officer or  
24 law-enforcement official, humane officer, member of the clergy,  
25 circuit court judge, family court judge, employee of the Division  
26 of Juvenile Services, magistrate, youth camp administrator or

1 counselor, employee, coach or volunteer of an entity that provides  
2 organized activities for children, or commercial film or  
3 photographic print processor who has reasonable cause to suspect  
4 that a child is neglected or abused or observes the child being  
5 subjected to conditions that are likely to result in abuse or  
6 neglect shall immediately, and not more than forty-eight hours  
7 after suspecting this abuse or neglect, report the circumstances or  
8 cause a report to be made to the Department of Health and Human  
9 Resources: *Provided*, That in any case where the reporter believes  
10 that the child suffered serious physical abuse or sexual abuse or  
11 sexual assault, the reporter shall also immediately report, or  
12 cause a report to be made, to the State Police and any  
13 law-enforcement agency having jurisdiction to investigate the  
14 complaint: *Provided, however*, That any person required to report  
15 under this article who is a member of the staff or volunteer of a  
16 public or private institution, school, entity that provides  
17 organized activities for children, facility or agency shall also  
18 immediately notify the person in charge of the institution, school,  
19 entity that provides organized activities for children, facility or  
20 agency, or a designated agent thereof, who may supplement the  
21 report or cause an additional report to be made.

22 (b) Any person over the age of eighteen who receives a  
23 disclosure from a credible witness or observes any sexual abuse or  
24 sexual assault of a child, shall immediately, and not more than  
25 forty-eight hours after receiving such a disclosure or observing  
26 the sexual abuse or sexual assault, report the circumstances or

1 cause a report to be made to the Department of Health and Human  
2 Resources or the State Police or other law-enforcement agency  
3 having jurisdiction to investigate the report. In the event that  
4 the individual receiving the disclosure or observing the sexual  
5 abuse or sexual assault has a good faith belief that the reporting  
6 of the event to the police would expose either the reporter, the  
7 subject child, the reporter's children or other children in the  
8 subject child's household to an increased threat of serious bodily  
9 injury, the individual may delay making the report while he or she  
10 undertakes measures to remove themselves or the affected children  
11 from the perceived threat of additional harm: *Provided*, That the  
12 individual makes the report as soon as practicable after the threat  
13 of harm has been reduced. The law-enforcement agency that receives  
14 a report under this subsection shall report the allegations to the  
15 Department of Health and Human Resources and coordinate with any  
16 other law-enforcement agency, as necessary to investigate the  
17 report.

18 (c) Nothing in this article is intended to prevent individuals  
19 from reporting suspected abuse or neglect on their own behalf. In  
20 addition to those persons and officials specifically required to  
21 report situations involving suspected abuse or neglect of children,  
22 any other person may make a report if such person has reasonable  
23 cause to suspect that a child has been abused or neglected in a  
24 home or institution or observes the child being subjected to  
25 conditions or circumstances that would reasonably result in abuse  
26 or neglect.

1 **§49-6A-8. Failure to report; penalty.**

2 Any person, official or institution required by this article  
3 to report a case involving a child known or suspected to be abused  
4 or neglected, or required by section five of this article to  
5 forward a copy of a report of serious injury, who knowingly fails  
6 to do so or knowingly prevents another person acting reasonably  
7 from doing so, is guilty of a misdemeanor and, upon conviction  
8 thereof, shall be confined in jail not more than thirty days or  
9 fined not more than \$1,000, or both.

10 **§49-6A-10. Educational programs.**

11 Subject to appropriation in the budget bill, the state  
12 department shall conduct educational and training programs for  
13 persons required to report suspected abuse or neglect, and the  
14 general public, as well as implement evidence-based programs that  
15 reduce incidents of child maltreatment including sexual abuse.  
16 Training for persons require to report and the general public shall  
17 include indicators of child abuse and neglect, tactics used by  
18 sexual abusers, how and when to make a report, and protective  
19 factors that prevent abuse and neglect in order to promote adult  
20 responsibility for protecting children, encourage maximum reporting  
21 of child abuse and neglect, and to improve communication,  
22 cooperation and coordination among all agencies involved in the  
23 identification, prevention and treatment of the abuse and neglect  
24 of children.