

1 **Senate Bill No. 404**

2 (By Senators Cookman, Stollings, Miller, Williams, Fitzsimmons,  
3 Green and Palumbo)

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5 [Introduced March 1, 2013; referred to the Committee on  
6 Education; and then to the Committee on the Judiciary.]  
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11 A BILL to amend and reenact §49-1-3 of the Code of West Virginia,  
12 1931, as amended, relating generally to child abuse and  
13 neglect; and clarifying that a child who is physically healthy  
14 and presumed safe is a neglected child if the child is  
15 habitually absent from school without good cause.

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

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

19 **ARTICLE 1. PURPOSES; DEFINITIONS.**

20 **§49-1-3. Definitions relating to abuse and neglect.**

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

23 (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;

4 (B) Sexual abuse or sexual exploitation;

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.

1           (4) "Child abuse and neglect" or "child abuse or neglect"  
2 means physical injury, mental or emotional injury, sexual abuse,  
3 sexual exploitation, sale or attempted sale or negligent treatment  
4 or maltreatment of a child by a parent, guardian or custodian who  
5 is responsible for the child's welfare, under circumstances which  
6 harm or threaten the health and welfare of the child.

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

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

11           (B) Identifying, preventing and remedying conditions which  
12 cause child abuse and neglect;

13           (C) Preventing the unnecessary removal of children from their  
14 families by identifying family problems and assisting families in  
15 resolving problems which could lead to a removal of children and a  
16 breakup of the family;

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

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

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

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

5 (A) Child-appropriate/child-friendly facility: A child  
6 advocacy center provides a comfortable, private, child-friendly  
7 setting that is both physically and psychologically safe for clients.

8 (B) Multidisciplinary team (MDT): A multidisciplinary team for  
9 response to child abuse allegations includes representation from  
10 the following: Law enforcement; child protective services;  
11 prosecution; mental health; medical; victim advocacy; and child  
12 advocacy center.

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

16 (D) Cultural competency and diversity: The CAC promotes  
17 policies, practices and procedures that are culturally competent.  
18 "Cultural competency" is defined as the capacity to function in  
19 more than one culture, requiring the ability to appreciate,  
20 understand and interact with members of diverse populations within  
21 the local community.

22 (E) Forensic interviews: Forensic interviews are conducted in  
23 a manner which is of a neutral, fact-finding nature and coordinated  
24 to avoid duplicative interviewing.

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

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

9 (H) Victim support/advocacy: Victim support and advocacy are  
10 to be made available as part of the team response, either at the  
11 CAC or through coordination with other providers, throughout the  
12 investigation and subsequent legal proceedings.

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

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

22 (7) "Court-appointed special advocate (CASA) program" means a  
23 community organization that screens, trains and supervises CASA  
24 volunteers to advocate for the best interests of children who are

1 involved in abuse and neglect proceedings. Court-appointed special  
2 advocate programs will be operated under the following guidelines:

3 (A) Standards: CASA programs shall be members in good standing  
4 with the West Virginia Court Appointed Special Advocate  
5 Association, Inc., and the National Court Appointed Special  
6 Advocates Association and adhere to all standards set forth by  
7 these entities.

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

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

17 (D) Case management: CASA programs must utilize a uniform case  
18 management system to monitor case progress and track outcomes.

19 (E) Case review: CASA volunteers meet with CASA staff on a  
20 routine basis to discuss case status and outcomes.

21 (F) Training: Court-appointed special advocates shall serve as  
22 volunteers without compensation and shall receive training  
23 consistent with state and nationally developed standards.

24 (8) "Imminent danger to the physical well being of the child"

1 means an emergency situation in which the welfare or the life of  
2 the child is threatened. Such emergency situation exists when there  
3 is reasonable cause to believe that any child in the home is or has  
4 been sexually abused or sexually exploited, or reasonable cause to  
5 believe that the following conditions threaten the health or life  
6 of any child in the home:

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

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

12 (C) Nutritional deprivation;

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

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

15 (F) Substantial emotional injury inflicted by a parent,  
16 guardian or custodian;

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

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

24 (9) "Legal guardianship" means the permanent relationship

1 between a child and caretaker, established by order of the circuit  
2 court having jurisdiction over the child, pursuant to the  
3 provisions of this chapter and chapter forty-eight of this code.

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

17 (11) (A) "Neglected child" means a child:

18 (i) Whose physical or mental health is harmed or threatened by  
19 a present refusal, failure or inability of the child's parent,  
20 guardian or custodian to supply the child with necessary food,  
21 clothing, shelter, supervision, medical care or education, when  
22 such refusal, failure or inability is not due primarily to a lack  
23 of financial means on the part of the parent, guardian or  
24 custodian; ~~or~~



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

4 (iii) Who is otherwise physically healthy and presumed safe  
5 but is habitually absent from school without good cause. Provided,  
6 That this subparagraph (iii) does not apply to the parents of any  
7 child who is educated pursuant to the home instruction exemption  
8 from the compulsory school attendance requirements set forth in  
9 section one, article eight, chapter eighteen of this code.

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

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

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

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

24 (15) "Sexual abuse" means:

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

8 (i) Sexual intercourse;

9 (ii) Sexual intrusion; or

10 (iii) Sexual contact;

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

18 (i) Sexual intercourse;

19 (ii) Sexual intrusion; or

20 (iii) Sexual contact;

21 (C) Any conduct whereby a parent, guardian or custodian  
22 displays his or her sex organs to a child, or procures another  
23 person to display his or her sex organs to a child, for the purpose  
24 of gratifying the sexual desire of the parent, guardian or

1 custodian, of the person making such display, or of the child, or  
2 for the purpose of affronting or alarming the child.

3 (16) "Sexual contact" means sexual contact as that term is  
4 defined in section one, article eight-b, chapter sixty-one of this  
5 code.

6 (17) "Sexual exploitation" means an act whereby:

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

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

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

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

23 (20) "Placement" means any temporary or permanent placement of  
24 a child who is in the custody of the state in any foster home,

1 group home or other facility or residence.

2 (21) "Serious physical abuse" means bodily injury which  
3 creates a substantial risk of death, which causes serious or  
4 prolonged disfigurement, prolonged impairment of health or  
5 prolonged loss or impairment of the function of any bodily organ.

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

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

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(NOTE: The purpose of this bill is to clarify that a child who is physically healthy and presumed safe is a neglected child if he or she is habitually absent from school without good cause. This bill provides an exemption for parents whose children are receiving home instruction.

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