

H. B. 2939

(By Delegate B. White)

[Introduced February 24, 2015; referred to the
Committee on the Judiciary.]

**FISCAL
NOTE**

A BILL to amend and reenact §49-6A-2 and §49-6A-8 of the Code of West Virginia, 1931, as amended, relating to requirements for mandatory reporting of sexual offenses on school premises involving students; adding conduct that must be reported; defining conduct; creating penalties for failure to report; and increasing penalties for other reporting requirements.

Be it enacted by the Legislature of West Virginia:

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

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

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

(a) Any medical, dental or mental health professional, Christian Science practitioner, religious healer, school teacher or other school personnel, social service worker, child care or foster

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

17 (b) Any person over the age of eighteen who receives a disclosure from a credible witness
18 or observes any sexual abuse or sexual assault of a child, shall immediately, and not more than forty-
19 eight hours after receiving such a disclosure or observing the sexual abuse or sexual assault, report
20 the circumstances or cause a report to be made to the Department of Health and Human Resources
21 or the State Police or other law-enforcement agency having jurisdiction to investigate the report. In
22 the event that the individual receiving the disclosure or observing the sexual abuse or sexual assault

1 has a good faith belief that the reporting of the event to the police would expose either the reporter,
2 the subject child, the reporter's children or other children in the subject child's household to an
3 increased threat of serious bodily injury, the individual may delay making the report while he or she
4 undertakes measures to remove themselves or the affected children from the perceived threat of
5 additional harm: *Provided*, That the individual makes the report as soon as practicable after the
6 threat of harm has been reduced. The law-enforcement agency that receives a report under this
7 subsection shall report the allegations to the Department of Health and Human Resources and
8 coordinate with any other law-enforcement agency, as necessary to investigate the report.

9 (c) Any school teacher or other school personnel who receives a disclosure from a student,
10 credible witness or personally observes any sexual contact, sexual intercourse or sexual intrusion of
11 a child on school premises, as those terms are defined in article eight-b, chapter sixty-one, shall
12 immediately report the circumstances or cause a report to be made to the State Police or other law-
13 enforcement agency having jurisdiction to investigate the report. In the event that the individual
14 receiving the disclosure or observing the sexual contact, intercourse or intrusion has a good faith
15 belief that the reporting of the event to the police would expose either the reporter, the subject child,
16 the reporter's children or other children in the subject child's household to an increased threat of
17 serious bodily injury, the individual may delay making the report while he or she undertakes
18 measures to remove themselves or the affected children from the perceived threat of additional harm:
19 *Provided*, That the individual makes the report as soon as practicable after the threat of harm has
20 been reduced.

21 (d) The reporting requirements contained in this section specifically include reported,
22 disclosed or observed conduct involving students enrolled in a public or private institution of

1 education or involving a student and school teacher or personnel. When the alleged conduct is
 2 between two students or between a student and school teacher or personnel, the parents of the
 3 involved students shall additionally be immediately notified of the allegations.

4 ~~(c)~~ (e) Nothing in this article is intended to prevent individuals from reporting suspected
 5 abuse or neglect on their own behalf. In addition to those persons and officials specifically required
 6 to report situations involving suspected abuse or neglect of children, any other person may make a
 7 report if such person has reasonable cause to suspect that a child has been abused or neglected in a
 8 home or institution or observes the child being subjected to conditions or circumstances that would
 9 reasonably result in abuse or neglect.

10 **§49-6A-8. Failure to report; penalty.**

11 (a) Any person, official or institution required by this article to report a case involving a child
 12 known or suspected to be abused or neglected, or required by section five of this article to forward
 13 a copy of a report of serious injury, who knowingly fails to do so or knowingly prevents another
 14 person acting reasonably from doing so, is guilty of a misdemeanor and, upon conviction thereof,
 15 shall be confined in jail not more than ~~thirty days~~ six months or fined not more than ~~\$1,000~~ \$5,000,
 16 or both.

17 (b) Any person, official or institution required by this article to report a case involving a child
 18 known or suspected to be sexually assaulted or abused, or student known or suspected to have been
 19 involved in any sexual contact, sexual intercourse or sexual intrusion on school premises, who
 20 knowingly fails to do so or knowingly prevents another person acting reasonably from doing so, is
 21 guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail not more than one
 22 year or fined not more than \$10,000, or both.

NOTE: The purpose of this bill is to clarify and specifically include sexual misconduct by a student upon another student as warranting mandatory reporting to law enforcement. The bill makes failure to report such misconduct a misdemeanor offense punishable by up to a year in jail and/or a fine of \$10,000. The bill also increases the penalty for other failures to report.

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