

**E N G R O S S E D**

COMMITTEE SUBSTITUTE

for

**H. B. 2939**

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(BY DELEGATE(S) B. WHITE)

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(Originating in the Committee on the Judiciary)

[February 26, 2015]

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A BILL to amend and reenact §49-1-201 of the Code of West Virginia, 1931, as amended; and to amend and reenact §49-2-803 and §49-2-812 of said code, all relating to requirements for mandatory reporting of sexual offenses on school premises involving or between students; defining terms; adding conduct that must be reported to law enforcement; defining nature of conduct to be reported; creating criminal penalties for failure to report; and increasing penalties for other reporting requirements.

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

That §49-1-201 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §49-2-803 and §49-2-812 of said code be amended and reenacted, all to read as follows:

**ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.**

**§49-1-201. Definitions related, but not limited, to child abuse and neglect.**

1       When used in this chapter, terms defined in this section have  
2       the meanings ascribed to them that relate to, but are not limited  
3       to, child abuse and neglect, except in those instances where a  
4       different meaning is provided or the context in which the word  
5       is used clearly indicates that a different meaning is intended.

6       “Abandonment” means any conduct that demonstrates the  
7       settled purpose to forego the duties and parental responsibilities  
8       to the child;

9       “Abused child” means a child whose health or welfare is  
10      being harmed or threatened by:

11      (A) A parent, guardian or custodian who knowingly or  
12      intentionally inflicts, attempts to inflict or knowingly allows  
13      another person to inflict, physical injury or mental or emotional

14 injury, upon the child or another child in the home. Physical  
15 injury may include an injury to the child as a result of excessive  
16 corporal punishment;

17 (B) Sexual abuse or sexual exploitation;

18 (C) The sale or attempted sale of a child by a parent,  
19 guardian or custodian in violation of section fourteen-h, article  
20 two, chapter sixty-one of this code; or

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

23 “Abusing parent” means a parent, guardian or other  
24 custodian, regardless of his or her age, whose conduct has been  
25 adjudicated by the court to constitute child abuse or neglect as  
26 alleged in the petition charging child abuse or neglect.

27 “Battered parent,” for the purposes of part seven, article two  
28 of this chapter, means a respondent parent, guardian, or other  
29 custodian who has been adjudicated by the court to have not  
30 condoned the abuse or neglect and has not been able to stop the  
31 abuse or neglect of the child or children due to being the victim  
32 of domestic violence as defined by section two hundred two,  
33 article twenty-seven, chapter forty-eight of this code which was

34 perpetrated by the same person or persons determined to have  
35 abused or neglected the child or children.

36 “Child abuse and neglect services” means social services  
37 which are directed toward:

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

40 (B) Identifying, preventing and remedying conditions which  
41 cause child abuse and neglect;

42 (C) Preventing the unnecessary removal of children from  
43 their families by identifying family problems and assisting  
44 families in resolving problems which could lead to a removal of  
45 children and a breakup of the family;

46 (D) In cases where children have been removed from their  
47 families, providing time-limited reunification services to the  
48 children and the families so as to reunify those children with  
49 their families or some portion thereof;

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

53 (F) Assuring the adequate care of children or juveniles who  
54 have been placed in the custody of the department or third  
55 parties.

56 “Condition requiring emergency medical treatment” means  
57 a condition which, if left untreated for a period of a few hours,  
58 may result in permanent physical damage; that condition  
59 includes, but is not limited to, profuse or arterial bleeding,  
60 dislocation or fracture, unconsciousness and evidence of  
61 ingestion of significant amounts of a poisonous substance.

62 “Imminent danger to the physical well-being of the child”  
63 means an emergency situation in which the welfare or the life of  
64 the child is threatened. These conditions may include an  
65 emergency situation when there is reasonable cause to believe  
66 that any child in the home is or has been sexually abused or  
67 sexually exploited, or reasonable cause to believe that the  
68 following conditions threaten the health, life, or safety of any  
69 child in the home:

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

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

75 (C) Nutritional deprivation;

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

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

78 (F) Substantial emotional injury inflicted by a parent,  
79 guardian or custodian;

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

82 (H) The parent, guardian or custodian's abuse of alcohol or  
83 drugs or other controlled substance as defined in section one  
84 hundred one, article one, chapter sixty-a of this code, has  
85 impaired his or her parenting skills to a degree as to pose an  
86 imminent risk to a child's health or safety; or

87 (I) Any other condition that threatens the health, life, or  
88 safety of any child in the home.

89 "Neglected child" means a child:

90 (A) Whose physical or mental health is harmed or threatened  
91 by a present refusal, failure or inability of the child's parent,

92 guardian or custodian to supply the child with necessary food,  
93 clothing, shelter, supervision, medical care or education, when  
94 that refusal, failure or inability is not due primarily to a lack of  
95 financial means on the part of the parent, guardian or custodian;  
96 or

97 (B) Who is presently without necessary food, clothing,  
98 shelter, medical care, education or supervision because of the  
99 disappearance or absence of the child's parent or custodian;

100 (C) "Neglected child" does not mean a child whose  
101 education is conducted within the provisions of section one,  
102 article eight, chapter eighteen of this code.

103 "Petitioner or co-petitioner" means the Department or any  
104 reputable person who files a child abuse or neglect petition  
105 pursuant to section six hundred one, article four, of this chapter.

106 "Permanency plan" means the part of the case plan which is  
107 designed to achieve a permanent home for the child in the least  
108 restrictive setting available.

109 "Respondent" means all parents, guardians, and custodians  
110 identified in the child abuse and neglect petition who are not  
111 petitioners or co-petitioners.

112 “Sexual abuse” means:

113 (A) Sexual intercourse, sexual intrusion, sexual contact, or  
114 conduct proscribed by section three, article eight-c, chapter  
115 sixty-one, which a parent, guardian or custodian engages in,  
116 attempts to engage in, or knowingly procures another person to  
117 engage in with a child notwithstanding the fact that for a child  
118 who is less than sixteen years of age the child may have  
119 willingly participated in that conduct or the child may have  
120 suffered no apparent physical injury or mental or emotional  
121 injury as a result of that conduct or, for a child sixteen years of  
122 age or older the child may have consented to that conduct or the  
123 child may have suffered no apparent physical injury or mental or  
124 emotional injury as a result of that conduct; ~~or~~

125 (B) Any conduct where a parent, guardian or custodian  
126 displays his or her sex organs to a child, or procures another  
127 person to display his or her sex organs to a child, for the purpose  
128 of gratifying the sexual desire of the parent, guardian or  
129 custodian, of the person making that display, or of the child, or  
130 for the purpose of affronting or alarming the child; ~~or~~ or



131        (C) Any of the offenses proscribed in sections seven, eight  
132 or nine of article eight-b, chapter sixty-one of this code.

133        “Sexual Assault” means any of the offenses proscribed in  
134 sections three, four or five of article eight-b, chapter sixty-one of  
135 this code.

136        “Sexual contact” means sexual contact as that term is  
137 defined in section one, article eight-b, chapter sixty-one of this  
138 code.

139        “Sexual exploitation” means an act where:

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

144        (B) A parent, guardian or custodian persuades, induces,  
145 entices or coerces a child to display his or her sex organs for the  
146 sexual gratification of the parent, guardian, custodian or a third  
147 person, or to display his or her sex organs under circumstances  
148 in which the parent, guardian or custodian knows that the display  
149 is likely to be observed by others who would be affronted or  
150 alarmed.

151       “Sexual intercourse” means sexual intercourse as that term  
152 is defined in section one, article eight-b, chapter sixty-one of this  
153 code.

154       “Sexual intrusion” means sexual intrusion as that term is  
155 defined in section one, article eight-b, chapter sixty-one of this  
156 code.

157       “Serious physical abuse” means bodily injury which creates  
158 a substantial risk of death, which causes serious or prolonged  
159 disfigurement, prolonged impairment of health or prolonged loss  
160 or impairment of the function of any bodily organ.

**ARTICLE 2. STATE RESPONSIBILITIES FOR CHILDREN.**

**§49-2-803. Persons mandated to report suspected abuse and neglect; requirements.**

- 1       (a) Any medical, dental or mental health professional,
- 2       Christian Science practitioner, religious healer, school teacher or
- 3       other school personnel, social service worker, child care or foster
- 4       care worker, emergency medical services personnel, peace
- 5       officer or law-enforcement official, humane officer, member of
- 6       the clergy, circuit court judge, family court judge, employee of
- 7       the Division of Juvenile Services, magistrate, youth camp

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

27 designated agent thereof, who may supplement the report or  
28 cause an additional report to be made.

29 (b) Any person over the age of eighteen who receives a  
30 disclosure from a credible witness or observes any sexual abuse  
31 or sexual assault of a child, shall immediately, and not more than  
32 forty-eight hours after receiving that disclosure or observing the  
33 sexual abuse or sexual assault, report the circumstances or cause  
34 a report to be made to the Department of Health and Human  
35 Resources or the State Police or other law-enforcement agency  
36 having jurisdiction to investigate the report. In the event that the  
37 individual receiving the disclosure or observing the sexual abuse  
38 or sexual assault has a good faith belief that the reporting of the  
39 event to the police would expose either the reporter, the subject  
40 child, the reporter's children or other children in the subject  
41 child's household to an increased threat of serious bodily injury,  
42 the individual may delay making the report while he or she  
43 undertakes measures to remove themselves or the affected  
44 children from the perceived threat of additional harm and the  
45 individual makes the report as soon as practicable after the threat  
46 of harm has been reduced. The law-enforcement agency that

47 receives a report under this subsection shall report the  
48 allegations to the Department of Health and Human Resources  
49 and coordinate with any other law-enforcement agency, as  
50 necessary to investigate the report.

51 (c) Any school teacher or other school personnel who  
52 receives a disclosure from a credible witness or personally  
53 observes any sexual contact, sexual intercourse or sexual  
54 intrusion of a child on school premises or on school buses or on  
55 transportation used in furtherance of a school purpose, as those  
56 terms are defined in article eight-b, chapter sixty-one, shall  
57 immediately report the circumstances or cause a report to be  
58 made to the State Police or other law-enforcement agency having  
59 jurisdiction to investigate the report: *Provided*, That this  
60 subsection will not impose any reporting duty upon school  
61 teachers or other school personnel who observe, or receive a  
62 disclosure of any consensual sexual contact, intercourse, or  
63 intrusion occurring between students who would not otherwise  
64 be subject to section three, five, seven or nine of article eight-8,  
65 chapter sixty-one of this code: *Provided, however*, That any  
66 teacher or other school personnel shall not be in violation of this

67 section if he or she makes known immediately to the principal or  
68 county superintendent a disclosure from a credible witness or  
69 personal observation of conduct described in this section:  
70 *Provided further,* That a principal or county superintendent made  
71 aware of such disclosure or observation from a teacher or other  
72 school personnel shall be responsible for immediately reporting  
73 such conduct to law enforcement.

74 (d) The reporting requirements contained in this section  
75 specifically include reported, disclosed or observed conduct  
76 involving or between students enrolled in a public or private  
77 institution of education, or involving a student and school  
78 teacher or personnel. When the alleged conduct is between two  
79 students or between a student and school teacher or personnel,  
80 the law enforcement body that received the report under this  
81 section is required to make such a report under this section shall  
82 additionally immediately notify the students' parents, guardians,  
83 and custodians about the allegations.

84 ~~(c)~~(e) Nothing in this article is intended to prevent  
85 individuals from reporting suspected abuse or neglect on their

86 own behalf. In addition to those persons and officials specifically  
87 required to report situations involving suspected abuse or neglect  
88 of children, any other person may make a report if that person  
89 has reasonable cause to suspect that a child has been abused or  
90 neglected in a home or institution or observes the child being  
91 subjected to conditions or circumstances that would reasonably  
92 result in abuse or neglect.

**§49-2-812. Failure to report; penalty.**

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

10        (b) Any person, official or institution required by this article  
11 to report a case involving a child known or suspected to be

12 sexually assaulted or sexually abused, or student known or  
13 suspected to have been involved in any sexual contact, sexual  
14 intercourse or sexual intrusion on school premises, who  
15 knowingly fails to do so or knowingly prevents another person  
16 acting reasonably from doing so, is guilty of a misdemeanor and,  
17 upon conviction thereof, shall be confined in jail not more than  
18 one year or fined not more than \$10,000, or both.