

COMMITTEE SUBSTITUTE

for

H. B. 2939

(BY DELEGATE(S) B. WHITE)

(Originating in the Committee on the Judiciary)

[February 26, 2015]

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 student, credible witness or
53 personally observes any sexual contact, sexual intercourse or
54 sexual intrusion of a child on school premises or on school buses
55 or on transportation used in furtherance of a school purpose, as
56 those 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.

66 (d) The reporting requirements contained in this section
67 specifically include reported, disclosed or observed conduct
68 involving or between students enrolled in a public or private
69 institution of education, or involving a student and school
70 teacher or personnel. When the alleged conduct is between two
71 students or between a student and school teacher or personnel,
72 the law enforcement body that received the report under this
73 section is required to make such a report under this section shall
74 additionally immediately notify the students' parents, guardians,
75 and custodians about the allegations.

76 ~~(c)~~(e) Nothing in this article is intended to prevent
77 individuals from reporting suspected abuse or neglect on their
78 own behalf. In addition to those persons and officials specifically
79 required to report situations involving suspected abuse or neglect
80 of children, any other person may make a report if that person
81 has reasonable cause to suspect that a child has been abused or
82 neglected in a home or institution or observes the child being
83 subjected to conditions or circumstances that would reasonably
84 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.

