

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

House Bill 2758

**FISCAL
NOTE**

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BYRD AND ISNER

[BY REQUEST OF THE WEST VIRGINIA SUPREME COURT
OF APPEALS]

[Introduced March 1, 2017; Referred
to the Committee on the Judiciary.]

1 A BILL to amend and reenact §49-1-201 of the Code of West Virginia, 1931, as amended;
 2 relating to amending the definition of “abused child” to include a child conceived as a
 3 result of an act of sexual assault.

Be it enacted by the Legislature of West Virginia:

1 That §49-1-201 of the Code of West Virginia, 1931, as amended, be amended and
 2 reenacted to read as follows:

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

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

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

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

9 “Abused child” ~~means a~~ means:

10 (1) A child whose health or welfare is being harmed or threatened by:

11 (A) A parent, guardian or custodian who knowingly or intentionally inflicts, attempts to
 12 inflict or knowingly allows another person to inflict, physical injury or mental or emotional injury,
 13 upon the child or another child in the home. Physical injury may include an injury to the child as
 14 a result of excessive corporal punishment;

15 (B) Sexual abuse or sexual exploitation;

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

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

20 (2) A child conceived as a result of an act of sexual assault as defined in this section, or
21 pursuant to a similar law of another state, territory, possession, or Native American tribe where
22 the offense occurred: *Provided*, That the victim of the sexual assault shall not be determined to
23 be an abusing parent as a result of the sexual assault.

24 “Abusing parent” means a parent, guardian or other custodian, regardless of his or her
25 age, whose conduct has been 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 six, article four of this chapter, means a
28 respondent parent, guardian, or other custodian who has been adjudicated by the court to have
29 not condoned the abuse or neglect and has not been able to stop the abuse or neglect of the
30 child or children due to being the victim of domestic violence as defined by section two hundred
31 two, article twenty-seven, chapter forty-eight of this code which was perpetrated by the same
32 person or persons determined to have abused or neglected the child or children.

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

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

35 (B) Identifying, preventing and remedying conditions which cause child abuse and
36 neglect;

37 (C) Preventing the unnecessary removal of children from their families by identifying
38 family problems and assisting families in resolving problems which could lead to a removal of
39 children and a breakup of the family;

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

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

45 (F) Assuring the adequate care of children or juveniles who have been placed in the

46 custody of the department or third parties.

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

51 “Imminent danger to the physical well-being of the child” means an emergency situation
52 in which the welfare or the life of the child is threatened. These conditions may include an
53 emergency situation when there is reasonable cause to believe that any child in the home is or
54 has been sexually abused or sexually exploited, or reasonable cause to believe that the
55 following conditions threaten the health, life, or safety of any child in the home:

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

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

60 (C) Nutritional deprivation;

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

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

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

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

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

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

70 “Neglected child” means a child:

71 (A) Whose physical or mental health is harmed or threatened by a present refusal,

72 failure or inability of the child's parent, guardian or custodian to supply the child with necessary
73 food, clothing, shelter, supervision, medical care or education, when that refusal, failure or
74 inability is not due primarily to a lack of financial means on the part of the parent, guardian or
75 custodian; or

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

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

80 "Petitioner or copetitioner" means the department or any reputable person who files a
81 child abuse or neglect petition pursuant to section six hundred one, article four, of this chapter.

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

84 "Respondent" means all parents, guardians, and custodians identified in the child abuse
85 and neglect petition who are not petitioners or copetitioners.

86 "Sexual abuse" means:

87 (A) Sexual intercourse, sexual intrusion, sexual contact, or conduct proscribed by
88 section three, article eight-c, chapter sixty-one, which a parent, guardian or custodian engages
89 in, attempts to engage in, or knowingly procures another person to engage in with a child
90 notwithstanding the fact that for a child who is less than sixteen years of age the child may have
91 willingly participated in that conduct or the child may have suffered no apparent physical injury
92 or mental or emotional injury as a result of that conduct or, for a child sixteen years of age or
93 older the child may have consented to that conduct or the child may have suffered no apparent
94 physical injury or mental or emotional injury as a result of that conduct;

95 (B) Any conduct where a parent, guardian or custodian displays his or her sex organs to
96 a child, or procures another person to display his or her sex organs to a child, for the purpose of
97 gratifying the sexual desire of the parent, guardian or custodian, of the person making that

98 display, or of the child, or for the purpose of affronting or alarming the child; or

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

101 “Sexual assault” means any of the offenses proscribed in sections three, four or five of
102 article eight-b, chapter sixty-one of this code.

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

105 “Sexual exploitation” means an act where:

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

109 (B) A parent, guardian or custodian persuades, induces, entices or coerces a child to
110 display his or her sex organs for the sexual gratification of the parent, guardian, custodian or a
111 third person, or to display his or her sex organs under circumstances in which the parent,
112 guardian or custodian knows that the display is likely to be observed by others who would be
113 affronted or alarmed.

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

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

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

NOTE: The Rape Survivor Child Custody Act of 2015 (42 USC 14043h, *et. seq.*) provides incentives for states that have or enact statutes terminating the parental rights of rapist; therefore, the purpose of this bill is to include children conceived as a result of a sexual assault in the definition of “abused child.”

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