

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

House Bill 2870

BY DELEGATES FOSTER, G. AND HANSHAW

[Introduced March 9, 2017; Referred
to the Committee on the Judiciary.]

1 A BILL to amend and reenact §15-2C-1 of the Code of West Virginia, 1931, as amended; to
 2 amend and reenact §16-3C-1 of said code; to amend and reenact §28-1-2 of said code;
 3 to amend and reenact §33-4-20 of said code; to amend and reenact §48-9-201 and §48-
 4 9-205 of said code; to amend and reenact §61-2-14h of said code; to amend and reenact
 5 §61-6-25 of said code, all relating to addressing certain cross references in the code that
 6 are no longer correct with regard to definitions of “child abuse and neglect,” “child abuse
 7 or neglect,” “juvenile offender,” “delinquent,” “child abuse,” “domestic violence,” “abused
 8 child” and “child sexual abuse.”

Be it enacted by the Legislature of West Virginia:

1 That §15-2C-1 of the Code of West Virginia, 1931, as amended, be amended and
 2 reenacted; that §16-3C-1 of said code be amended and reenacted; that §28-1-2 of said code be
 3 amended and reenacted; that §33-4-20 of said code be amended and reenacted; that §48-9-201
 4 and §48-9-205 of said code be amended and reenacted; that §61-2-14h of said code be amended
 5 and reenacted; and that §61-6-25 of said code be amended and reenacted, all to read as follows:

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 2C. CENTRAL ABUSE REGISTRY.

§15-2C-1. Definitions.

1 The following words when used in this article have meanings ascribed to them in this
 2 section, except in those instances where the context clearly indicates a different meaning:

3 (a) "Central abuse registry" or "registry" means the registry created by this article which
 4 shall contain the names of individuals who have been convicted of a felony or a misdemeanor
 5 offense constituting abuse, neglect or misappropriation of the property of a child or an
 6 incapacitated adult or an adult receiving behavioral health services.

7 (b) "Child abuse and neglect" or "child abuse or neglect" means ~~those terms as defined in~~
 8 ~~section three, article one, chapter forty-nine of this code, and shall include~~ physical injury, mental
 9 or emotional injury, sexual abuse, sexual exploitation, sale or attempted sale or negligent

10 treatment or maltreatment of a child by a parent, guardian or custodian who is responsible for the
11 child's welfare, under circumstances which harm or threaten the health and welfare of the child
12 and includes any act with respect to a child which is a crime against the person pursuant to article
13 two, chapter sixty-one of this code, any act which is unlawful pursuant to article eight-d of said
14 chapter sixty-one, and any offense with respect to a child which is enumerated in section three of
15 this article.

16 (c) "Abuse or neglect of an incapacitated adult" means "abuse," "neglect" and
17 "incapacitated adult" as those terms are defined in section one, article six, chapter nine, and shall
18 include any act with respect to an incapacitated adult which is a crime against the person pursuant
19 to article two, chapter sixty-one of this code, and any offense with respect to an incapacitated
20 adult which is enumerated in section three of this article.

21 (d) "Adult receiving behavioral health services" means a person over the age of eighteen
22 years who is receiving any behavioral health service from a licensed behavioral health provider
23 or any behavioral health provider whose services are paid for, in whole or in part, by Medicaid or
24 Medicare.

25 (e) "Conviction" of a felony or a misdemeanor means an adjudication of guilt by a court or
26 jury following a hearing on the merits, or entry of a plea of guilty or nolo contendere.

27 (f) "Residential care facility" means any facility where a child or an incapacitated adult or
28 an adult receiving behavioral health services resides which is subject to registration, licensure or
29 certification by the Department of Health and Human Resources, and shall include nursing
30 homes, personal care homes, residential board and care homes, adult family care homes, group
31 homes, legally unlicensed service providers, residential child care facilities, family based foster
32 care homes, specialized family care homes and intermediate care facilities for the mentally
33 retarded.

34 (g) "Misappropriation of property" means any act which is a crime against property under
35 article three, chapter sixty-one of this code with respect to a child in a residential care facility or

36 an incapacitated adult or an adult receiving behavioral health services in a residential care facility
37 or a child or an incapacitated adult or an adult receiving behavioral health services who is a
38 recipient of home care services.

39 (h) "Home care" or "home care services" means services provided to children or
40 incapacitated adults or adults receiving behavioral health services in the home through a hospice
41 provider, a community care provider, a home health agency, through the Medicaid waiver
42 program, or through any person when that service is reimbursable under the state Medicaid
43 program.

44 (i) "Requester" means the West Virginia Department of Education, any residential care
45 facility, any state licensed day care center, any qualified entity as defined in this section or any
46 provider of home care services or an adult receiving behavioral health services providing to the
47 Central Abuse Registry the name of an individual and other information necessary to identify that
48 individual, and either: (1) Certifying that the individual is being considered for employment or
49 service as a volunteer by the requester or for a contractual relationship with the requester wherein
50 the individual will provide services to a child or an incapacitated adult or an adult receiving
51 behavioral health services for compensation; or contractors and vendors who have or may have
52 unsupervised access to the child, disabled or elderly person for whom the qualified entity provides
53 care; or (2) certifying that an allegation of abuse, neglect or misappropriation of property has been
54 made against the individual.

55 (j) "Qualified entity" means any business, agency or organization that provides care,
56 treatment, education, training, instruction, supervision or recreation for children, the elderly or
57 individuals with disabilities and is a public, private or not-for-profit entity within the State of West
58 Virginia and meets the definition of qualified entity under the federal National Child Protection Act
59 of 1993; P.L. 103-209 as amended by the Volunteers for Children Act; P.L. 105-251.

CHAPTER 16. PUBLIC HEALTH.

**ARTICLE 3C. AIDS-RELATED MEDICAL TESTING AND RECORDS
CONFIDENTIALITY ACT.**

§16-3C-1. Definitions.

1 When used in this article:

2 (a) "AIDS" means acquired immunodeficiency syndrome.

3 (b) "Bureau" means the Bureau for Public Health.

4 (c) "Commissioner" means the commissioner of the Bureau for Public Health.

5 (d) "Convicted" includes pleas of guilty and pleas of nolo contendere accepted by the court
6 having jurisdiction of the criminal prosecution, a finding of guilty following a jury trial or a trial to a
7 court and an adjudicated juvenile offender ~~as defined in sections two and four~~ under article ~~one~~
8 four, chapter forty-nine of this code.

9 (e) "Department" means the State Department of Health and Human Resources.

10 (f) "Funeral director" has the same meaning ascribed to such term in section three, article
11 six, chapter thirty of this code.

12 (g) "Funeral establishment" has the same meaning ascribed to that term in section three,
13 article six, chapter thirty of this code.

14 (h) "HIV" means the human immunodeficiency virus identified as the causative agent of
15 AIDS.

16 (i) "HIV-related test" means a test for the HIV antibody or antigen or any future valid test
17 approved by the bureau, the federal drug administration or the Centers for Disease Control and
18 Prevention.

19 (j) "Health facility" means a hospital, nursing home, physician's office, clinic, blood bank,
20 blood center, sperm bank, laboratory or other health care institution.

21 (k) "Health care provider" means any physician, dentist, nurse, paramedic, psychologist
22 or other person providing medical, dental, nursing, psychological or other health care services of

23 any kind.

24 (l) "Health Information Exchange" means the electronic movement of health-related
25 information in accord with law and nationally recognized standards.

26 (m) "High risk behavior" means behavior by a person including, but not limited to: (i)
27 Unprotected sex with a person who is living with HIV; (ii) unprotected sex in exchange for money
28 or drugs; (iii) unprotected sex with multiple partners; (iv) anonymous unprotected sex; (v) or
29 needle sharing; (vi) diagnosis of a sexually transmitted disease; or (vii) unprotected sex or sharing
30 injecting equipment in a high HIV prevalence setting or with a person who is living with HIV.

31 (n) "Medical or emergency responders" means paid or volunteer firefighters, law-
32 enforcement officers, emergency medical technicians, paramedics, or other emergency service
33 personnel, providers or entities acting within the usual course of their duties; good samaritans
34 and other nonmedical and nonemergency personnel providing assistance in emergencies; funeral
35 directors; health care providers; commissioner of the Bureau for Public Health; and all employees
36 thereof and volunteers associated therewith.

37 (o) "Patient" or "test subject" or "subject of the test" means the person upon whom a HIV
38 test is performed, or the person who has legal authority to make health care decisions for the test
39 subject.

40 (p) "Permitted purpose" is a disclosure permitted by the Health Insurance Portability and
41 Accountability Act of 1996 as amended, or a disclosure consented to or authorized by a patient
42 or test subject.

43 (q) "Person" includes any natural person, partnership, association, joint venture, trust,
44 public or private corporation or health facility.

45 (r) "Release of test results" means a permitted or authorized disclosure of HIV-related test
46 results.

47 (s) "Significant exposure" means:

48 (1) Exposure to blood or body fluids through needlestick, instruments, sharps, surgery or

49 traumatic events; or

50 (2) Exposure of mucous membranes to visible blood or body fluids, to which universal
51 precautions apply according to the national Centers for Disease Control and Prevention, and
52 laboratory specimens that contain HIV (e.g. suspensions of concentrated virus); or

53 (3) Exposure of skin to visible blood or body fluids, when the exposed skin is chapped,
54 abraded or afflicted with dermatitis or the contact is prolonged or involving an extensive area.

55 (t) "Source patient" means any person whose body fluids have been the source of a
56 significant exposure to a medical or emergency responder.

57 (u) "Targeted testing" means performing an HIV-related test for sub-populations at higher
58 risk, typically defined on the basis of behavior, clinical or demographic characteristics.

59 (v) "Victim" means the person or persons to whom transmission of bodily fluids from the
60 perpetrator of the crimes of sexual abuse, sexual assault, incest or sexual molestation occurred
61 or was likely to have occurred in the commission of such crimes.

CHAPTER 28. STATE CORRECTIONAL AND PENAL INSTITUTIONS.

ARTICLE 1. COMMITMENT OF YOUTHFUL MALE OFFENDERS.

§28-1-2. Commitment; age limits; physical, educational and psychological examinations; admission; transfer and placement.

1 (a) Any male youth between the ages of ten and eighteen years may be committed to the
2 custody of the Commissioner of Corrections by a circuit court of this state in the manner
3 prescribed in article ~~five~~ four, chapter forty-nine of this code; and further, any male youth who has
4 been adjudged delinquent pursuant to ~~subdivision (1), section four, article one~~ four, chapter forty-
5 nine of this code, who, as a result thereof, was placed on probation and has been found, in a
6 proceeding pursuant to the procedural requirements of article ~~five~~ four, chapter forty-nine of this
7 code, to have violated a term of probation, prior to the attainment of his or her twentieth birthday,
8 which constitutes a criminal offense, may be committed to the custody of the Commissioner of

9 Corrections as a youthful offender.

10 (b) Every youth committed hereunder shall, following the dispositional proceeding, be
11 transferred to the place or places designated by the Commissioner of Corrections for complete
12 physical, educational and psychological examinations, including all appropriate tests, to be
13 completed as soon as possible, the completion of the physical examinations to be within twenty
14 days. Such youth shall be housed in a manner so as to prevent the spread of infectious disease.
15 Following disposition and prior to transfer to the custody of the Commissioner of Corrections,
16 each youth shall be allowed to visit with his or her relatives, without being committed to jail for a
17 period of not less than one hour. The cost of the examinations herein shall be borne by the
18 committing county. The youth shall be provided all treatment and rehabilitation indicated by such
19 examinations.

20 In lieu of the physical examinations and tests provided for herein, the court may, in the
21 absence of objection, have the county health officer or other local health care facility perform
22 physical and mental examinations and tests, so long as such examinations and tests are
23 performed prior to the dispositional proceeding. Except as otherwise provided by law, no child
24 shall be committed to a jail following a dispositional proceeding solely to await a physical,
25 educational or mental examination or the results thereof.

26 (c) All such examinations shall be private. No youth who is mentally ill or significantly
27 intellectually disabled shall be committed to, or retained by, the Commissioner of Corrections, but
28 shall be returned to the committing court for further disposition. No youth who has a serious
29 infectious disease shall be retained in the custody of the Commissioner of Corrections, but shall
30 be transferred to an appropriate treatment facility. Detailed medical records shall be kept of every
31 youth.

32 (d) The results of any such physical, educational and psychological examinations, together
33 with a copy of the petition, the adjudicatory order and the dispositional order shall accompany
34 every youth committed to the Commissioner of Corrections, without which such youth shall not

35 be accepted. The commissioner, or his or her designated representative, shall review the records
36 of each youth committed to assure that no youth is illegally detained in an inappropriate facility or
37 custodial situation.

38 (e) The Commissioner of Corrections shall have the authority to transfer and place such
39 youth in any of the centers or homes or halfway programs which shall be established, and in less
40 restrictive settings, whether under his or her jurisdiction or private nonprofit residential facilities,
41 as he or she may deem appropriate to promote the rehabilitation of such youth. To the extent
42 possible, no youth under the age of fifteen shall be in regular contact with youths between the
43 ages of sixteen and eighteen.

CHAPTER 33. INSURANCE.

ARTICLE 4. GENERAL PROVISIONS.

§33-4-20. Cancellation, nonrenewal or limitation of coverage of life or sickness and accident insurance.

1 (a) For purposes of this section, the following definitions shall apply:

2 (1) "Abuse," as used in this section, means the occurrence of one or more of the following
3 acts between family or household members:

4 (A) Attempting to cause or intentionally, knowingly or recklessly causing physical harm to
5 another with or without dangerous or deadly weapons;

6 (B) Placing another in reasonable apprehension of physical harm;

7 (C) Creating fear of physical harm by harassment, psychological abuse or threatening
8 acts;

9 (D) Committing either sexual assault or sexual abuse as those terms are defined in articles
10 eight-b and eight-d, chapter sixty-one of this code;

11 (E) Holding, confining, detaining or abducting another person against that person's will;

12 (F) Intentionally or recklessly damaging, destroying or taking the tangible property of

13 another individual;

14 (G) Insulting, taunting or challenging another individual or engaging in a course of alarming
15 or distressing conduct in a manner which is likely to provoke a violent or disorderly response or
16 which is likely to cause humiliation, degradation or fear in another individual;

17 (H) Trespassing on or in the property of another individual, or on or in property from which
18 the trespasser has been excluded by court order;

19 (I) ~~Child abuse or neglect, as defined in section three, article one, chapter forty-nine of this~~
20 ~~code~~ Physical injury, mental or emotional injury, sexual abuse, sexual exploitation, sale or
21 attempted sale or negligent treatment or maltreatment of a child by a parent, guardian or custodian
22 who is responsible for the child's welfare, under circumstances which harm or threaten the health
23 and welfare of the child;

24 (J) Kidnapping, concealment or removal of a minor child from his or her custodian or from
25 a person entitled to visitation, as set forth in sections fourteen through fourteen-e, article two,
26 chapter sixty-one of this code.

27 (2) "Family or household member" means current or former spouses, persons living as
28 spouses, persons who formerly resided as spouses, parents, children and stepchildren, current
29 or former sexual or intimate partners, other persons related by blood or marriage, persons who
30 are presently or in the past have resided or cohabited together or a person with whom the victim
31 has a child in common.

32 (3) "Victim of abuse," as used in this section, means an individual who has been or is
33 subject to abuse, including, but not limited to, an individual who seeks, has sought or should have
34 sought medical or psychological treatment for abuse, protection from abuse or shelter from abuse.

35 (b) For all policies issued or renewed after the effective date of this section, no person or
36 entity engaged in the business of providing life or health insurance, or both, in this state may:

37 (1) Deny, refuse to issue, refuse to renew, refuse to reissue, cancel or otherwise terminate
38 an insurance policy or restrict coverage on any individual because that individual is, has been or

39 may be the victim of abuse;

40 (2) Add any surcharge or rating factor to a premium of an insurance policy because an
41 individual has been or may be the victim of abuse;

42 (3) Exclude or limit coverage for losses or deny a claim incurred because an individual
43 has been or may be the victim of abuse; or

44 (4) Require as part of the application process any information regarding whether that
45 individual has been or may be the victim of abuse.

46 (c) Nothing in this section may be construed to prohibit a person from declining to issue
47 an insurance policy insuring the life of an individual who is or has been the victim of abuse if the
48 perpetrator of abuse is the applicant or would be the owner of the insurance policy.

49 (d) Nothing in this section may be construed to prohibit a person from underwriting or
50 rating a risk on the basis of a preexisting physical or mental condition, even if the condition had
51 been caused by abuse: *Provided, That:*

52 (1) The person routinely underwrites or rates the condition in the same manner with
53 respect to an insured or an applicant who is not a victim of abuse;

54 (2) The fact that an individual is, has been, or may be the victim of abuse may not be
55 considered a physical or mental condition; and

56 (3) The underwriting or rating is not used to evade the intent of this law or any other
57 provision of law. A person may not be held civilly or criminally liable for any cause of action which
58 may be brought because of compliance with this section.

CHAPTER 48. DOMESTIC RELATIONS.

ARTICLE 9. ALLOCATION OF CUSTODIAL RESPONSIBILITY AND DECISION- MAKING RESPONSIBILITY OF CHILDREN.

PART 2. PARENTING PLANS.

§48-9-201. Parenting agreements.

1 (a) If the parents agree to one or more provisions of a parenting plan, the court shall so
2 order, unless it makes specific findings that:

3 (1) The agreement is not knowing or voluntary; or

4 (2) The plan would be harmful to the child.

5 (b) The court, at its discretion and on any basis it deems sufficient, may conduct an
6 evidentiary hearing to determine whether there is a factual basis for a finding under subdivision
7 (1) or (2), subsection (a) of this section. When there is credible information that child abuse as
8 ~~defined by section 49-1-3 of this code~~ or domestic violence as defined by section ~~27-202 of this~~
9 ~~code~~ two hundred two, article twenty-seven of this chapter, has occurred, a hearing is mandatory
10 and if the court determines that abuse has occurred, appropriate protective measures shall be
11 ordered.

12 (c) If an agreement, in whole or in part, is not accepted by the court under the standards
13 set forth in subsection (a) of this section, the court shall allow the parents the opportunity to
14 negotiate another agreement.

15 (d) For purposes of this section "child abuse" means physical injury, mental or emotional
16 injury, sexual abuse, sexual exploitation, sale or attempted sale or negligent treatment or
17 maltreatment of a child by a parent, guardian or custodian who is responsible for the child's
18 welfare, under circumstances which harm or threaten the health and welfare of the child.

§48-9-205. Permanent parenting plan.

1 (a) A party seeking a judicial allocation of custodial responsibility or decision-making
2 responsibility under this article shall file a proposed parenting plan with the court. Parties may file
3 a joint plan. A proposed plan shall be verified and shall state, to the extent known or reasonably
4 discoverable by the filing party or parties:

5 (1) The name, address and length of residence of any adults with whom the child has lived
6 for one year or more, or in the case of a child less than one year old, any adults with whom the
7 child has lived since the child's birth;

8 (2) The name and address of each of the child's parents and any other individuals with
9 standing to participate in the action under section one hundred three of this article;

10 (3) A description of the allocation of care taking and other parenting responsibilities
11 performed by each person named in subdivisions (1) and (2) of this subsection during the twenty-
12 four months preceding the filing of an action under this article;

13 (4) A description of the work and child-care schedules of any person seeking an allocation
14 of custodial responsibility, and any expected changes to these schedules in the near future;

15 (5) A description of the child's school and extracurricular activities;

16 (6) A description of any of the limiting factors as described in section two hundred nine of
17 this article that are present, including any restraining orders against either parent to prevent
18 domestic or family violence, by case number and jurisdiction;

19 (7) Required financial information; and

20 (8) A description of the known areas of agreement and disagreement with any other
21 parenting plan submitted in the case.

22 The court shall maintain the confidentiality of any information required to be filed under
23 this section when the person giving that information has a reasonable fear of domestic abuse and
24 disclosure of the information would increase that fear.

25 (b) (1) The court shall develop a process to identify cases in which there is credible
26 information that child abuse or neglect, ~~as defined in section three, article one, chapter forty-nine~~
27 ~~of this code,~~ or domestic violence as defined in section two hundred two, article twenty-seven of
28 this chapter has occurred. The process shall include assistance for possible victims of domestic
29 abuse in complying with subdivision (6), subsection (a) of this section, and referral to appropriate
30 resources for safe shelter, counseling, safety planning, information regarding the potential impact
31 of domestic abuse on children and information regarding civil and criminal remedies for domestic
32 abuse. The process shall also include a system for ensuring that jointly submitted parenting plans
33 that are filed in cases in which there is credible information that child abuse or domestic abuse

34 has occurred receive the court review that is mandated by subsection (b), section two hundred
35 one of this article.

36 (2) For purposes of this section “child abuse or neglect” means physical injury, mental or
37 emotional injury, sexual abuse, sexual exploitation, sale or attempted sale or negligent treatment
38 or maltreatment of a child by a parent, guardian or custodian who is responsible for the child's
39 welfare, under circumstances which harm or threaten the health and welfare of the child.

40 (c) Upon motion of a party and after consideration of the evidence, the court shall order a
41 parenting plan consistent with the provisions of sections two hundred six, two hundred seven, two
42 hundred eight and two hundred nine of this article, containing:

43 (1) A provision for the child's living arrangements and each parent's custodial
44 responsibility, which shall include either:

45 (A) A custodial schedule that designates in which parent's home each minor child will
46 reside on given days of the year; or

47 (B) A formula or method for determining such a schedule in sufficient detail that, if
48 necessary, the schedule can be enforced in subsequent proceedings by the court;

49 (2) An allocation of decision-making responsibility as to significant matters reasonably
50 likely to arise with respect to the child;

51 (3) A provision consistent with section two hundred two of this article for resolution of
52 disputes that arise under the plan, and remedies for violations of the plan; and

53 (4) A plan for the custody of the child should one or both of the parents as a member of
54 the National Guard, a reserve component or an active duty component be mobilized, deployed or
55 called to active duty.

56 (d) A parenting plan may, at the court's discretion, contain provisions that address matters
57 that are expected to arise in the event of a party's relocation, or provide for future modifications
58 in the parenting plan if specified contingencies occur.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 2. CRIMES AGAINST THE PERSON.

§61-2-14h. Prohibition of purchase or sale of child; penalty; definitions; exceptions.

1 (a) Any person or agency who knowingly offers, gives or agrees to give to another person
2 money, property, service or other thing of value in consideration for the recipient's locating,
3 providing or procuring a minor child for any purpose which entails a transfer of the legal or physical
4 custody of said child, including, but not limited to, adoption or placement, is guilty of a felony and
5 subject to fine and imprisonment as provided herein.

6 (b) Any person who knowingly receives, accepts or offers to accept money, property,
7 service or other thing of value to locate, provide or procure a minor child for any purpose which
8 entails a transfer of the legal or physical custody of said child, including, but not limited to, adoption
9 or placement, is guilty of a felony and subject to fine and imprisonment as provided herein.

10 (c) Any person who violates the provisions of this section is guilty of a felony and, upon
11 conviction thereof, may be confined in the state correctional facility for not less than one year nor
12 more than ten years or, in the discretion of the court, be confined in jail not more than one year
13 and fined not less than \$2,000 nor more than \$10,000.

14 (d) A child whose parent, guardian or custodian has sold or attempted to sell said child in
15 violation of the provisions of article twenty-two, chapter forty-eight may be deemed an abused
16 child as defined by section ~~three~~ two hundred one, article one, chapter forty-nine of this code. The
17 court may place such a child in the custody of the department of health and human resources or
18 with such other responsible person as the best interests of the child dictate.

19 (e) This section does not prohibit the payment or receipt of the following:

20 (1) Fees paid for reasonable and customary services provided by the department of health
21 and human resources or any licensed or duly authorized adoption or child-placing agency.

22 (2) Reasonable and customary legal, medical, hospital or other expenses incurred in

23 connection with the pregnancy, birth and adoption proceedings.

24 (3) Fees and expenses included in any agreement in which a woman agrees to become
25 a surrogate mother.

26 (4) Any fees or charges authorized by law or approved by a court in a proceeding relating
27 to the placement plan, prospective placement or placement of a minor child for adoption.

28 (f) At the final hearing on the adoption as provided in article twenty-two, chapter forty-eight
29 of this code, an affidavit of any fees and expenses paid or promised by the adoptive parents shall
30 be submitted to the court.

ARTICLE 6. CRIMES AGAINST THE PEACE.

§61-6-25. Falsely reporting child abuse.

1 (a) Any person who knowingly and intentionally reports or causes to be reported to a law-
2 enforcement officer, child protective service worker or judicial officer that another has committed
3 child sexual abuse, child abuse or neglect ~~as such are defined in section three, article one, chapter~~
4 ~~forty-nine of this code~~ who when doing so knows or has reason to know such accusation is false
5 and who does it with the intent to influence a child custody decision shall be guilty of a
6 misdemeanor, and, upon conviction, shall be fined not more than \$1,000, sentenced to not more
7 than sixty hours of court-approved community service, or both.

8 (b) In addition to any other sanctions imposed by the provisions of this section, any person
9 convicted of a violation of this section shall be required to attend and complete a court-approved
10 parenting class.

11 (c) For purposes of this section:

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

16 (2) "Child sexual abuse" means:

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

22 (i) Sexual intercourse;

23 (ii) Sexual intrusion; or

24 (iii) Sexual contact;

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

30 (i) Sexual intercourse;

31 (ii) Sexual intrusion; or

32 (iii) Sexual contact;

33 (C) Any conduct whereby a parent, guardian or custodian displays his or her sex organs
34 to a child, or procures another person to display his or her sex organs to a child, for the purpose
35 of gratifying the sexual desire of the parent, guardian or custodian, of the person making such
36 display, or of the child, or for the purpose of affronting or alarming the child.

NOTE: The purpose of this bill is to address certain cross references in the code that are no longer correct with regard to definitions of "child abuse and neglect," "child abuse or neglect," "juvenile offender," "delinquent," "child abuse," "domestic violence," "abused child" and "child sexual abuse."

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