

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Introduced

Senate Bill 362

BY SENATORS TRUMP, BALDWIN, AND CLINE

[Introduced January 24, 2018; 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, relating
2 to definitions related, but not limited to, child abuse and neglect.

Be it enacted by the Legislature of West Virginia:

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

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

7 “Abused child” means:

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

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

13 (B) Sexual abuse or sexual exploitation;

14 (C) The sale or attempted sale of a child by a parent, guardian, or custodian in violation of
15 §61-2-14h of this code;

16 (D) Domestic violence as defined in §48-27-202 of this code; or

17 (E) Human trafficking of a child, or attempting to traffic a child, in violation of §61-14-2 of
18 this code.

19 (2) A child conceived as a result of sexual assault, as that term is defined in this section,
20 or as a result of the violation of a criminal law of another jurisdiction which has the same essential
21 elements: *Provided*, That no victim of sexual assault may be determined to be an abusive parent,

22 as that term is defined in this section, based upon being a victim of sexual assault.

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

26 “Battered parent” for the purposes of §49-4-601 et seq. of this code means a respondent
27 parent, guardian, or other custodian who has been adjudicated by the court to have not condoned
28 the abuse or neglect and has not been able to stop the abuse or neglect of the child or children
29 due to being the victim of domestic violence as defined by §48-27-202 of this code which was
30 perpetrated by the same person or persons determined to have abused or neglected the child or
31 children.

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

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

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

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

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

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

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

45 “Condition requiring emergency medical treatment” means a condition which, if left
46 untreated for a period of a few hours, may result in permanent physical damage; that condition
47 includes, but is not limited to, profuse or arterial bleeding, dislocation or fracture, unconsciousness

48 and evidence of ingestion of significant amounts of a poisonous substance.

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

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

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

58 (C) Nutritional deprivation;

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

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

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

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

63 (H) The parent, guardian, or custodian’s abuse of alcohol or drugs or other controlled
64 substance as defined in §60A-1-101 of this code, has impaired his or her parenting skills to a
65 degree as to pose an imminent risk to a child’s health or safety; or

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

67 “Neglected child” means a child:

68 (A) Whose physical or mental health is harmed or threatened by a present refusal, failure
69 or inability of the child’s parent, guardian, or custodian to supply the child with necessary food,
70 clothing, shelter, supervision, medical care or education, when that refusal, failure or inability is
71 not due primarily to a lack of financial means on the part of the parent, guardian, or custodian;

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

74 (C) "Neglected child" does not mean a child whose education is conducted within the
75 provisions of §18-8-1 et seq, of this code.

76 "Petitioner or copetitioner" means the department or any reputable person who files a child
77 abuse or neglect petition pursuant to §49-4-601 et seq, of this code.

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

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

82 "Sexual abuse" means:

83 (A) Sexual intercourse, sexual intrusion, sexual contact, or conduct proscribed by §61-8c-
84 3 of this code, which a parent, guardian, or custodian engages in, attempts to engage in, or
85 knowingly procures another person to engage in with a child notwithstanding the fact that for a
86 child who is less than 16 years of age the child may have willingly participated in that conduct or
87 the child may have suffered no apparent physical injury or mental or emotional injury as a result
88 of that conduct or, for a child 16 years of age or older the child may have consented to that conduct
89 or the child may have suffered no apparent physical injury or mental or emotional injury as a result
90 of that conduct;

91 (B) Any conduct where a parent, guardian, or custodian displays his or her sex organs to
92 a child, or procures another person to display his or her sex organs to a child, for the purpose of
93 gratifying the sexual desire of the parent, guardian, or custodian, of the person making that
94 display, or of the child, or for the purpose of affronting or alarming the child; or

95 (C) Any of the offenses proscribed in §61-8b-7, §61-8b-8, or §61-8b-9 of this code.

96 "Sexual assault" means any of the offenses proscribed in §61-8b-3, §61-8b-4, or §61-8b-
97 5 of this code.

98 "Sexual contact" means sexual contact as that term is defined in §61-8b-1 of this code.

99 "Sexual exploitation" means an act where:

100 (A) A parent, custodian or guardian, whether for financial gain or not, persuades, induces,
101 entices or coerces a child to engage in sexually explicit conduct as that term is defined in §61-8c-
102 1 of this code;

103 (B) A parent, guardian, or custodian persuades, induces, entices or coerces a child to
104 display his or her sex organs for the sexual gratification of the parent, guardian, custodian or a
105 third person, or to display his or her sex organs under circumstances in which the parent,
106 guardian, or custodian knows that the display is likely to be observed by others who would be
107 affronted or alarmed; or

108 (C) A parent, guardian, or custodian knowingly maintains or makes available a child for
109 the purpose of engaging the child in commercial sexual activity in violation of §61-14-5 of this
110 code.

111 “Sexual intercourse” means sexual intercourse as that term is defined in §61-8b-1 of this
112 code.

113 “Sexual intrusion” means sexual intrusion as that term is defined in §61-8b-1 of this code.

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

NOTE: The purpose of this bill is to provide a clear definition of the terms “child abuse and neglect” and “child abuse or neglect,” which terms are operative throughout Chapter 49 but not clearly defined.

§49-1-201 has been completely rewritten; therefore, it has been completely underscored.