

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 216**

4 (By Senators Prezioso, Palumbo, Edgell, Foster,  
5 Kessler (Acting President), Minard, Unger,  
6 Williams, Boley, Jenkins, Snyder, Browning, McCabe, Stollings,  
7 Plymale, Laird, Miller, Klempa and Nohe)

8 \_\_\_\_\_  
9 [Originating in the Committee on the Judiciary;  
10 reported January 27, 2011.]

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12  
13 A BILL to amend and reenact §49-1-3 of the Code of West Virginia,  
14 1931, as amended, relating to modifying the definition of  
15 "imminent danger to the physical well-being of a child" with  
16 regard to child abuse and neglect to include alcohol and  
17 substance abuse on the part of the parent, guardian or  
18 custodian.

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

20 That §49-1-3 of the Code of West Virginia, 1931, as amended,  
21 be amended and reenacted to read as follows:

22 **ARTICLE 1. PURPOSES; DEFINITIONS.**

23 **§49-1-3. Definitions relating to abuse and neglect.**

24 As used in this chapter:

25 ~~(a)~~ (1) "Abused child" means a child whose health or welfare  
26 is harmed or threatened by:

27 ~~(1)~~ (A) A parent, guardian or custodian who knowingly or

1 intentionally inflicts, attempts to inflict or knowingly allows  
2 another person to inflict, physical injury or mental or emotional  
3 injury, upon the child or another child in the home; or

4 ~~(2)~~ (B) Sexual abuse or sexual exploitation; or

5 ~~(3)~~ (C) The sale or attempted sale of a child by a parent,  
6 guardian or custodian in violation of section sixteen, article  
7 four, chapter forty-eight of this code; or

8 ~~(4)~~ (D) Domestic violence as defined in section two hundred  
9 two, article twenty-seven, chapter forty-eight of this code.

10 In addition to its broader meaning, physical injury may  
11 include an injury to the child as a result of excessive corporal  
12 punishment.

13 ~~(b)~~ (2) "Abusing parent" means a parent, guardian or other  
14 custodian, regardless of his or her age, whose conduct, as alleged  
15 in the petition charging child abuse or neglect, has been adjudged  
16 by the court to constitute child abuse or neglect.

17 ~~(c)~~ (3) "Battered parent" means a parent, guardian or other  
18 custodian who has been judicially determined not to have condoned  
19 the abuse or neglect and has not been able to stop the abuse or  
20 neglect of the child or children due to being the victim of  
21 domestic violence as defined by section two hundred two, article  
22 twenty-seven, chapter forty-eight of this code, which domestic  
23 violence was perpetrated by the person or persons determined to  
24 have abused or neglected the child or children.

25 ~~(d)~~ (4) "Child abuse and neglect" or "child abuse or neglect"  
26 means physical injury, mental or emotional injury, sexual abuse,  
27 sexual exploitation, sale or attempted sale or negligent treatment  
28 or maltreatment of a child by a parent, guardian or custodian who

1 is responsible for the child's welfare, under circumstances which  
2 harm or threaten the health and welfare of the child.

3 ~~(e)~~ (5) "Child abuse and neglect services" means social  
4 services which are directed toward:

5 ~~(1)~~ (A) Protecting and promoting the welfare of children who  
6 are abused or neglected;

7 ~~(2)~~ (B) Identifying, preventing and remedying conditions which  
8 cause child abuse and neglect;

9 ~~(3)~~ (C) Preventing the unnecessary removal of children from  
10 their families by identifying family problems and assisting  
11 families in resolving problems which could lead to a removal of  
12 children and a breakup of the family;

13 ~~(4)~~ (D) In cases where children have been removed from their  
14 families, providing services to the children and the families so as  
15 to reunify such children with their families or some portion  
16 thereof;

17 ~~(5)~~ (E) Placing children in suitable adoptive homes when  
18 reunifying the children with their families, or some portion  
19 thereof, is not possible or appropriate; and

20 ~~(6)~~ (F) Assuring the adequate care of children who have been  
21 placed in the custody of the department or third parties.

22 ~~(f)~~ (6) "Child advocacy center" means a community-based  
23 organization that is a member in good standing with the West  
24 Virginia Child Abuse Network, Inc., and is working to implement the  
25 following program components:

26 ~~(1)~~ (A) Child-appropriate/child-friendly facility: A child  
27 advocacy center provides a comfortable, private, child-friendly  
28 setting that is both physically and psychologically safe for

1 clients.

2       ~~(2)~~ (B) Multidisciplinary team (MDT): A multidisciplinary  
3 team for response to child abuse allegations includes  
4 representation from the following: Law enforcement; child  
5 protective services; prosecution; mental health; medical; victim  
6 advocacy; child advocacy center.

7       ~~(3)~~ (C) Organizational capacity: A designated legal entity  
8 responsible for program and fiscal operations has been established  
9 and implements basic sound administrative practices.

10       ~~(4)~~ (D) Cultural competency and diversity: The CAC promotes  
11 policies, practices and procedures that are culturally competent.  
12 Cultural competency is defined as the capacity to function in more  
13 than one culture, requiring the ability to appreciate, understand  
14 and interact with members of diverse populations within the local  
15 community.

16       ~~(5)~~ (E) Forensic interviews: Forensic interviews are  
17 conducted in a manner which is of a neutral, fact finding nature  
18 and coordinated to avoid duplicative interviewing.

19       ~~(6)~~ (F) Medical evaluation: Specialized medical evaluation  
20 and treatment are to be made available to CAC clients as part of  
21 the team response, either at the CAC or through coordination and  
22 referral with other specialized medical providers.

23       ~~(7)~~ (G) Therapeutic intervention: Specialized mental health  
24 services are to be made available as part of the team response,  
25 either at the CAC or through coordination and referral with other  
26 appropriate treatment providers.

27       ~~(8)~~ (H) Victim support/advocacy: Victim support and advocacy  
28 are to be made available as part of the team response, either at

1 the CAC or through coordination with other providers, throughout  
2 the investigation and subsequent legal proceedings.

3 ~~(9)~~ (I) Case review: Team discussion and information sharing  
4 regarding the investigation, case status and services needed by the  
5 child and family are to occur on a routine basis.

6 ~~(10)~~ (J) Case tracking: CACs must develop and implement a  
7 system for monitoring case progress and tracking case outcomes for  
8 team components: *Provided*, That a child advocacy center may  
9 establish a safe exchange location for children and families who  
10 have a parenting agreement or an order providing for visitation or  
11 custody of the children that require a safe exchange location.

12 ~~(9)~~ (7) "Imminent danger to the physical well-being of the  
13 child" means an emergency situation in which the welfare or the  
14 life of the child is threatened. Such emergency situation exists  
15 when there is reasonable cause to believe that any child in the  
16 home is or has been sexually abused or sexually exploited, or  
17 reasonable cause to believe that the following conditions threaten  
18 the health or life of any child in the home:

19 ~~(1)~~ (A) Nonaccidental trauma inflicted by a parent, guardian,  
20 custodian, sibling or a babysitter or other caretaker;

21 ~~(2)~~ (B) A combination of physical and other signs indicating  
22 a pattern of abuse which may be medically diagnosed as battered  
23 child syndrome;

24 ~~(3)~~ (C) Nutritional deprivation;

25 ~~(4)~~ (D) Abandonment by the parent, guardian or custodian;

26 ~~(5)~~ (E) Inadequate treatment of serious illness or disease;

27 ~~(6)~~ (F) Substantial emotional injury inflicted by a parent,  
28 guardian or custodian; ~~or~~

1       ~~(7)~~ (G) Sale or attempted sale of the child by the parent,  
2 guardian or custodian; or

3       (H) The parent, guardian or custodian's abuse of alcohol,  
4 drugs or other controlled substance, as those latter terms are  
5 defined in section one-hundred one, article one, chapter sixty-a of  
6 this code, has impaired his or her parenting skills to a degree as  
7 to pose an imminent risk to a child's health or safety.

8       ~~(h)~~ (8) "Legal guardianship" means the permanent relationship  
9 between a child and caretaker, established by order of the circuit  
10 court having jurisdiction over the child, pursuant to the  
11 provisions of this chapter and chapter forty-eight of this code.

12       ~~(i)~~ (9) "Multidisciplinary team" means a group of  
13 professionals and paraprofessionals representing a variety of  
14 disciplines who interact and coordinate their efforts to identify,  
15 diagnose and treat specific cases of child abuse and neglect.  
16 Multidisciplinary teams may include, but are not limited to,  
17 medical, educational, child care and law-enforcement personnel,  
18 social workers, psychologists and psychiatrists. Their goal is to  
19 pool their respective skills in order to formulate accurate  
20 diagnoses and to provide comprehensive coordinated treatment with  
21 continuity and follow-up for both parents and children. "Community  
22 team" means a multidisciplinary group which addresses the general  
23 problem of child abuse and neglect in a given community and may  
24 consist of several multidisciplinary teams with different  
25 functions.

26       ~~(j)~~~~(1)~~ (10) (A) "Neglected child" means a child:

27       ~~(A)~~ (i) Whose physical or mental health is harmed or  
28 threatened by a present refusal, failure or inability of the

1 child's parent, guardian or custodian to supply the child with  
2 necessary food, clothing, shelter, supervision, medical care or  
3 education, when such refusal, failure or inability is not due  
4 primarily to a lack of financial means on the part of the parent,  
5 guardian or custodian; or

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

9 ~~(2)~~ (B) "Neglected child" does not mean a child whose  
10 education is conducted within the provisions of section one,  
11 article eight, chapter eighteen of this code.

12 (11) "Parent" means an individual defined as a parent by law  
13 or on the basis of a biological relationship, marriage to a person  
14 with a biological relationship, legal adoption or other recognized  
15 grounds.

16 (12) "Parental rights" means any and all rights and duties  
17 regarding a parent to a minor child, including, but not limited to,  
18 custodial rights and visitational rights and rights to participate  
19 in the decisions affecting a minor child.

20 ~~(k)~~ (13) "Parenting skills" means a parent's competencies in  
21 providing physical care, protection, supervision and psychological  
22 support appropriate to a child's age and state of development.

23 ~~(l)~~ (14) "Sexual abuse" means:

24 (A) As to a child who is less than sixteen years of age, any  
25 of the following acts which a parent, guardian or custodian shall  
26 engage in, attempt to engage in, or knowingly procure another  
27 person to engage in, with such child, notwithstanding the fact that  
28 the child may have willingly participated in such conduct or the

1 fact that the child may have suffered no apparent physical injury  
2 or mental or emotional injury as a result of such conduct:

3 (i) Sexual intercourse;

4 (ii) Sexual intrusion; or

5 (iii) Sexual contact;

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

13 (i) Sexual intercourse;

14 (ii) Sexual intrusion; or

15 (iii) Sexual contact.

16 (C) Any conduct whereby a parent, guardian or custodian  
17 displays his or her sex organs to a child, or procures another  
18 person to display his or her sex organs to a child, for the purpose  
19 of gratifying the sexual desire of the parent, guardian or  
20 custodian, of the person making such display, or of the child, or  
21 for the purpose of affronting or alarming the child.

22 ~~(m)~~ (15) "Sexual contact" means sexual contact as that term is  
23 defined in section one, article eight-b, chapter sixty-one of this  
24 code.

25 ~~(n)~~ (16) "Sexual exploitation" means an act whereby:

26 ~~(1)~~ (A) A parent, custodian or guardian, whether for financial  
27 gain or not, persuades, induces, entices or coerces a child to  
28 engage in sexually explicit conduct as that term is defined in



1 section one, article eight-c, chapter sixty-one of this code; or

2       ~~(2)~~ (B) A parent, guardian or custodian persuades, induces,  
3 entices or coerces a child to display his or her sex organs for the  
4 sexual gratification of the parent, guardian, custodian or a third  
5 person, or to display his or her sex organs under circumstances in  
6 which the parent, guardian or custodian knows such display is  
7 likely to be observed by others who would be affronted or alarmed.

8       ~~(c)~~ (17) "Sexual intercourse" means sexual intercourse as that  
9 term is defined in section one, article eight-b, chapter sixty-one  
10 of this code.

11       ~~(p)~~ (18) "Sexual intrusion" means sexual intrusion as that  
12 term is defined in section one, article eight-b, chapter sixty-one  
13 of this code.

14       ~~(q)~~ ~~"Parental rights" means any and all rights and duties~~  
15 ~~regarding a parent to a minor child, including, but not limited to,~~  
16 ~~custodial rights and visitational rights and rights to participate~~  
17 ~~in the decisions affecting a minor child.~~

18       ~~(r)~~ (19) "Placement" means any temporary or permanent  
19 placement of a child who is in the custody of the state in any  
20 foster home, group home or other facility or residence.

21       ~~(s)~~ (20) "Serious physical abuse" means bodily injury which  
22 creates a substantial risk of death, which causes serious or  
23 prolonged disfigurement, prolonged impairment of health or  
24 prolonged loss or impairment of the function of any bodily organ.

25       ~~(t)~~ (21) "Siblings" means children who have at least one  
26 biological parent in common or who have been legally adopted by the  
27 same parents or parent.

28       ~~(u)~~ (22) "Time-limited reunification services" means

1 individual, group and family counseling, inpatient, residential or  
2 outpatient substance abuse treatment services, mental health  
3 services, assistance to address domestic violence, services  
4 designed to provide temporary child care and therapeutic services  
5 for families, including crisis nurseries and transportation to or  
6 from any such services, provided during fifteen of the most recent  
7 twenty-two months a child has been in foster care, as determined by  
8 the earlier date of the first judicial finding that the child is  
9 subjected to abuse or neglect, or the date which is sixty days  
10 after the child is removed from home.