

1 **H. B. 4309**

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3 (By Delegates Miley, M. Poling, Frazier,  
4 Longstreth, Barill, Jones, Stowers,  
5 Manchin and Boggs)

6 [By the request of the Supreme Court of Appeals]

7 [Introduced January 26, 2012; referred to the  
8 Committee on Education then the Judiciary.]

9  
10 A Bill to amend and reenact §49-1-3 of the Code of West Virginia,  
11 1931, as amended, relating to child abuse and neglect;  
12 clarifying that a child who is physically healthy and  
13 presumed safe is a neglected child if the child is habitually  
14 absent from school without good cause.

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

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

18 **ARTICLE 1. PURPOSES; DEFINITIONS.**

19 **§49-1-3. Definitions relating to abuse and neglect.**

20 As used in this chapter:

21 (1) "Abused child" means a child whose health or welfare is  
22 harmed or threatened by:

23 (A) A parent, guardian or custodian who knowingly or  
24 intentionally inflicts, attempts to inflict or knowingly allows  
25 another person to inflict, physical injury or mental or emotional

1 injury, upon the child or another child in the home; or

2 (B) Sexual abuse or sexual exploitation; or

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

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

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

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

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

23 (4) "Child abuse and neglect" or "child abuse or neglect"  
24 means physical injury, mental or emotional injury, sexual abuse,

1 sexual exploitation, sale or attempted sale or negligent treatment  
2 or maltreatment of a child by a parent, guardian or custodian who  
3 is responsible for the child's welfare, under circumstances which  
4 harm or threaten the health and welfare of the child.

5 (5) "Child abuse and neglect services" means social services  
6 which are directed toward:

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

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

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

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

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

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

24 (6) "Child advocacy center" means a community-based

1 organization that is a member in good standing with the West  
2 Virginia Child Abuse Network, Inc., and is working to implement the  
3 following program components:

4 (A) Child-appropriate/child-friendly facility: A child  
5 advocacy center provides a comfortable, private, child-friendly  
6 setting that is both physically and psychologically safe for  
7 clients.

8 (B) Multidisciplinary team (MDT): A multidisciplinary team for  
9 response to child abuse allegations includes representation from  
10 ~~the following:~~ law enforcement, child protective services,  
11 prosecution, mental health, medical, victim advocacy and a child  
12 advocacy center.

13 (C) Organizational capacity: A designated legal entity  
14 responsible for program and fiscal operations has been established  
15 and implements basic sound administrative practices.

16 (D) Cultural competency and diversity: The CAC promotes  
17 policies, practices and procedures that are culturally competent.  
18 Cultural competency is defined as the capacity to function in more  
19 than one culture, requiring the ability to appreciate, understand  
20 and interact with members of diverse populations within the local  
21 community.

22 (E) Forensic interviews: Forensic interviews are conducted in  
23 a manner which is of a neutral, fact finding nature and coordinated  
24 to avoid duplicative interviewing.

1 (F) Medical evaluation: Specialized medical evaluation and  
2 treatment are to be made available to CAC clients as part of the  
3 team response either at the CAC or through coordination and  
4 referral with other specialized medical providers.

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

9 (H) Victim support/advocacy: Victim support and advocacy are  
10 to be made available as part of the team response either at the CAC  
11 or through coordination with other providers throughout the  
12 investigation and subsequent legal proceedings.

13 (I) Case review: Team discussion and information sharing  
14 regarding the investigation, case status and services needed by the  
15 child and family are to occur on a routine basis.

16 (J) Case tracking: CACs must develop and implement a system  
17 for monitoring case progress and tracking case outcomes for team  
18 components. ~~Provided, That~~ A child advocacy center may establish a  
19 safe exchange location for children and families who have a  
20 parenting agreement or an order providing for visitation or custody  
21 of the children that require a safe exchange location.

22 (7) "Imminent danger to the physical well-being of the child"  
23 means an emergency situation in which the welfare or the life of  
24 the child is threatened. Such emergency situation exists when there

1 is reasonable cause to believe that any child in the home is or has  
2 been sexually abused or sexually exploited or reasonable cause to  
3 believe that the following conditions threaten the health or life  
4 of any child in the home:

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

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

10 (C) Nutritional deprivation;

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

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

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

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

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

22 (8) "Legal guardianship" means the permanent relationship  
23 between a child and caretaker, established by order of the circuit  
24 court having jurisdiction over the child, pursuant to the

1 provisions of this chapter and chapter forty-eight of this code.

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

15       (10) (A) "Neglected child" means a child:

16       (i) Whose physical or mental health is harmed or threatened by  
17 a present refusal, failure or inability of the child's parent,  
18 guardian or custodian to supply the child with necessary food,  
19 clothing, shelter, supervision, medical care or education, when  
20 such refusal, failure or inability is not due primarily to a lack  
21 of financial means on the part of the parent, guardian or  
22 custodian; ~~or~~

23       (ii) Who is presently without necessary food, clothing,  
24 shelter, medical care, education or supervision because of the

1 disappearance or absence of the child's parent or custodian; or

2 (iii) Who is otherwise physically healthy and presumed safe  
3 but is habitually absent from school without good cause.

4 (B) "Neglected child" does not mean a child whose education is  
5 conducted within the provisions of section one, article eight,  
6 chapter eighteen of this code.

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

11 (12) "Parental rights" means any and all rights and duties  
12 regarding a parent to a minor child including, but not limited to,  
13 custodial rights, ~~and visitational~~ visitation rights and rights to  
14 participate in the decisions affecting a minor child.

15 (13) "Parenting skills" means a parent's competencies in  
16 providing physical care, protection, supervision and psychological  
17 support appropriate to a child's age and state of development.

18 (14) "Sexual abuse" means:

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



1 or mental or emotional injury as a result of such conduct:

2 (i) Sexual intercourse;

3 (ii) Sexual intrusion; or

4 (iii) Sexual contact;

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

12 (i) Sexual intercourse;

13 (ii) Sexual intrusion; or

14 (iii) Sexual contact.

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

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

24 (16) "Sexual exploitation" means an act whereby:

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

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

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

14 (18) "Sexual intrusion" means sexual intrusion as that term is  
15 defined in section one, article eight-b, chapter sixty-one of this  
16 code.

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

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

24 (21) "Siblings" means children who have at least one

1 biological parent in common or who have been legally adopted by the  
2 same parents or parent.

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

NOTE: The purpose of this bill is to provide that a child who is physically healthy and presumed safe is a neglected child if he or she is habitually absent from school without good cause.

Strike-throughs indicate language that would be stricken from the current law and underscoring indicates language that would be added.