

1 **ENGROSSED**

2 COMMITTEE SUBSTITUTE

3 FOR

4 **H. B. 2939**

5
6 (By Delegate B. White)

7
8 (Originating in the Committee on the Judiciary)

9 [February 26, 2015]

10
11 A BILL to amend and reenact §49-1-201 of the Code of West Virginia, 1931, as amended; and to
12 amend and reenact §49-2-803 and §49-2-812 of said code, all relating to requirements for
13 mandatory reporting of sexual offenses on school premises involving or between students;
14 defining terms; adding conduct that must be reported to law enforcement; defining nature of
15 conduct to be reported; creating criminal penalties for failure to report; and increasing
16 penalties for other reporting requirements.

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

18 That §49-1-201 of the Code of West Virginia, 1931, as amended, be amended and reenacted;
19 and that §49-2-803 and §49-2-812 of said code be amended and reenacted, all to read as follows:

20 **ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.**

21 **§49-1-201. Definitions related, but not limited, to child abuse and neglect.**

22 When used in this chapter, terms defined in this section have the meanings ascribed to them
23 that relate to, but are not limited to, child abuse and neglect, except in those instances where a

1 different meaning is provided or the context in which the word is used clearly indicates that a
2 different meaning is intended.

3 "Abandonment" means any conduct that demonstrates the settled purpose to forego the duties
4 and parental responsibilities to the child;

5 "Abused child" means a child whose health or welfare is being harmed or threatened by:

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

10 (B) Sexual abuse or sexual exploitation;

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

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

15 "Abusing parent" means a parent, guardian or other custodian, regardless of his or her age,
16 whose conduct has been adjudicated by the court to constitute child abuse or neglect as alleged in
17 the petition charging child abuse or neglect.

18 "Battered parent," for the purposes of part seven, article two of this chapter, means a
19 respondent parent, guardian, or other custodian who has been adjudicated by the court to have not
20 condoned the abuse or neglect and has not been able to stop the abuse or neglect of the child or
21 children due to being the victim of domestic violence as defined by section two hundred two, article
22 twenty-seven, chapter forty-eight of this code which was perpetrated by the same person or persons

1 determined to have abused or neglected the child or children.

2 "Child abuse and neglect services" means social services which are directed toward:

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

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

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

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

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

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

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

19 "Imminent danger to the physical well-being of the child" means an emergency situation in
20 which the welfare or the life of the child is threatened. These conditions may include an emergency
21 situation when there is reasonable cause to believe that any child in the home is or has been sexually
22 abused or sexually exploited, or reasonable cause to believe that the following conditions threaten

1 the health, life, or safety of any child in the home:

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

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

6 (C) Nutritional deprivation;

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

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

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

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

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

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

16 "Neglected child" means a child:

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

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

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

3 "Petitioner or co-petitioner" means the Department or any reputable person who files a child
4 abuse or neglect petition pursuant to section six hundred one, article four, of this chapter.

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

7 "Respondent" means all parents, guardians, and custodians identified in the child abuse and
8 neglect petition who are not petitioners or co-petitioners.

9 "Sexual abuse" means:

10 (A) Sexual intercourse, sexual intrusion, sexual contact, or conduct proscribed by section
11 three, article eight-c, chapter sixty-one, which a parent, guardian or custodian engages in, attempts
12 to engage in, or knowingly procures another person to engage in with a child notwithstanding the fact
13 that for a child who is less than sixteen years of age the child may have willingly participated in that
14 conduct or the child may have suffered no apparent physical injury or mental or emotional injury as
15 a result of that conduct or, for a child sixteen years of age or older the child may have consented to
16 that conduct or the child may have suffered no apparent physical injury or mental or emotional injury
17 as a result of that conduct; ~~or~~

18 (B) Any conduct where a parent, guardian or custodian displays his or her sex organs to a
19 child, or procures another person to display his or her sex organs to a child, for the purpose of
20 gratifying the sexual desire of the parent, guardian or custodian, of the person making that display,
21 or of the child, or for the purpose of affronting or alarming the child; ~~or~~ or

22 (C) Any of the offenses proscribed in sections seven, eight or nine of article eight-b, chapter

1 sixty-one of this code.

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

4 "Sexual contact" means sexual contact as that term is defined in section one, article eight-b,
5 chapter sixty-one of this code.

6 "Sexual exploitation" means an act where:

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

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

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

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

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

21 **ARTICLE 2. STATE RESPONSIBILITIES FOR CHILDREN**

22 **§49-2-803. Persons mandated to report suspected abuse and neglect; requirements.**

1 (a) Any medical, dental or mental health professional, Christian Science practitioner,
2 religious healer, school teacher or other school personnel, social service worker, child care or foster
3 care worker, emergency medical services personnel, peace officer or law-enforcement official,
4 humane officer, member of the clergy, circuit court judge, family court judge, employee of the
5 Division of Juvenile Services, magistrate, youth camp administrator or counselor, employee, coach
6 or volunteer of an entity that provides organized activities for children, or commercial film or
7 photographic print processor who has reasonable cause to suspect that a child is neglected or abused
8 or observes the child being subjected to conditions that are likely to result in abuse or neglect shall
9 immediately, and not more than forty-eight hours after suspecting this abuse or neglect, report the
10 circumstances or cause a report to be made to the Department of Health and Human Resources. In
11 any case where the reporter believes that the child suffered serious physical abuse or sexual abuse
12 or sexual assault, the reporter shall also immediately report, or cause a report to be made, to the State
13 Police and any law-enforcement agency having jurisdiction to investigate the complaint. Any person
14 required to report under this article who is a member of the staff or volunteer of a public or private
15 institution, school, entity that provides organized activities for children, facility or agency shall also
16 immediately notify the person in charge of the institution, school, entity that provides organized
17 activities for children, facility or agency, or a designated agent thereof, who may supplement the
18 report or cause an additional report to be made.

19 (b) Any person over the age of eighteen who receives a disclosure from a credible witness
20 or observes any sexual abuse or sexual assault of a child, shall immediately, and not more than
21 forty-eight hours after receiving that disclosure or observing the sexual abuse or sexual assault,
22 report the circumstances or cause a report to be made to the Department of Health and Human

1 Resources or the State Police or other law-enforcement agency having jurisdiction to investigate the
2 report. In the event that the individual receiving the disclosure or observing the sexual abuse or
3 sexual assault has a good faith belief that the reporting of the event to the police would expose either
4 the reporter, the subject child, the reporter's children or other children in the subject child's
5 household to an increased threat of serious bodily injury, the individual may delay making the report
6 while he or she undertakes measures to remove themselves or the affected children from the
7 perceived threat of additional harm and the individual makes the report as soon as practicable after
8 the threat of harm has been reduced. The law-enforcement agency that receives a report under this
9 subsection shall report the allegations to the Department of Health and Human Resources and
10 coordinate with any other law-enforcement agency, as necessary to investigate the report.

11 (c) Any school teacher or other school personnel who receives a disclosure from a credible
12 witness or personally observes any sexual contact, sexual intercourse or sexual intrusion of a child
13 on school premises or on school buses or on transportation used in furtherance of a school purpose,
14 as those terms are defined in article eight-b, chapter sixty-one, shall immediately report the
15 circumstances or cause a report to be made to the State Police or other law-enforcement agency
16 having jurisdiction to investigate the report: *Provided*, That this subsection will not impose any
17 reporting duty upon school teachers or other school personnel who observe, or receive a disclosure
18 of any consensual sexual contact, intercourse, or intrusion occurring between students who would
19 not otherwise be subject to section three, five, seven or nine of article eight-8, chapter sixty-one of
20 this code: *Provided, however*, That any teacher or other school personnel shall not be in violation
21 of this section if he or she makes known immediately to the principal or county superintendent a
22 disclosure from a credible witness or personal observation of conduct described in this section:

1 Provided further, That a principal or county superintendent made aware of such disclosure or
2 observation from a teacher or other school personnel shall be responsible for immediately reporting
3 such conduct to law enforcement.

4 (d) The reporting requirements contained in this section specifically include reported,
5 disclosed or observed conduct involving or between students enrolled in a public or private
6 institution of education, or involving a student and school teacher or personnel. When the alleged
7 conduct is between two students or between a student and school teacher or personnel, the law
8 enforcement body that received the report under this section is required to make such a report under
9 this section shall additionally immediately notify the students' parents, guardians, and custodians
10 about the allegations.

11 ~~(e)~~(e) Nothing in this article is intended to prevent individuals from reporting suspected
12 abuse or neglect on their own behalf. In addition to those persons and officials specifically required
13 to report situations involving suspected abuse or neglect of children, any other person may make a
14 report if that person has reasonable cause to suspect that a child has been abused or neglected in a
15 home or institution or observes the child being subjected to conditions or circumstances that would
16 reasonably result in abuse or neglect.

17 **§49-2-812. Failure to report; penalty.**

18 (a) Any person, official or institution required by this article to report a case involving a child
19 known or suspected to be abused or neglected, or required by section eight hundred nine of this
20 article to forward a copy of a report of serious injury, who knowingly fails to do so or knowingly
21 prevents another person acting reasonably from doing so, is guilty of a misdemeanor and, upon
22 conviction, shall be confined in jail not more than ~~thirty days~~ six months or fined not more than

1 ~~\$1,000~~ \$5,000, or both fined and confined.

2 (b) Any person, official or institution required by this article to report a case involving a child
3 known or suspected to be sexually assaulted or sexually abused, or student known or suspected to
4 have been involved in any sexual contact, sexual intercourse or sexual intrusion on school premises,
5 who knowingly fails to do so or knowingly prevents another person acting reasonably from doing
6 so, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail not more than
7 one year or fined not more than \$10,000, or both.