

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Committee Substitute

for

House Bill 4291

(BY DELEGATES J. NELSON, R. PHILLIPS, MOFFATT,
ESPINOSA, WESTFALL, PERDUE, UPSON, LANE, MOYE,
MR. SPEAKER (MR. ARMSTEAD), AND MILEY)

[Originating in the Committee on the Judiciary.]

1 A BILL to amend and reenact §61-8D-5 of the Code of West Virginia, 1931, as amended, relating
2 to increasing penalties for teachers and service personnel who commit sexual offenses
3 against children with whom they hold positions of trust; providing that upon conviction for
4 sexual offenses against children with whom they hold positions of trust such teachers and
5 service personnel are prohibited from being employed by any educational, vocational,
6 training, day care, group home, foster care program, or rehabilitation facility in the state;
7 and defining terms.

Be it enacted by the Legislature of West Virginia:

1 That §61-8D-5 of the Code of West Virginia, 1931, as amended, be amended and
2 reenacted to read as follows:

ARTICLE 8D. CHILD ABUSE.

**§61-8D-5. Sexual abuse by a parent, guardian, custodian or person in a position of trust to
a child; parent, guardian, custodian or person in a position of trust allowing
sexual abuse to be inflicted upon a child; displaying of sex organs by a
parent, guardian, or custodian; penalties.**

1 (a) In addition to any other offenses set forth in this code, the Legislature hereby declares
2 a separate and distinct offense under this subsection, as follows: If any parent, guardian or
3 custodian of or other person in a position of trust in relation to a child under his or her care, custody
4 or control, shall engage in or attempt to engage in sexual exploitation of, or in sexual intercourse,
5 sexual intrusion or sexual contact with, a child under his or her care, custody or control,
6 notwithstanding the fact that the child may have willingly participated in such conduct, or the fact
7 that the child may have consented to such conduct or the fact that the child may have suffered no
8 apparent physical injury or mental or emotional injury as a result of such conduct, then such
9 parent, guardian, custodian or person in a position of trust shall be guilty of a felony and, upon
10 conviction thereof, shall be imprisoned in a correctional facility not less than ten nor more than
11 twenty years, or fined not less than \$500 nor more than \$5,000 and imprisoned in a correctional

12 facility not less than ten years nor more than twenty years: Provided, That any teacher or service
13 personnel convicted of a crime under this subsection is thereafter prohibited from being employed
14 by any preschool facility, kindergarten, elementary school, middle school, high school or other
15 educational, training, vocational, day care, group home, foster care program, or rehabilitation
16 facility licensed to operate or otherwise exist under the authority of this state.

17 (b) Any parent, guardian, custodian or other person in a position of trust in relation to the
18 child who knowingly procures, authorizes, or induces another person to engage in or attempt to
19 engage in sexual exploitation of, or sexual intercourse, sexual intrusion or sexual contact with, a
20 child under the care, custody or control of such parent, guardian, custodian or person in a position
21 of trust when such child is less than sixteen years of age, notwithstanding the fact that the child
22 may have willingly participated in such conduct or the fact that the child may have suffered no
23 apparent physical injury or mental or emotional injury as a result of such conduct, such parent,
24 guardian, custodian or person in a position of trust shall be guilty of a felony and, upon conviction
25 thereof, shall be imprisoned in a correctional facility not less than five years nor more than fifteen
26 years, or fined not less than \$1,000 nor more than \$10,000 and imprisoned in a correctional facility
27 not less than five years nor more than fifteen years: Provided, That in the event the person who
28 holds a position of trust and commits an offense described in this subsection is a teacher or
29 service personnel, he or she, upon conviction thereof, shall be fined not less than \$5,000 nor
30 more than \$25,000 and imprisoned in a correctional facility for not less than six nor more than
31 sixteen years: Provided, however, That any teacher or service personnel convicted of a crime
32 under this subsection is thereafter prohibited from being employed by any preschool facility,
33 kindergarten, elementary school, middle school, high school or other educational, training,
34 vocational, day care, group home, foster care program, or rehabilitation facility licensed to operate
35 or otherwise exist under the authority of this state.

36 (c) Any parent, guardian, custodian or other person in a position of trust in relation to the
37 child who knowingly procures, authorizes, or induces another person to engage in or attempt to

38 engage in sexual exploitation of, or sexual intercourse, sexual intrusion or sexual contact with, a
39 child under the care, custody or control of such parent, guardian, custodian or person in a position
40 of trust when such child is sixteen years of age or older, notwithstanding the fact that the child
41 may have consented to such conduct or the fact that the child may have suffered no apparent
42 physical injury or mental or emotional injury as a result of such conduct, then such parent,
43 guardian, custodian or person in a position of trust shall be guilty of a felony and, upon conviction
44 thereof, shall be imprisoned in a correctional facility not less than one year nor more than five
45 years: Provided, That in the event the person who holds a position of trust and commits an offense
46 described in this subsection is a teacher or service personnel, he or she, upon conviction thereof,
47 shall be fined not less than \$5,000 nor more than \$25,000 and imprisoned in a correctional facility
48 for not less than two nor more than six years: *Provided, however,* That any teacher or service
49 personnel convicted of a crime under this subsection is prohibited from being employed by any
50 preschool facility, kindergarten, elementary school, middle school, high school or other
51 educational, training, vocational, day care, group home, foster care program or rehabilitation
52 facility licensed to operate or otherwise exist under the authority of this state.

53 (d) The provisions of this section shall not apply to a custodian or person in a position of
54 trust whose age exceeds the age of the child by less than four years unless they are a school
55 teacher or employee of any school, educational facility, daycare, group home or foster care
56 system.

57 (e) As used in this section, the terms “teacher” and “service personnel” shall have the
58 same meaning as those terms are defined in W.Va. Code §18-1-1.

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