

# **WEST VIRGINIA LEGISLATURE**

## **2016 REGULAR SESSION**

### **ENGROSSED**

#### **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 person 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 person, he or she, upon conviction thereof, shall be fined not less than \$5,000 nor more  
30 than \$25,000 and imprisoned in a correctional facility for not less than six nor more than sixteen  
31 years: Provided, however, That any teacher or service person convicted of a crime under this  
32 subsection is thereafter prohibited from being employed by any preschool facility, kindergarten,  
33 elementary school, middle school, high school or other educational, training, vocational, day care,  
34 group home, foster care program, or rehabilitation facility licensed to operate or otherwise exist  
35 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 person, 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 person 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 person” shall have the same  
58 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.