

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

House Bill 2942

2015 Carryover

(BY DELEGATES FAST AND FRICH)

[Introduced January 13, 2016; referred to the
Committee on the Judiciary.]

1 A BILL to amend and reenact §49-1-3 of the Code of West Virginia, 1931, as amended, relating
2 to modifying the definition of child abuse or neglect to exclude accidental injury.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. PURPOSES; DEFINITIONS.

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

1 As used in this chapter, accidental physical, mental or emotional injury to a child, arising
2 from a reasonable failure by a parent, guardian or custodian to recognize or foresee the threat
3 arising from circumstances leading to an incidental or unplanned event which has resulted in
4 injury to the child is not abuse or neglect.

5 (1) "Abused child" means a child whose health or welfare is 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;

9 (B) Sexual abuse or sexual exploitation;

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

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

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

16 (2) "Abusing parent" means a parent, guardian or other custodian, regardless of his or her
17 age, whose conduct, as alleged in the petition charging child abuse or neglect, has been adjudged

18 by the court to constitute child abuse or neglect.

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

25 (4) "Child abuse and neglect" or "child abuse or neglect" means physical injury, mental or
26 emotional injury, sexual abuse, sexual exploitation, sale or attempted sale or negligent treatment
27 or maltreatment of a child by a parent, guardian or custodian who is responsible for the child's
28 welfare, under circumstances which harm or threaten the health and welfare of the child.

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

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

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

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

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

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

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

42 (6) "Child advocacy center (CAC)" means a community-based organization that is a
43 member in good standing with the West Virginia Child Abuse Network, Inc., and is working to
44 implement the following program components:

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

48 (B) Multidisciplinary team (MDT): A multidisciplinary team for response to child abuse
49 allegations includes representation from the following: Law enforcement; child protective services;
50 prosecution; mental health; medical; victim advocacy; child advocacy center.

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

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

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

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

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

65 (H) Victim support/advocacy: Victim support and advocacy are to be made available as

66 part of the team response, either at the CAC or through coordination with other providers,
67 throughout the investigation and subsequent legal proceedings.

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

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

75 (7) "Court appointed special advocate (CASA) program" means a community organization
76 that screens, trains and supervises CASA volunteers to advocate for the best interests of children
77 who are involved in abuse and neglect proceedings. Court appointed special advocate
78 programs will be operated under the following guidelines:

79 (A) Standards: CASA programs shall be members in good standing with the West Virginia
80 Court Appointed Special Advocate Association, Inc., and the National Court Appointed Special
81 Advocates Association and adhere to all standards set forth by these entities.

82 (B) Organizational capacity: A designated legal entity responsible for program and fiscal
83 operations has been established and implements basic sound administrative practice.

84 (C) Cultural competency and diversity: CASA programs promote policies, practices and
85 procedures that are culturally competent. "Cultural competency" is defined as the capacity to
86 function in more than one culture, requiring the ability to appreciate, understand and interact with
87 members of diverse populations within the local community.

88 (D) Case management: CASA programs must utilize a uniform case management system
89 to monitor case progress and track outcomes.

90 (E) Case review: CASA volunteers meet with CASA staff on a routine basis to discuss
91 case status and outcomes.

92 (F) Training: Court appointed special advocates shall serve as volunteers without
93 compensation and shall receive training consistent with state and nationally developed standards.

94 (8) "Imminent danger to the physical well being of the child" means an emergency situation
95 in which the welfare or the life of the child is threatened. Such emergency situation exists when
96 there is reasonable cause to believe that any child in the home is or has been sexually abused or
97 sexually exploited, or reasonable cause to believe that the following conditions threaten the health
98 or life of any child in the home:

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

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

103 (C) Nutritional deprivation;

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

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

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

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

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

112 (9) "Legal guardianship" means the permanent relationship between a child and caretaker,
113 established by order of the circuit court having jurisdiction over the child, pursuant to the

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

115 (10) "Multidisciplinary team" means a group of professionals and paraprofessionals
116 representing a variety of disciplines who interact and coordinate their efforts to identify, diagnose
117 and treat specific cases of child abuse and neglect. Multidisciplinary teams may include, but are
118 not limited to, medical, educational, child care and law-enforcement personnel, social workers,
119 psychologists and psychiatrists. Their goal is to pool their respective skills in order to formulate
120 accurate diagnoses and to provide comprehensive coordinated treatment with continuity and
121 followup for both parents and children. "Community team" means a multidisciplinary group
122 which addresses the general problem of child abuse and neglect in a given community and may
123 consist of several multidisciplinary teams with different functions.

124 (11) (A) "Neglected child" means a child:

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

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

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

133 (12) "Parent" means an individual defined has a parent by law or on the basis of a biological
134 relationship, marriage to a person with a biological relationship, legal adoption or other recognized
135 grounds.

136 (13) "Parental rights" means any and all rights and duties regarding a parent to a minor
137 child, including, but not limited to, custodial rights and visitational rights and rights to participate

138 in the decisions affecting a minor child.

139 (14) "Parenting skills" means a parent's competencies in providing physical care,
140 protection, supervision and psychological support appropriate to a child's age and state of
141 development.

142 (15) "Sexual abuse" means:

143 (A) As to a child who is less than sixteen years of age, any of the following acts which a
144 parent, guardian or custodian shall engage in, attempt to engage in or knowingly procure another
145 person to engage in, with such child, notwithstanding the fact that the child may have willingly
146 participated in such conduct or the fact that the child may have suffered no apparent physical
147 injury or mental or emotional injury as a result of such conduct:

148 (i) Sexual intercourse;

149 (ii) Sexual intrusion; or

150 (iii) Sexual contact;

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

156 (i) Sexual intercourse;

157 (ii) Sexual intrusion; or

158 (iii) Sexual contact;

159 (C) Any conduct whereby a parent, guardian or custodian displays his or her sex organs
160 to a child, or procures another person to display his or her sex organs to a child, for the purpose
161 of gratifying the sexual desire of the parent, guardian or custodian, of the person making such

162 display, or of the child, or for the purpose of affronting or alarming the child.

163 (16) "Sexual contact" means sexual contact as that term is defined in section one, article
164 eight-b, chapter sixty-one of this code.

165 (17) "Sexual exploitation" means an act whereby:

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

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

174 (18) "Sexual intercourse" means sexual intercourse as that term is defined in section one,
175 article eight-b, chapter sixty-one of this code.

176 (19) "Sexual intrusion" means sexual intrusion as that term is defined in section one, article
177 eight-b, chapter sixty-one of this code.

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

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

183 (22) "Siblings" means children who have at least one biological parent in common or who
184 have been legally adopted by the same parents or parent.

185 (23) "Time-limited reunification services" means individual, group and family counseling,

186 inpatient, residential or outpatient substance abuse treatment services, mental health services,
187 assistance to address domestic violence, services designed to provide temporary child care and
188 therapeutic services for families, including crisis nurseries and transportation to or from any such
189 services, provided during fifteen of the most recent twenty-two months a child has been in foster
190 care, as determined by the earlier date of the first judicial finding that the child is subjected to
191 abuse or neglect, or the date which is sixty days after the child is removed from home.

NOTE: The purpose of this bill is to modify the definition of child abuse or neglect to exclude accidental injury.

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