

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

House Bill 4291

FISCAL
NOTE

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ESPINOSA, WESTFALL, PERDUE, UPSON, LANE, MOYE,
MR. SPEAKER, MR. ARMSTEAD, AND MILEY

[Introduced January 27, 2016; Referred
to the Committee on Education then 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 who commit sexual offenses against children with
 3 whom they hold positions of trust; and, providing that upon conviction for sexual offenses
 4 against children with whom they hold positions of trust, such teachers are banned for life
 5 from volunteering for or being employed by any educational, vocational, training, day care,
 6 group home, foster care program, or rehabilitation facility in the state.

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.

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

32 (c) Any parent, guardian, custodian or other person in a position of trust in relation to the
33 child who knowingly procures, authorizes, or induces another person to engage in or attempt to
34 engage in sexual exploitation of, or sexual intercourse, sexual intrusion or sexual contact with, a
35 child under the care, custody or control of such parent, guardian, custodian or person in a position
36 of trust when such child is sixteen years of age or older, notwithstanding the fact that the child
37 may have consented to such conduct or the fact that the child may have suffered no apparent
38 physical injury or mental or emotional injury as a result of such conduct, then such parent,

39 guardian, custodian or person in a position of trust shall be guilty of a felony and, upon conviction
40 thereof, shall be imprisoned in a correctional facility not less than one year nor more than five
41 years: Provided That, in the event the person who holds a position of trust and commits an offense
42 described in this subsection is a teacher, he or she, upon conviction thereof shall be fined not
43 less than \$5,000 nor more than \$25,000 and imprisoned in a correctional facility for not less than
44 two nor more than six years: *Provided, however, That, any teacher convicted of a crime under*
45 this subsection is banned for life from being employed by or volunteering in any capacity
46 whatsoever in any preschool facility, kindergarten, elementary school, middle school, high school
47 or other educational, training, vocational, day care, group home, foster care program or
48 rehabilitation facility, licensed to operate or otherwise exist under the authority of this state.

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

NOTE: The purpose of this bill is to increase penalties for teachers who sexually abuse children with whom they hold positions of trust. The bill also provides that teachers convicted of sexually abusing children with whom they hold positions of trust are banned from being employed in any capacity in any educational, training, vocational, day care, group home, foster care program or rehabilitation facility in the state.

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