

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Introduced

Senate Bill 465

BY SENATORS TRUMP, BOSO, FERNS, BALDWIN, AND

CLINE

[Introduced February 2, 2018; Referred
to the Committee on Education; and then to the
Committee on the Judiciary]

1 A BILL to amend and reenact §49-2-803 of the Code of West Virginia, 1931, as amended, relating
 2 generally to mandated reporting of child abuse and neglect; clarifying that sexual abuse
 3 and sexual assault constitute abuse of a child for reporting purposes; reducing the time
 4 period in which a mandated reporter shall report suspected abuse or neglect; requiring
 5 mandated reporters to directly report known or suspected abuse or neglect; eliminating
 6 particularized reporting requirements for education employees; eliminating certain
 7 exceptions to the reporting time limit; and clarifying that the duty to report is nondelegable.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. STATE RESPONSIBILITIES FOR CHILDREN.

§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
 3 foster care worker, emergency medical services personnel, peace officer or law-enforcement
 4 official, humane officer, member of the clergy, circuit court judge, family court judge, employee of
 5 the Division of Juvenile Services, magistrate, youth camp administrator or counselor, employee,
 6 coach or volunteer of an entity that provides organized activities for children, or commercial film
 7 or photographic print processor who has reasonable cause to suspect that a child is neglected or
 8 abused, including sexual abuse or sexual assault, or observes the child being subjected to
 9 conditions that are likely to result in abuse or neglect shall immediately, and not more than ~~forty-~~
 10 ~~eight~~ 24 hours after suspecting this abuse or neglect, report the circumstances ~~or cause a report~~
 11 ~~to be made~~ to the Department of Health and Human Resources. In any case where the reporter
 12 believes that the child suffered serious physical abuse or sexual abuse or sexual assault, the
 13 reporter shall also immediately report, ~~or cause a report to be made~~, to the State Police and any
 14 law-enforcement agency having jurisdiction to investigate the complaint. Any person required to
 15 report under this article who is a member of the staff or volunteer of a public or private institution,
 16 school, entity that provides organized activities for children, facility, or agency shall also

17 immediately notify the person in charge of the institution, school, entity that provides organized
18 activities for children, facility, or agency, or a designated agent thereof, who may supplement the
19 report or cause an additional report to be made: Provided, That notifying a person in charge,
20 supervisor, or superior does not exempt a person from his or her mandate to report suspected
21 abuse or neglect.

22 ~~(b) Any person over the age of eighteen who receives a disclosure from a credible witness~~
23 ~~or observes any sexual abuse or sexual assault of a child, shall immediately, and not more than~~
24 ~~forty-eight hours after receiving that disclosure or observing the sexual abuse or sexual assault,~~
25 ~~report the circumstances or cause a report to be made to the Department of Health and Human~~
26 ~~Resources or the State Police or other law enforcement agency having jurisdiction to investigate~~
27 ~~the report. In the event that the individual receiving the disclosure or observing the sexual abuse~~
28 ~~or sexual assault has a good faith belief that the reporting of the event to the police would expose~~
29 ~~either the reporter, the subject child, the reporter's children or other children in the subject child's~~
30 ~~household to an increased threat of serious bodily injury, the individual may delay making the~~
31 ~~report while he or she undertakes measures to remove themselves or the affected children from~~
32 ~~the perceived threat of additional harm and the individual makes the report as soon as practicable~~
33 ~~after the threat of harm has been reduced. The law enforcement agency that receives a report~~
34 ~~under this subsection shall report the allegations to the Department of Health and Human~~
35 ~~Resources and coordinate with any other law enforcement agency, as necessary to investigate~~
36 ~~the report.~~

37 ~~(c) Any school teacher or other school personnel who receives a disclosure from a witness,~~
38 ~~which a reasonable prudent person would deem credible, or personally observes any sexual~~
39 ~~contact, sexual intercourse or sexual intrusion, as those terms are defined in article eight-b,~~
40 ~~chapter sixty-one, of a child on school premises or on school buses or on transportation used in~~
41 ~~furtherance of a school purpose shall immediately, but not more than 24 hours, report the~~
42 ~~circumstances or cause a report to be made to the State Police or other law enforcement agency~~

43 ~~having jurisdiction to investigate the report: *Provided*, That this subsection will not impose any~~
44 ~~reporting duty upon school teachers or other school personnel who observe, or receive a~~
45 ~~disclosure of any consensual sexual contact, intercourse, or intrusion occurring between students~~
46 ~~who would not otherwise be subject to section three, five, seven or nine of article eight-8, chapter~~
47 ~~sixty-one of this code: *Provided, however*, That any teacher or other school personnel shall not~~
48 ~~be in violation of this section if he or she makes known immediately, but not more than 24 hours.~~
49 ~~to the principal, assistant principal or similar person in charge, a disclosure from a witness, which~~
50 ~~a reasonable prudent person would deem credible, or personal observation of conduct described~~
51 ~~in this section: *Provided further*, That a principal, assistant principal or similar person in charge~~
52 ~~made aware of such disclosure or observation from a teacher or other school personnel shall be~~
53 ~~responsible for immediately, but not more than 24 hours, reporting such conduct to law~~
54 ~~enforcement~~

55 (d) (b) County boards of education and private school administrators shall provide all
56 employees with a written statement setting forth the requirement contained in this subsection and
57 shall obtain and preserve a signed acknowledgment from school employees that they have
58 received and understand the reporting requirement.

59 (e) ~~The reporting requirements contained in this section specifically include reported,~~
60 ~~disclosed or observed conduct involving or between students enrolled in a public or private~~
61 ~~institution of education, or involving a student and school teacher or personnel. When the alleged~~
62 ~~conduct is between two students or between a student and school teacher or personnel, the law~~
63 ~~enforcement body that received the report under this section is required to make such a report~~
64 ~~under this section shall additionally immediately, but not more than 24 hours, notify the students'~~
65 ~~parents, guardians, and custodians about the allegations~~

66 (f) (c) Nothing in this article is intended to prevent individuals from reporting suspected
67 abuse or neglect on their own behalf. In addition to those persons and officials specifically required
68 to report situations involving suspected abuse or neglect of children, any other person may make

- 69 a report if that person has reasonable cause to suspect that a child has been abused or neglected
- 70 in a home or institution or observes the child being subjected to conditions or circumstances that
- 71 would reasonably result in abuse or neglect.

NOTE: The purpose of this bill is to clarify mandatory reporting requirements to report suspected child abuse or neglect, including child sexual abuse, immediately, and clarifying that notifying a person in charge, supervisor, or superior does not exempt one from their mandate to report.

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