

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

ENROLLED

Committee Substitute

for

House Bill 4600

BY DELEGATES MAZZOCCHI, ELLINGTON, KIMBLE,
BRIDGES, MAYNOR, KESSINGER, TONEY, FERRELL,
LONGANACRE, HOLSTEIN, AND CAPITO

[Passed March 12, 2022; in effect ninety days from passage.]

1 AN ACT to repeal §61-8D-5a of the Code of West Virginia, 1931, as amended; and to amend said
2 code by adding thereto a new article, designated §61-8F-1, §61-8F-2, § 61-8F-3, §61-8F-
3 4, §61-8F-5, §61-8F-6, and §61-8F-7, all relating to maltreatment of disabled children by
4 persons in a position of trust to them; defining terms; creating misdemeanor and felony
5 offenses and penalties for certain non-physical and physical acts against disabled
6 children; creating criminal penalty for persons in a position of trust in relation to a disabled
7 child failing to report abuse as a mandatory reporter; creating criminal offenses for
8 obstructing or discriminating against a mandatory reporter of abuse; directing the
9 Secretary of the Department of Health and Human Resources and the West Virginia
10 Department of Education to create a mandatory program for people working with disabled
11 children and to study the viability and implementation of putting in place a system that
12 allows parents and guardians the ability to view their children remotely; directing
13 educational programs specific to crimes against disabled children for prosecutors and law
14 enforcement; establishing dates for compliance; requiring the state department of
15 education to establish a database of persons under active investigation for child abuse
16 required to be reported to by county boards of education; and establishing effective dates.

Be it enacted by the Legislature of West Virginia:

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 8D. CHILD ABUSE.

§61-8D-5a. Verbal abuse of noncommunicative child; penalties.

1 [Repealed.]

ARTICLE 8F. SPECIAL PROTECTIONS FOR DISABLED CHILDREN ACT of 2022.

This article shall be known as Trenton, Andrew, Adri, Owen and Emma's law

§61-8F-1. Findings.

1 The Legislature finds that disabled persons and particularly disabled children are often
2 more vulnerable and in greater need of protection than the nondisabled. Concomitant with greater

3 vulnerability is the enhanced risk of injury and intimidation, particularly when the child is
4 noncommunicative.

5 Based upon these facts, the Legislature has determined that it is appropriate that
6 enhanced protections be put in place statutorily to provide a framework of protections to improve
7 disabled children's education and, quality of life as well as ease the concerns of their loved-ones
8 and caregivers.

§61-8F-2 Definitions.

1 As used in this article:

2 (1) "Disabled child" means a child with any physical, intellectual, developmental,
3 communication, or psychological disability or impairment. A disability includes , but is not limited
4 to one that:

5 (A) Limits the child's ability to recognize abuse, unlawful activity, or his or her rights to
6 safety and protection, or that makes the child rely on others to recognize that he or she is being
7 abused;

8 (B) Limits the child's ability to recognize unlawful sexual abuse or misconduct;

9 (C) Causes the child to be dependent on others to assist with any activity of daily living or
10 personal care;

11 (D) Limits the child's ability to formulate or execute a response to abuse, to verbally or
12 physically defend himself or herself, or to physically escape from an abusive environment; or

13 (E) Limits the child's ability to disclose abuse.

14 (2) "Noncommunicative child" means a child who, due to physical or developmental
15 disabilities, is unable to functionally articulate verbally, in writing, or through a recognized sign
16 language,

17 (3) "Person in a position of trust in relation to a disabled child" means any adult who is
18 acting in the place of a parent and charged with any of a parent's rights, duties, or responsibilities
19 concerning a disabled child or someone with supervisory responsibility for a disabled child's

20 welfare, or any person who by virtue of their occupation or position is charged with any duty or
21 responsibility for the health, education, welfare, or supervision of a disabled child,

22 (4) "Repeatedly" means on two or more occasions,

23 (5) "Supervisory responsibility" means any situation where an adult has direct supervisory
24 decision-making, oversight, instructive, academic, evaluative, or advisory responsibilities
25 regarding the child. Supervisory responsibility may occur in a residence, in or out of a school
26 setting, institutional setting, and in curricular, co-curricular, or extra-curricular settings.

§61-8F-3. Maltreatment of a disabled child; penalties.

1 (a) Any person in a position of trust in relation to a disabled child, who has supervisory
2 responsibility over a disabled child, and who repeatedly engages in conduct, verbal or otherwise
3 toward the child in an insulting, demeaning, or threatening manner, is guilty of a misdemeanor
4 and, upon conviction thereof, shall be fined not less than \$500, nor more than \$2,500, or confined
5 in jail not more than one year, or both fined and confined.

6 (b) The conduct prohibited by this section includes, but is not limited to, behavior of any
7 type intended to humiliate, intimidate, shame, degrade, or cause emotional distress.

8 (c) Each instance of the conduct prohibited by subsection (a) of this section shall constitute
9 a separate and distinct offense whether directed at one disabled child or multiple disabled
10 children.

§61-8F-4 Battery and assault of a disabled child.

1 (a) Any person in a position of trust to a disabled child, with supervisory responsibility over
2 the child who unlawfully and intentionally makes physical contact of an insulting and provoking
3 nature to the person of the disabled child or unlawfully causes physical harm to the disabled child
4 is guilty of a felony, and upon conviction thereof, shall be fined not more than \$1,000 and
5 imprisoned in a state correctional facility for not less than one nor more than five years, or both
6 fined and imprisoned.

7 (b) Any person in a position of trust in relation to a disabled child, with supervisory
8 responsibility over the child who unlawfully attempts to commit a violent injury to the person of the
9 disabled child or unlawfully commits an act that places the disabled child in reasonable
10 apprehension of immediately receiving a violent injury is guilty of a felony and upon conviction
11 thereof shall be fined not more than \$500 or imprisoned not less than one nor more than three
12 years, or both fined and imprisoned.

§61-8F-5 Failure to report; obstruction; retaliation; penalties.

1 (a) Any person in a position of trust in relation to a disabled child who is subject to the
2 mandatory reporting requirements in §49-2-803 of this code who fails to make a required report
3 regarding a disabled child is guilty of a misdemeanor, and upon conviction shall be confined in
4 jail for not more than one year.

5 (b) Any person who willfully impedes or obstructs or attempts to impede or obstruct a
6 person in a position of trust in regard to a disabled child from making a report required by §49-2-
7 803 of this code regarding a disabled child is guilty of a felony, and upon conviction thereof be
8 fined not more than \$5,000 or imprisoned in a state correctional facility for not less than one nor
9 more than three years, or both fined and imprisoned.

10 (c) Any person who discriminates or retaliates against a person in a position of trust in
11 relation to a disabled child for making a report pursuant to § 49-2-803 of this code regarding a
12 disabled child is guilty of a felony and, upon conviction, shall be fined not more than \$5,000 or
13 imprisoned in a state correctional facility for not less than one year nor more than three years or
14 both fined and imprisoned or both fined and imprisoned.

§61-8F-6 Specific directives to enhance the safety of disabled children.

1 (a) The West Virginia Department of Education in collaboration with the Secretary of
2 Health and Human Resources shall:

3 (1) On or before January 1, 2023, develop, produce, and disseminate an eight-hour
4 education program for people employed in or to be employed in the care, housing, and education

5 of disabled children as well as their supervisory personnel and administrators. The program shall
6 include, but not be limited to, the legal duties of persons so employed, the behavioral
7 characteristics associated with different disabling conditions, symptoms of disabling conditions
8 and appropriate interventions necessary to support a child in a particular setting. Successful
9 completion of the program shall be mandatory for state, county, and municipal employees
10 engaged in the care, housing, and education of disabled children as well as their supervisory
11 personnel and administrators on and after July 1, 2023; and

12 (2) On or before January 1, 2023, investigate the availability and implementation cost of a
13 program for public schools and government operated programs for disabled children which allows
14 parents, guardians, and custodians to remotely view classrooms and other areas where disabled
15 children are taught, housed, or cared for and provide copies of the findings and proposals to the
16 President of the Senate and the Speaker of the House of Delegates prior to the first day of the
17 2023 Regular Session of the Legislature.

18 (3) To the extent practicable the program shall consider and include input from family
19 members and caregiving of disabled children.

20 (b) On or before January 1, 2023, the West Virginia Prosecuting Attorney's Institute in
21 collaboration with the Law Enforcement Professional Standards subcommittee on the Governor's
22 Committee on Crime Delinquency and Correction shall develop a three-hour mandatory
23 educational program for prosecuting attorneys and law enforcement officers that offers education:

24 (1) As to the provisions of this article; and

25 (2) In the investigation and prosecution of crimes against disabled children.

26 (3) To the extent practicable the program shall consider and include input from family
27 members and caregiving of disabled children.

28 (c) The State Board of Education shall create a database which identifies school
29 employees who are under active investigation for misconduct towards children into which county

30 boards of education shall report and review when considering employing a person with previous
31 experience in the education system.

§61-8F-7. Effective dates.

1 (a) This section and the provisions of §61-8F-1, §61-8F-2, and §61-8F-6 of this article shall
2 be effective from passage.

3 (b) The provisions of §61-8F-3, §61-8F-4, and §61-8F-5 shall be effective July 1, 2022.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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Chairman, House Committee

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Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

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Clerk of the House of Delegates

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Clerk of the Senate

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Speaker of the House of Delegates

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President of the Senate

The within this the.....
day of, 2022.

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Governor