

H. B. 3236

(By Delegates Ashley, Frazier, Boggs, Michael
and Miley)

[Introduced February 21, 2011; referred to the
Committee on the Judiciary.]

A BILL to amend and reenact §49-6-5b of the Code of West Virginia,
1931, as amended; and to amend and reenact §61-8D-1 and
§61-8D-4 of said code, all relating to child abuse and
neglect, specifically, to provide additional conditions for
which the Department of Health and Human Resources is mandated
to file a petition to terminate parental rights and to extend
the definition of neglect to include cohabiting with
registered sex offenders.

Be it enacted by the Legislature of West Virginia:

That §49-6-5b of the Code of West Virginia, 1931, as amended,
be amended and reenacted; and that §61-8D-1 and §61-8D-4 of said
code be amended and reenacted, all to read as follows:

CHAPTER 49. CHILD WELFARE.

ARTICLE 6. PROCEDURE IN CASES OF CHILD NEGLECT OR ABUSE.

§49-6-5b. When efforts to terminate parental rights required.

(a) Except as provided in subsection (b) of this section, the
department shall file or join in a petition or otherwise seek a
ruling in any pending proceeding to terminate parental rights:

1 (1) If a child has been in foster care for fifteen of the most
2 recent twenty-two months as determined by the earlier of the date
3 of the first judicial finding that the child is subjected to abuse
4 or neglect or the date which is sixty days after the child is
5 removed from the home;

6 (2) If a court has determined the child is abandoned; ~~or~~

7 (3) If a court has determined the parent has committed murder
8 or voluntary manslaughter of another of his or her children or the
9 other parent of his or her children; has attempted or conspired to
10 commit ~~such~~ murder or voluntary manslaughter or has been an
11 accessory before or after the fact of either crime; has committed
12 unlawful or malicious wounding resulting in serious bodily injury
13 to the child, ~~or~~ to another of his or her children or to the other
14 parent of his or her children; or, the parental rights of the
15 parent to a sibling have been terminated involuntarily; or

16 (4) If a child has been living in the home of a person who is
17 a registered sex offender under the terms of article twelve,
18 chapter fifteen of this code.

19 (b) The department may determine not to file a petition to
20 terminate parental rights when:

21 (1) At the option of the department, the child has been placed
22 with a relative;

23 (2) The department has documented in the case plan made
24 available for court review, a compelling reason including, but not
25 limited to, the child's age and preference regarding termination or
26 the child's placement in custody of the department based on ~~any~~

1 proceedings initiated under article five of this chapter, that
2 filing the petition would not be in the best interests of the
3 child; or

4 (3) The department has not provided, when reasonable efforts
5 to return a child to the family are required, the services to the
6 child's family as the department deems necessary for the safe
7 return of the child to the home.

8 **CHAPTER 61. CRIMES AND THEIR PUNISHMENT.**

9 **ARTICLE 8D. CHILD ABUSE.**

10 **§61-8D-1. Definitions.**

11 In this article, unless a different meaning plainly is
12 required:

13 (1) "Abuse" means the infliction upon a minor of physical
14 injury by other than accidental means.

15 (2) "Child" means any person under eighteen years of age not
16 otherwise emancipated by law.

17 (3) "Controlled substance" means controlled substance as that
18 term is defined in subsection (d), section one hundred one, article
19 one, chapter sixty-a of this code.

20 (4) "Custodian" means a person over the age of fourteen years
21 who has or shares actual physical possession or care and custody of
22 a child on a full-time or temporary basis regardless of whether
23 such person has been granted custody of the child by any contract,
24 agreement or legal proceeding. "Custodian" ~~shall also include, but~~
25 ~~not be~~ also includes, but is not limited to, the spouse of a
26 parent, guardian or custodian or a person cohabiting with a parent,

1 guardian or custodian in the relationship of husband and wife where
2 such spouse or other person shares actual physical possession or
3 care and custody of a child. ~~with the parent, guardian or~~
4 ~~custodian.~~

5 (5) "Guardian" means a person who has care and custody of a
6 child as the result of any contract, agreement or legal proceeding.

7 (6) "Neglect" means the unreasonable failure by a parent,
8 guardian or any person voluntarily accepting a supervisory role
9 towards a minor child to exercise a minimum degree of care to
10 assure said minor child's physical safety or health. "Neglect"
11 includes cohabitation by a parent, guardian or custodian with a
12 person who is a registered sex offender under article twelve,
13 chapter fifteen of this code.

14 (7) "Parent" means the biological father or mother of a child
15 or the adoptive mother or father of a child.

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

19 (9) "Sexual exploitation" means an act whereby:

20 (A) A parent, custodian, guardian or other person in a
21 position of trust to a child, whether for financial gain or not,
22 persuades, induces, entices or coerces the child to engage in
23 sexually explicit conduct as that term is defined in section one,
24 article eight-c, chapter sixty-one of this code; or

25 (B) A parent, guardian, custodian or other person in a
26 position of trust in relation to a child persuades, induces,

1 entices or coerces the child to display his or her sex organs for
2 the sexual gratification of the parent, guardian, custodian, person
3 in a position of trust or a third person or to display his or her
4 sex organs under circumstances in which the parent, guardian,
5 custodian or other person in a position of trust knows such display
6 is likely to be observed by others who would be affronted or
7 alarmed.

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

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

14 (12) A "person in a position of trust in relation to a child"
15 refers to any person who is acting in the place of a parent and
16 charged with any of a parent's rights, duties or responsibilities
17 concerning a child or someone responsible for the general
18 supervision of a child's welfare or any person who by virtue of
19 their occupation or position is charged with any duty or
20 responsibility for the health, education, welfare or supervision of
21 the child.

22 **§61-8D-4. Child neglect resulting in injury; child neglect**
23 **creating risk of injury; criminal penalties.**

24 (a) If any parent, guardian or custodian ~~shall neglect~~
25 neglects a child and by such neglect ~~cause said child~~ causes bodily
26 injury as such term is defined in section one, article eight-b of

1 this chapter, then such parent, guardian or custodian ~~shall be~~ is
 2 guilty of a felony and, upon conviction thereof, shall be fined not
 3 less than ~~one hundred nor more than one thousand dollars or~~
 4 ~~committed to the custody of the Division of Corrections~~ \$100 nor
 5 more than \$1000 or imprisoned in a state correctional facility for
 6 not less than one nor more than three years or, in the discretion
 7 of the court, be confined in ~~the county~~ jail for not more than one
 8 year, or both ~~such fine and confinement or imprisonment.~~ fined and
 9 confined.

10 (b) If any parent, guardian or custodian ~~shall neglect~~
 11 neglects a child and by such neglect ~~cause said child~~ causes
 12 serious bodily injury as such term is defined in section one,
 13 article eight-b of this chapter, then such parent, guardian or
 14 custodian ~~shall be~~ is guilty of a felony and, upon conviction
 15 thereof, shall be fined not less than ~~three hundred nor more than~~
 16 ~~three thousand dollars or committed to the custody of the Division~~
 17 ~~of Corrections~~ \$300 nor more than \$3000 or imprisoned in a state
 18 correctional facility for not less than one nor more than ten
 19 years, or both such fine and imprisonment.

20 (c) The provisions of this section ~~shall~~ do not apply if the
 21 neglect by the parent, guardian or custodian is due primarily to a
 22 lack of financial means on the part of such parent, guardian or
 23 custodian except when the parent, guardian or custodian is
 24 cohabiting with a registered sex offender under the terms of
 25 article twelve, chapter of this code.

26 (d) The provisions of this section shall do not apply to any

1 a parent, guardian or custodian who fails or refuses, or allows
2 another person to fail or refuse, to supply a child ~~under the care,~~
3 ~~custody or control of such parent, guardian or custodian~~ with
4 necessary medical care when such medical care conflicts with the
5 tenets and practices of a recognized religious denomination or
6 order of which such parent, guardian or custodian is an adherent or
7 member.

8 (e) ~~Any~~ A person who grossly neglects a child and by the gross
9 neglect creates a substantial risk of serious bodily injury or of
10 death to the child, is guilty of a felony and, upon conviction
11 thereof, shall be fined not more than ~~three thousand dollars and~~
12 ~~confined to the custody of the Division of Corrections~~ \$3000 and
13 imprisoned in a state correctional facility for not less than one
14 nor more than five years.

NOTE: The purpose of this bill is to provide additional conditions for which the Department of Health and Human Resources is mandated to file a petition to terminate parental rights and to extend the definition of neglect to include cohabiting with registered sex offenders.

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