

ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 216

(SENATORS PREZIOSO, PALUMBO, EDGELL,
FOSTER, KESSLER (ACTING PRESIDENT), MINARD,
UNGER, WILLIAMS, BOLEY, JENKINS, SNYDER,
BROWNING, MCCABE, STOLLINGS, PLYMALE,
LAIRD, MILLER, KLEMPA AND NOHE, *original sponsors*)

[Passed March 7, 2011; in effect ninety days from passage.]

AN ACT to amend and reenact §49-1-3 of the Code of West Virginia, 1931, as amended, relating to modifying the definition of “imminent danger to the physical well-being of a child” with regard to child abuse and neglect to include alcohol and substance abuse on the part of the parent, guardian or custodian.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. PURPOSES; DEFINITIONS.

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

1 As used in this chapter:

2 (1) "Abused child" means a child whose health or welfare
3 is harmed or threatened by:

4 (A) A parent, guardian or custodian who knowingly or
5 intentionally inflicts, attempts to inflict or knowingly allows
6 another person to inflict, physical injury or mental or
7 emotional injury, upon the child or another child in the
8 home; or

9 (B) Sexual abuse or sexual exploitation; or

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

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

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

18 (2) "Abusing parent" means a parent, guardian or other
19 custodian, regardless of his or her age, whose conduct, as
20 alleged in the petition charging child abuse or neglect, has
21 been adjudged by the court to constitute child abuse or
22 neglect.

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

32 (4) "Child abuse and neglect" or "child abuse or neglect"
33 means physical injury, mental or emotional injury, sexual
34 abuse, sexual exploitation, sale or attempted sale or negli-
35 gent treatment or maltreatment of a child by a parent,

36 guardian or custodian who is responsible for the child's
37 welfare, under circumstances which harm or threaten the
38 health and welfare of the child.

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

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

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

45 (C) Preventing the unnecessary removal of children from
46 their families by identifying family problems and assisting
47 families in resolving problems which could lead to a removal
48 of children and a breakup of the family;

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

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

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

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

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

66 (B) Multidisciplinary team (MDT): A multidisciplinary
67 team for response to child abuse allegations includes repre-
68 sentation from the following: Law enforcement; child

69 protective services; prosecution; mental health; medical;
70 victim advocacy; child advocacy center.

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

75 (D) Cultural competency and diversity: The CAC promotes
76 policies, practices and procedures that are culturally compe-
77 tent. Cultural competency is defined as the capacity to
78 function in more than one culture, requiring the ability to
79 appreciate, understand and interact with members of diverse
80 populations within the local community.

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

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

88 (G) Therapeutic intervention: Specialized mental health
89 services are to be made available as part of the team re-
90 sponse, either at the CAC or through coordination and
91 referral with other appropriate treatment providers.

92 (H) Victim support/advocacy: Victim support and advocacy
93 are to be made available as part of the team response, either
94 at the CAC or through coordination with other providers,
95 throughout the investigation and subsequent legal proceed-
96 ings.

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

100 (J) Case tracking: CACs must develop and implement a
101 system for monitoring case progress and tracking case
102 outcomes for team components: *Provided*, That a child

103 advocacy center may establish a safe exchange location for
104 children and families who have a parenting agreement or an
105 order providing for visitation or custody of the children that
106 require a safe exchange location.

107 (7) “Imminent danger to the physical well-being of the
108 child” means an emergency situation in which the welfare or
109 the life of the child is threatened. Such emergency situation
110 exists when there is reasonable cause to believe that any
111 child in the home is or has been sexually abused or sexually
112 exploited, or reasonable cause to believe that the following
113 conditions threaten the health or life of any child in the
114 home:

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

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

120 (C) Nutritional deprivation;

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

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

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

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

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

132 (8) “Legal guardianship” means the permanent relation-
133 ship between a child and caretaker, established by order of
134 the circuit court having jurisdiction over the child, pursuant

135 to the provisions of this chapter and chapter forty-eight of
136 this code.

137 (9) “Multidisciplinary team” means a group of profession-
138 als and paraprofessionals representing a variety of disci-
139 plines who interact and coordinate their efforts to identify,
140 diagnose and treat specific cases of child abuse and neglect.
141 Multidisciplinary teams may include, but are not limited to,
142 medical, educational, child care and law-enforcement
143 personnel, social workers, psychologists and psychiatrists.
144 Their goal is to pool their respective skills in order to
145 formulate accurate diagnoses and to provide comprehensive
146 coordinated treatment with continuity and follow-up for
147 both parents and children. “Community team” means a
148 multidisciplinary group which addresses the general problem
149 of child abuse and neglect in a given community and may
150 consist of several multidisciplinary teams with different
151 functions.

152 (10) (A) “Neglected child” means a child:

153 (i) Whose physical or mental health is harmed or threat-
154 ened by a present refusal, failure or inability of the child's
155 parent, guardian or custodian to supply the child with
156 necessary food, clothing, shelter, supervision, medical care
157 or education, when such refusal, failure or inability is not
158 due primarily to a lack of financial means on the part of the
159 parent, guardian or custodian; or

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

163 (B) “Neglected child” does not mean a child whose educa-
164 tion is conducted within the provisions of section one, article
165 eight, chapter eighteen of this code.

166 (11) “Parent” means an individual defined as a parent by
167 law or on the basis of a biological relationship, marriage to
168 a person with a biological relationship, legal adoption or
169 other recognized grounds.

170 (12) "Parental rights" means any and all rights and duties
171 regarding a parent to a minor child, including, but not
172 limited to, custodial rights and visitational rights and rights
173 to participate in the decisions affecting a minor child.

174 (13) "Parenting skills" means a parent's competencies in
175 providing physical care, protection, supervision and psycho-
176 logical support appropriate to a child's age and state of
177 development.

178 (14) "Sexual abuse" means:

179 (A) As to a child who is less than sixteen years of age, any
180 of the following acts which a parent, guardian or custodian
181 shall engage in, attempt to engage in, or knowingly procure
182 another person to engage in, with such child, notwithstand-
183 ing the fact that the child may have willingly participated in
184 such conduct or the fact that the child may have suffered no
185 apparent physical injury or mental or emotional injury as a
186 result of such conduct:

187 (i) Sexual intercourse;

188 (ii) Sexual intrusion; or

189 (iii) Sexual contact;

190 (B) As to a child who is sixteen years of age or older, any of
191 the following acts which a parent, guardian or custodian
192 shall engage in, attempt to engage in, or knowingly procure
193 another person to engage in, with such child, notwithstand-
194 ing the fact that the child may have consented to such
195 conduct or the fact that the child may have suffered no
196 apparent physical injury or mental or emotional injury as a
197 result of such conduct:

198 (i) Sexual intercourse;

199 (ii) Sexual intrusion; or

200 (iii) Sexual contact.

201 (C) Any conduct whereby a parent, guardian or custodian
202 displays his or her sex organs to a child, or procures another

203 person to display his or her sex organs to a child, for the
204 purpose of gratifying the sexual desire of the parent, guard-
205 ian or custodian, of the person making such display, or of the
206 child, or for the purpose of affronting or alarming the child.

207 (15) "Sexual contact" means sexual contact as that term is
208 defined in section one, article eight-b, chapter sixty-one of
209 this code.

210 (16) "Sexual exploitation" means an act whereby:

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

215 (B) A parent, guardian or custodian persuades, induces,
216 entices or coerces a child to display his or her sex organs for
217 the sexual gratification of the parent, guardian, custodian or
218 a third person, or to display his or her sex organs under
219 circumstances in which the parent, guardian or custodian
220 knows such display is likely to be observed by others who
221 would be affronted or alarmed.

222 (17) "Sexual intercourse" means sexual intercourse as that
223 term is defined in section one, article eight-b, chapter
224 sixty-one of this code.

225 (18) "Sexual intrusion" means sexual intrusion as that
226 term is defined in section one, article eight-b, chapter
227 sixty-one of this code.

228 (19) "Placement" means any temporary or permanent
229 placement of a child who is in the custody of the state in any
230 foster home, group home or other facility or residence.

231 (20) "Serious physical abuse" means bodily injury which
232 creates a substantial risk of death, which causes serious or
233 prolonged disfigurement, prolonged impairment of health or
234 prolonged loss or impairment of the function of any bodily
235 organ.

236 (21) "Siblings" means children who have at least one
237 biological parent in common or who have been legally
238 adopted by the same parents or parent.

239 (22) "Time-limited reunification services" means individ-
240 ual, group and family counseling, inpatient, residential or
241 outpatient substance abuse treatment services, mental health
242 services, assistance to address domestic violence, services
243 designed to provide temporary child care and therapeutic
244 services for families, including crisis nurseries and transpor-
245 tation to or from any such services, provided during fifteen
246 of the most recent twenty-two months a child has been in
247 foster care, as determined by the earlier date of the first
248 judicial finding that the child is subjected to abuse or
249 neglect, or the date which is sixty days after the child is
250 removed from home.

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

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Chairman Senate Committee

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Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

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Clerk of the Senate

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Clerk of the House of Delegates

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Acting President of the Senate

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Speaker of the House of Delegates

The within this the
Day of, 2011.

.....
Governor

