

COMMITTEE SUBSTITUTE

FOR

**Senate Bill No. 216**

(By Senators Prezioso, Palumbo, Edgell, Foster,  
Kessler (Acting President), Minard, Unger,  
Williams, Boley, Jenkins, Snyder, Browning, McCabe,  
Stollings, Plymale, Laird, Miller, Klempa and Nohe)

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[Originating in the Committee on the Judiciary;  
reported January 27, 2011.]

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A BILL 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 ~~(a)~~ (1) “Abused child” means a child whose health or  
3 welfare is harmed or threatened by:

4 ~~(1)~~ (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 ~~(2)~~ (B) Sexual abuse or sexual exploitation; or

10 ~~(3)~~ (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 ~~(4)~~ (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 ~~(b)~~ (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 ~~(e)~~ (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 ~~(d)~~ (4) “Child abuse and neglect” or “child abuse or  
33 neglect” means physical injury, mental or emotional injury,  
34 sexual abuse, sexual exploitation, sale or attempted sale or  
35 negligent 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 ~~(e)~~ (5) “Child abuse and neglect services” means social  
40 services which are directed toward:

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

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

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

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

53    ~~(5)~~ (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    ~~(6)~~ (F) Assuring the adequate care of children who have  
57 been placed in the custody of the department or third parties.

58    ~~(f)~~ (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    ~~(1)~~ (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 (2) (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 (3) (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 (4) (D) Cultural competency and diversity: The CAC  
76 promotes policies, practices and procedures that are cultur-  
77 ally competent. Cultural competency is defined as the  
78 capacity to function in more than one culture, requiring the  
79 ability to appreciate, understand and interact with members  
80 of diverse populations within the local community.

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

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

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

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

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

102     ~~(10)~~ (J) Case tracking: CACs must develop and implement  
103 a system for monitoring case progress and tracking case  
104 outcomes for team components: *Provided*, That a child  
105 advocacy center may establish a safe exchange location for  
106 children and families who have a parenting agreement or an  
107 order providing for visitation or custody of the children that  
108 require a safe exchange location.

109     ~~(g)~~ (7) “Imminent danger to the physical well-being of the  
110 child” means an emergency situation in which the welfare or

111 the life of the child is threatened. Such emergency situation  
112 exists when there is reasonable cause to believe that any  
113 child in the home is or has been sexually abused or sexually  
114 exploited, or reasonable cause to believe that the following  
115 conditions threaten the health or life of any child in the  
116 home:

117 ~~(1)~~ (A) Nonaccidental trauma inflicted by a parent, guard-  
118 ian, custodian, sibling or a babysitter or other caretaker;

119 ~~(2)~~ (B) A combination of physical and other signs indicat-  
120 ing a pattern of abuse which may be medically diagnosed as  
121 battered child syndrome;

122 ~~(3)~~ (C) Nutritional deprivation;

123 ~~(4)~~ (D) Abandonment by the parent, guardian or custodian;

124 ~~(5)~~ (E) Inadequate treatment of serious illness or disease;

125 ~~(6)~~ (F) Substantial emotional injury inflicted by a parent,  
126 guardian or custodian; ~~or~~

127 ~~(7)~~ (G) Sale or attempted sale of the child by the parent,  
128 guardian or custodian; or

129 (H) The parent, guardian or custodian's abuse of alcohol,  
130 drugs or other controlled substance, as those latter terms are  
131 defined in section one-hundred one, article one, chapter  
132 sixty-a of this code, has impaired his or her parenting skills

133 to a degree as to pose an imminent risk to a child's health or  
134 safety.

135 (h) (8) "Legal guardianship" means the permanent rela-  
136 tionship between a child and caretaker, established by order  
137 of the circuit court having jurisdiction over the child,  
138 pursuant to the provisions of this chapter and chapter  
139 forty-eight of this code.

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

155 ~~(j)-(1)~~ (10) (A) “Neglected child” means a child:

156 ~~(A)~~ (i) Whose physical or mental health is harmed or  
157 threatened by a present refusal, failure or inability of the  
158 child’s parent, guardian or custodian to supply the child with  
159 necessary food, clothing, shelter, supervision, medical care  
160 or education, when such refusal, failure or inability is not  
161 due primarily to a lack of financial means on the part of the  
162 parent, guardian or custodian; or

163 ~~(B)~~ (ii) Who is presently without necessary food, clothing,  
164 shelter, medical care, education or supervision because of the  
165 disappearance or absence of the child’s parent or custodian;

166 ~~(2)~~ (B) “Neglected child” does not mean a child whose  
167 education is conducted within the provisions of section one,  
168 article eight, chapter eighteen of this code.

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

173 (12) “Parental rights” means any and all rights and duties  
174 regarding a parent to a minor child, including, but not  
175 limited to, custodial rights and visitational rights and rights  
176 to participate in the decisions affecting a minor child.

177 ~~(K)~~ (13) “Parenting skills” means a parent’s competencies  
178 in providing physical care, protection, supervision and  
179 psychological support appropriate to a child’s age and state  
180 of development.

181 ~~(H)~~ (14) “Sexual abuse” means:

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

190 (i) Sexual intercourse;

191 (ii) Sexual intrusion; or

192 (iii) Sexual contact;

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

199 apparent physical injury or mental or emotional injury as a  
200 result of such conduct:

201 (i) Sexual intercourse;

202 (ii) Sexual intrusion; or

203 (iii) Sexual contact.

204 (C) Any conduct whereby a parent, guardian or custodian  
205 displays his or her sex organs to a child, or procures another  
206 person to display his or her sex organs to a child, for the  
207 purpose of gratifying the sexual desire of the parent, guard-  
208 ian or custodian, of the person making such display, or of the  
209 child, or for the purpose of affronting or alarming the child.

210 ~~(m)~~ (15) “Sexual contact” means sexual contact as that  
211 term is defined in section one, article eight-b, chapter  
212 sixty-one of this code.

213 ~~(n)~~ (16) “Sexual exploitation” means an act whereby:

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

219 ~~(2)~~ (B) A parent, guardian or custodian persuades, induces,  
220 entices or coerces a child to display his or her sex organs for

221 the sexual gratification of the parent, guardian, custodian or  
222 a third person, or to display his or her sex organs under  
223 circumstances in which the parent, guardian or custodian  
224 knows such display is likely to be observed by others who  
225 would be affronted or alarmed.

226 (o) (17) "Sexual intercourse" means sexual intercourse as  
227 that term is defined in section one, article eight-b, chapter  
228 sixty-one of this code.

229 (p) (18) "Sexual intrusion" means sexual intrusion as that  
230 term is defined in section one, article eight-b, chapter  
231 sixty-one of this code.

232 (q) ~~"Parental rights" means any and all rights and duties  
233 regarding a parent to a minor child, including, but not  
234 limited to, custodial rights and visitational rights and rights  
235 to participate in the decisions affecting a minor child.~~

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

239 (s) (20) "Serious physical abuse" means bodily injury  
240 which creates a substantial risk of death, which causes  
241 serious or prolonged disfigurement, prolonged impairment of  
242 health or prolonged loss or impairment of the function of any  
243 bodily organ.

244 (†) (21) “Siblings” means children who have at least one  
245 biological parent in common or who have been legally  
246 adopted by the same parents or parent.

247 (†) (22) “Time-limited reunification services” means  
248 individual, group and family counseling, inpatient, residen-  
249 tial or outpatient substance abuse treatment services, mental  
250 health services, assistance to address domestic violence,  
251 services designed to provide temporary child care and  
252 therapeutic services for families, including crisis nurseries  
253 and transportation to or from any such services, provided  
254 during fifteen of the most recent twenty-two months a child  
255 has been in foster care, as determined by the earlier date of  
256 the first judicial finding that the child is subjected to abuse  
257 or neglect, or the date which is sixty days after the child is  
258 removed from home.