

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 161**

4 (By Senators Foster, Palumbo, Klempa, Fanning, Unger, Kessler  
5 (Mr. President), Jenkins, Browning, Kirkendoll, Wills, Yost,  
6 Stollings and McCabe)

7 \_\_\_\_\_  
8 [Originating in the Committee on the Judiciary;  
9 reported January 25, 2012.]  
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13 A BILL to amend and reenact §49-6A-1, §49-6A-2, §49-6A-8 and  
14 §49-6A-10 of the Code of West Virginia, 1931, as amended, all  
15 relating to mandatory reporting of abuse and neglect of  
16 children; adding promoting adult responsibility and prevention  
17 to the purpose; adding certain persons to the mandatory  
18 reporting list for all abuse or neglect of children; creating  
19 a requirement that all adults report sexual abuse of children;  
20 requiring law enforcement who receive a report of sexual abuse  
21 to alert the Department of Health and Human Resources;  
22 encouraging law-enforcement agencies to coordinate in  
23 investigating a report; increasing the criminal penalties for  
24 failure to report; creating a crime and criminal penalties for  
25 all adults who fail to report sexual abuse of children; and  
26 requiring and amending certain educational programs and

1 trainings.

2 *Be it enacted by the Legislature of West Virginia:*

3 That §49-6A-1, §49-6A-2, §49-6A-8 and §49-6A-10 of the Code of  
4 West Virginia, 1931, as amended, be amended and reenacted, all to  
5 read as follows:

6 **ARTICLE 6A. REPORTS OF CHILDREN SUSPECTED TO BE ABUSED OR**  
7 **NEGLECTED.**

8 **§49-6A-1. Purpose.**

9 It is the purpose of this article, through the complete  
10 reporting of child abuse and neglect, to protect the best interests  
11 of the child, to offer protective services in order to prevent any  
12 further harm to the child or any other children living in the home,  
13 to stabilize the home environment, to preserve family life whenever  
14 possible, to promote adult responsibility for protecting children  
15 and to encourage cooperation among the states to prevent future  
16 incidents of child abuse and neglect and in dealing with the  
17 problems of child abuse and neglect.

18 **49-6A-2. Persons mandated to report suspected abuse and neglect.**

19 (a) When Any medical, dental or mental health professional,  
20 Christian Science practitioner, religious healer, school teacher or  
21 other school personnel, social service worker, child care or foster  
22 care worker, emergency medical services personnel, peace officer or  
23 law-enforcement official, humane officer, member of the clergy,  
24 circuit court judge, family court judge, employee of the Division  
25 of Juvenile Services, ~~or~~ magistrate, youth camp administrator or  
26 counselor, employee, coach or volunteer of an entity that provides

1 organized activities for children, or commercial film or  
2 photographic print processor who has reasonable cause to suspect  
3 that a child is neglected or abused or observes the child being  
4 subjected to conditions that are likely to result in abuse or  
5 neglect ~~such person~~ shall immediately, and not more than  
6 forty-eight hours after suspecting this abuse or neglect, report  
7 the circumstances or cause a report to be made to the Department of  
8 Health and Human Resources: *Provided*, That in any case where the  
9 reporter believes that the child suffered serious physical abuse or  
10 sexual abuse or sexual assault, the reporter shall also immediately  
11 report, or cause a report to be made, to the State Police and any  
12 law-enforcement agency having jurisdiction to investigate the  
13 complaint: *Provided, however*, That any person required to report  
14 under this article who is a member of the staff or volunteer of a  
15 public or private institution, school, entity that provides  
16 organized activities for children, facility or agency shall also  
17 immediately notify the person in charge of ~~such~~ the institution,  
18 school, entity that provides organized activities for children,  
19 facility or agency, or a designated agent thereof, who ~~shall~~ may  
20 supplement the report or cause ~~a~~ an additional report to be made.

21 (b) Any person over the age of eighteen who has actual  
22 knowledge of or observes any sexual abuse or sexual assault of a  
23 child, shall immediately, and not more than forty-eight hours after  
24 obtaining actual knowledge of or observing the sexual abuse or  
25 sexual assault, report the circumstances or cause a report to be  
26 made to the State Police or other law-enforcement agency having

1 jurisdiction to investigate the report. The law-enforcement agency  
2 that receives a report under this subsection shall report the  
3 allegations to the Department of Health and Human Resources and  
4 coordinate with any other law-enforcement agency, as necessary to  
5 investigate the report.

6 (c) However, Nothing in this article is intended to prevent  
7 individuals from reporting suspected abuse or neglect on their own  
8 behalf. In addition to those persons and officials specifically  
9 required to report situations involving suspected abuse or neglect  
10 of children, any other person may make a report if such person has  
11 reasonable cause to suspect that a child has been abused or  
12 neglected in a home or institution or observes the child being  
13 subjected to conditions or circumstances that would reasonably  
14 result in abuse or neglect.

15 **§49-6A-8. Failure to report; penalty.**

16 Any person, official or institution required by this article  
17 to report a case involving a child known or suspected to be abused  
18 or neglected, or required by section five of this article to  
19 forward a copy of a report of serious injury, who knowingly fails  
20 to do so or knowingly prevents another person acting reasonably  
21 from doing so, ~~shall be~~ is guilty of a misdemeanor and, upon  
22 conviction thereof, shall be confined in jail not more than ~~ten~~  
23 thirty days or fined not more than ~~\$100~~ \$1,000, or both.

24 **§49-6A-10. Educational programs.**

25 ~~Within available funding and as appropriate,~~ Subject to  
26 appropriation in the budget bill, the state department shall

1 conduct educational and training programs ~~with the staff of the~~  
2 ~~state department,~~ for persons required to report suspected abuse or  
3 neglect, and the general public, as well as implement evidence-  
4 based programs that reduce incidents of child maltreatment  
5 including sexual abuse. Training for persons require to report and  
6 the general public shall include indicators of child abuse and  
7 neglect, tactics used by sexual abusers, how and when to make a  
8 report, and protective factors that prevent abuse and neglect in  
9 order to promote adult responsibility for protecting children,  
10 encourage maximum reporting of child abuse and neglect, and to  
11 improve communication, cooperation and coordination among all  
12 agencies involved in the identification, prevention and treatment  
13 of the abuse and neglect of children.

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(NOTE: The purpose of this bill is to expand the list of those required to report abuse and neglect of children, require all persons to report sexual abuse of children, and increase the fine for those who fail to report.

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