

ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 161

(SENATORS FOSTER, PALUMBO, KLEMPA, FANNING,
UNGER, KESSLER (MR. PRESIDENT), JENKINS,
BROWNING, KIRKENDOLL, WILLS, YOST,
STOLLINGS AND MCCABE, *original sponsors*)

[Passed March 10, 2012; in effect ninety days from passage.]

AN ACT to amend and reenact §49-6A-1, §49-6A-2, §49-6A-8 and §49-6A-10 of the Code of West Virginia, 1931, as amended, all relating to mandatory reporting of abuse and neglect of children; adding promoting adult responsibility and prevention to the purpose; adding certain persons to the mandatory reporting list for all abuse or neglect of children; creating a requirement that certain adults report sexual abuse of children when observed or when received credible reports; allowing for exceptions; requiring law enforcement who receive a report of sexual abuse to alert the Department of Health and Human Resources; encouraging law-enforcement agencies to coordinate in investigating a report; increasing the criminal penalties for failure to report; creating a crime and criminal penalties for all adults who fail to report sexual abuse of children; and requiring and amending certain educational programs and trainings.

Be it enacted by the Legislature of West Virginia:

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

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

§49-6A-1. Purpose.

1 It is the purpose of this article, through the complete
2 reporting of child abuse and neglect, to protect the best
3 interests of the child, to offer protective services in order to
4 prevent any further harm to the child or any other children
5 living in the home, to stabilize the home environment, to
6 preserve family life whenever possible, to promote adult
7 responsibility for protecting children and to encourage
8 cooperation among the states to prevent future incidents of
9 child abuse and neglect and in dealing with the problems of
10 child abuse and neglect.

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

1 (a) Any medical, dental or mental health professional,
2 Christian Science practitioner, religious healer, school
3 teacher or other school personnel, social service worker,
4 child care or foster care worker, emergency medical services
5 personnel, peace officer or law-enforcement official, humane
6 officer, member of the clergy, circuit court judge, family
7 court judge, employee of the Division of Juvenile Services,
8 magistrate, youth camp administrator or counselor, em-
9 ployee, coach or volunteer of an entity that provides orga-
10 nized activities for children, or commercial film or photo-
11 graphic print processor who has reasonable cause to suspect
12 that a child is neglected or abused or observes the child
13 being subjected to conditions that are likely to result in
14 abuse or neglect shall immediately, and not more than
15 forty-eight hours after suspecting this abuse or neglect,
16 report the circumstances or cause a report to be made to the
17 Department of Health and Human Resources: *Provided*, That

18 in any case where the reporter believes that the child
19 suffered serious physical abuse or sexual abuse or sexual
20 assault, the reporter shall also immediately report, or cause
21 a report to be made, to the State Police and any law-en-
22 forcement agency having jurisdiction to investigate the
23 complaint: *Provided, however,* That any person required to
24 report under this article who is a member of the staff or
25 volunteer of a public or private institution, school, entity
26 that provides organized activities for children, facility or
27 agency shall also immediately notify the person in charge of
28 the institution, school, entity that provides organized
29 activities for children, facility or agency, or a designated
30 agent thereof, who may supplement the report or cause an
31 additional report to be made.

32 (b) Any person over the age of eighteen who receives a
33 disclosure from a credible witness or observes any sexual
34 abuse or sexual assault of a child, shall immediately, and not
35 more than forty-eight hours after receiving such a disclosure
36 or observing the sexual abuse or sexual assault, report the
37 circumstances or cause a report to be made to the Depart-
38 ment of Health and Human Resources or the State Police or
39 other law-enforcement agency having jurisdiction to investi-
40 gate the report. In the event that the individual receiving the
41 disclosure or observing the sexual abuse or sexual assault
42 has a good faith belief that the reporting of the event to the
43 police would expose either the reporter, the subject child, the
44 reporter's children or other children in the subject child's
45 household to an increased threat of serious bodily injury, the
46 individual may delay making the report while he or she
47 undertakes measures to remove themselves or the affected
48 children from the perceived threat of additional harm:
49 *Provided,* That the individual makes the report as soon as
50 practicable after the threat of harm has been reduced. The
51 law-enforcement agency that receives a report under this
52 subsection shall report the allegations to the Department of
53 Health and Human Resources and coordinate with any other
54 law-enforcement agency, as necessary to investigate the
55 report.

56 (c) Nothing in this article is intended to prevent individ-
57 uals from reporting suspected abuse or neglect on their own
58 behalf. In addition to those persons and officials specifically
59 required to report situations involving suspected abuse or
60 neglect of children, any other person may make a report if
61 such person has reasonable cause to suspect that a child has
62 been abused or neglected in a home or institution or observes
63 the child being subjected to conditions or circumstances that
64 would reasonably result in abuse or neglect.

§49-6A-8. Failure to report; penalty.

1 Any person, official or institution required by this article
2 to report a case involving a child known or suspected to be
3 abused or neglected, or required by section five of this article
4 to forward a copy of a report of serious injury, who know-
5 ingly fails to do so or knowingly prevents another person
6 acting reasonably from doing so, is guilty of a misdemeanor
7 and, upon conviction thereof, shall be confined in jail not
8 more than thirty days or fined not more than \$1,000, or both.

§49-6A-10. Educational programs.

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

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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President of the Senate

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Speaker of the House of Delegates

The within this the
Day of, 2012.

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Governor