

Senate Bill No. 404

(By Senators Cookman, Stollings, Miller, Williams,
Fitzsimmons, Green and Palumbo)

[Introduced March 1, 2013; referred to the Committee on
Education; and then to the Committee on the Judiciary.]

A BILL to amend and reenact §49-1-3 of the Code of West Virginia, 1931, as amended, relating generally to child abuse and neglect; and clarifying that a child who is physically healthy and presumed safe is a neglected child if the child is habitually absent from school without good cause.

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 (1) “Abused child” means a child whose health or welfare
- 2 is harmed or threatened by:

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

7 (B) Sexual abuse or sexual exploitation;

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

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

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

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

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

30 (4) “Child abuse and neglect” or “child abuse or neglect”
31 means physical injury, mental or emotional injury, sexual
32 abuse, sexual exploitation, sale or attempted sale or negligent
33 treatment or maltreatment of a child by a parent, guardian or
34 custodian who is responsible for the child’s welfare, under
35 circumstances which harm or threaten the health and welfare
36 of the child.

37 (5) “Child abuse and neglect services” means social
38 services which are directed toward:

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

41 (B) Identifying, preventing and remedying conditions
42 which cause child abuse and neglect;

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

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

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

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

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

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

64 (B) Multidisciplinary team (MDT): A multidisciplinary
65 team for response to child abuse allegations includes
66 representation from the following: Law enforcement; child
67 protective services; prosecution; mental health; medical;
68 victim advocacy; and child advocacy center.

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

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

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

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

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

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

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

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

106 (7) “Court-appointed special advocate (CASA) program”
107 means a community organization that screens, trains and
108 supervises CASA volunteers to advocate for the best interests
109 of children who are involved in abuse and neglect

110 proceedings. Court-appointed special advocate programs will
111 be operated under the following guidelines:

112 (A) Standards: CASA programs shall be members in
113 good standing with the West Virginia Court Appointed
114 Special Advocate Association, Inc., and the National Court
115 Appointed Special Advocates Association and adhere to all
116 standards set forth by these entities.

117 (B) Organizational capacity: A designated legal entity
118 responsible for program and fiscal operations has been
119 established and implements basic sound administrative practice.

120 (C) Cultural competency and diversity: CASA programs
121 promote policies, practices and procedures that are culturally
122 competent. "Cultural competency" is defined as the capacity
123 to function in more than one culture, requiring the ability to
124 appreciate, understand and interact with members of diverse
125 populations within the local community.

126 (D) Case management: CASA programs must utilize a
127 uniform case management system to monitor case progress
128 and track outcomes.

129 (E) Case review: CASA volunteers meet with CASA staff
130 on a routine basis to discuss case status and outcomes.

131 (F) Training: Court-appointed special advocates shall
132 serve as volunteers without compensation and shall receive
133 training consistent with state and nationally developed
134 standards.

135 (8) “Imminent danger to the physical well being of the
136 child” means an emergency situation in which the welfare or
137 the life of the child is threatened. Such emergency situation
138 exists when there is reasonable cause to believe that any child
139 in the home is or has been sexually abused or sexually
140 exploited, or reasonable cause to believe that the following
141 conditions threaten the health or life of any child in the home:

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

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

147 (C) Nutritional deprivation;

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

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

150 (F) Substantial emotional injury inflicted by a parent,
151 guardian or custodian;

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

154 (H) The parent, guardian or custodian abuse of alcohol or
155 drugs or other controlled substance as defined in section one
156 hundred one, article one, chapter sixty-a of this code, has
157 impaired his or her parenting skills to a degree as to pose an
158 imminent risk to a child's health or safety.

159 (9) "Legal guardianship" means the permanent
160 relationship between a child and caretaker, established by
161 order of the circuit court having jurisdiction over the child,
162 pursuant to the provisions of this chapter and chapter
163 forty-eight of this code.

164 (10) "Multidisciplinary team" means a group of
165 professionals and paraprofessionals representing a variety of
166 disciplines who interact and coordinate their efforts to identify,

167 diagnose and treat specific cases of child abuse and neglect.
168 Multidisciplinary teams may include, but are not limited to,
169 medical, educational, child care and law-enforcement
170 personnel, social workers, psychologists and psychiatrists.
171 Their goal is to pool their respective skills in order to formulate
172 accurate diagnoses and to provide comprehensive coordinated
173 treatment with continuity and followup for both parents and
174 children. “Community team” means a multidisciplinary group
175 which addresses the general problem of child abuse and neglect
176 in a given community and may consist of several
177 multidisciplinary teams with different functions.

178 (11)(A) “Neglected child” means a child:

179 (i) Whose physical or mental health is harmed or
180 threatened by a present refusal, failure or inability of the
181 child’s parent, guardian or custodian to supply the child with
182 necessary food, clothing, shelter, supervision, medical care
183 or education, when such refusal, failure or inability is not due
184 primarily to a lack of financial means on the part of the
185 parent, guardian or custodian; or

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

190 (iii) Who is otherwise physically healthy and presumed
191 safe but is habitually absent from school without good cause.
192 Provided, That this subparagraph (iii) does not apply to the
193 parents of any child who is educated pursuant to the home
194 instruction exemption from the compulsory school attendance
195 requirements set forth in section one, article eight, chapter
196 eighteen of this code.

197 (B) "Neglected child" does not mean a child whose
198 education is conducted within the provisions of section one,
199 article eight, chapter eighteen of this code.

200 (12) "Parent" means an individual defined ~~has~~ as a parent
201 by law or on the basis of a biological relationship, marriage
202 to a person with a biological relationship, legal adoption or
203 other recognized grounds.

204 (13) "Parental rights" means any and all rights and duties
205 regarding a parent to a minor child, including, but not limited
206 to, custodial rights and visitational rights and rights to
207 participate in the decisions affecting a minor child.

208 (14) "Parenting skills" means a parent's competencies in
209 providing physical care, protection, supervision and
210 psychological support appropriate to a child's age and state
211 of development.

212 (15) "Sexual abuse" means:

213 (A) As to a child who is less than sixteen years of age,
214 any of the following acts which a parent, guardian or
215 custodian shall engage in, attempt to engage in or knowingly
216 procure another person to engage in, with such child,
217 notwithstanding the fact that the child may have willingly
218 participated in such conduct or the fact that the child may
219 have suffered no apparent physical injury or mental or
220 emotional injury as a result of such conduct:

221 (i) Sexual intercourse;

222 (ii) Sexual intrusion; or

223 (iii) Sexual contact;

224 (B) As to a child who is sixteen years of age or older, any
225 of the following acts which a parent, guardian or custodian
226 shall engage in, attempt to engage in or knowingly procure
227 another person to engage in, with such child, notwithstanding
228 the fact that the child may have consented to such conduct or
229 the fact that the child may have suffered no apparent physical
230 injury or mental or emotional injury as a result of such
231 conduct:

232 (i) Sexual intercourse;

233 (ii) Sexual intrusion; or

234 (iii) Sexual contact;

235 (C) Any conduct whereby a parent, guardian or custodian
236 displays his or her sex organs to a child, or procures another
237 person to display his or her sex organs to a child, for the
238 purpose of gratifying the sexual desire of the parent, guardian
239 or custodian, of the person making such display, or of the
240 child, or for the purpose of affronting or alarming the child.

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

244 (17) "Sexual exploitation" means an act whereby:

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

249 (B) A parent, guardian or custodian persuades, induces,
250 entices or coerces a child to display his or her sex organs for
251 the sexual gratification of the parent, guardian, custodian or
252 a third person, or to display his or her sex organs under
253 circumstances in which the parent, guardian or custodian
254 knows such display is likely to be observed by others who
255 would be affronted or alarmed.

256 (18) "Sexual intercourse" means sexual intercourse as
257 that term is defined in section one, article eight-b, chapter
258 sixty-one of this code.

259 (19) “Sexual intrusion” means sexual intrusion as that
260 term is defined in section one, article eight-b, chapter
261 sixty-one of this code.

262 (20) “Placement” means any temporary or permanent
263 placement of a child who is in the custody of the state in any
264 foster home, group home or other facility or residence.

265 (21) “Serious physical abuse” means bodily injury which
266 creates a substantial risk of death, which causes serious or
267 prolonged disfigurement, prolonged impairment of health or
268 prolonged loss or impairment of the function of any bodily
269 organ.

270 (22) “Siblings” means children who have at least one
271 biological parent in common or who have been legally
272 adopted by the same parents or parent.

273 (23) “Time-limited reunification services” means
274 individual, group and family counseling, inpatient, residential
275 or outpatient substance abuse treatment services, mental
276 health services, assistance to address domestic violence,
277 services designed to provide temporary child care and

278 therapeutic services for families, including crisis nurseries
279 and transportation to or from any such services, provided
280 during fifteen of the most recent twenty-two months a child
281 has been in foster care, as determined by the earlier date of
282 the first judicial finding that the child is subjected to abuse or
283 neglect, or the date which is sixty days after the child is
284 removed from home.

(NOTE: The purpose of this bill is to clarify that a child who is physically healthy and presumed safe is a neglected child if he or she is habitually absent from school without good cause. This bill provides an exemption for parents whose children are receiving home instruction.

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