

# **WEST VIRGINIA LEGISLATURE**

## **2017 REGULAR SESSION**

**Introduced**

### **House Bill 2704**

BY DELEGATES ESPINOSA, STATLER, DEAN, ROHRBACH,  
WILSON, ROWAN, HARSHBARGER, ROMINE, R., WAGNER,  
COOPER AND HIGGINBOTHAM

[Introduced February 24, 2017; Referred  
to the Committee on Education then the Judiciary.]

1 A BILL to amend and reenact §61-8D-5 of the Code of West Virginia, 1931, as amended, relating  
 2 to prohibiting persons convicted of sexual offenses against children with whom they hold  
 3 positions of trust from holding certification or license valid in public schools; prohibiting  
 4 persons convicted of sexual offenses against children with whom they hold positions of  
 5 trust from being employed by any educational, vocational, training, day care, group home,  
 6 foster care program, or rehabilitation facility in the state; and increasing penalties for  
 7 persons who are school employees and convicted of sexual offenses against children with  
 8 whom they hold positions of trust.

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

1 That §61-8D-5 of the Code of West Virginia, 1931, as amended, be amended and  
 2 reenacted to read as follows:

**ARTICLE 8D. CHILD ABUSE.**

**§61-8D-5. Sexual abuse by a parent, guardian, custodian or person in a position of trust to  
 a child; parent, guardian, custodian or person in a position of trust allowing sexual  
 abuse to be inflicted upon a child; displaying of sex organs by a parent, guardian,  
 or custodian; penalties.**

1 (a) In addition to any other offenses set forth in this code, the Legislature hereby declares  
 2 a separate and distinct offense under this subsection, as follows: If any parent, guardian or  
 3 custodian of or other person in a position of trust in relation to a child under his or her care, custody  
 4 or control, shall engage in or attempt to engage in sexual exploitation of, or in sexual intercourse,  
 5 sexual intrusion or sexual contact with, a child under his or her care, custody or control,  
 6 notwithstanding the fact that the child may have willingly participated in such conduct, or the fact  
 7 that the child may have consented to such conduct or the fact that the child may have suffered no  
 8 apparent physical injury or mental or emotional injury as a result of such conduct, then such  
 9 parent, guardian, custodian or person in a position of trust shall be guilty of a felony and, upon  
 10 conviction thereof, shall be imprisoned in a correctional facility not less than ten nor more than

11 twenty years, or fined not less than \$500 nor more than \$5,000 and imprisoned in a correctional  
12 facility not less than ten years nor more than twenty years. Notwithstanding any other provision  
13 of this code, a person convicted under this subsection is not eligible for any certificate or license  
14 valid in the public schools that may be issued by the State Superintendent of Schools and any  
15 such certificate or license held by the person is revoked notwithstanding any other provision of  
16 this code. A person convicted of a crime under this subsection is thereafter prohibited from being  
17 employed by any preschool facility, kindergarten, elementary school, middle school, high school  
18 or other educational, training, vocational, day care, group home, foster care program, or  
19 rehabilitation facility licensed to operate or otherwise exist under the authority of this state.

20 (b) Any parent, guardian, custodian or other person in a position of trust in relation to the  
21 child who knowingly procures, authorizes, or induces another person to engage in or attempt to  
22 engage in sexual exploitation of, or sexual intercourse, sexual intrusion or sexual contact with, a  
23 child under the care, custody or control of such parent, guardian, custodian or person in a position  
24 of trust when such child is less than sixteen years of age, notwithstanding the fact that the child  
25 may have willingly participated in such conduct or the fact that the child may have suffered no  
26 apparent physical injury or mental or emotional injury as a result of such conduct, such parent,  
27 guardian, custodian or person in a position of trust shall be guilty of a felony and, upon conviction  
28 thereof, shall be imprisoned in a correctional facility not less than five years nor more than fifteen  
29 years, or fined not less than \$1,000 nor more than \$10,000 and imprisoned in a correctional facility  
30 not less than five years nor more than fifteen years: Provided, That in the event that the person  
31 who holds a position of trust is an employee of a school, public or private, that instructs children  
32 in any of the grade levels preschool through twelfth grade and commits an offense described in  
33 this subsection, he or she, upon conviction thereof, shall be fined not less than \$5,000 nor more  
34 than \$25,000 and imprisoned in a correctional facility for not less than six nor more than sixteen  
35 years. Notwithstanding any other provision of this code, a person convicted under this subsection  
36 is not eligible for any certificate or license valid in the public schools that may be issued by the

37 State Superintendent of Schools and any such certificate or license held by the person is revoked  
38 notwithstanding any other provision of this code. A person convicted of a crime under this  
39 subsection is thereafter prohibited from being employed by any preschool facility, kindergarten,  
40 elementary school, middle school, high school or other educational, training, vocational, day care,  
41 group home, foster care program, or rehabilitation facility licensed to operate or otherwise exist  
42 under the authority of this state.

43 (c) Any parent, guardian, custodian or other person in a position of trust in relation to the  
44 child who knowingly procures, authorizes, or induces another person to engage in or attempt to  
45 engage in sexual exploitation of, or sexual intercourse, sexual intrusion or sexual contact with, a  
46 child under the care, custody or control of such parent, guardian, custodian or person in a position  
47 of trust when such child is sixteen years of age or older, notwithstanding the fact that the child  
48 may have consented to such conduct or the fact that the child may have suffered no apparent  
49 physical injury or mental or emotional injury as a result of such conduct, then such parent,  
50 guardian, custodian or person in a position of trust shall be guilty of a felony and, upon conviction  
51 thereof, shall be imprisoned in a correctional facility not less than one year nor more than five  
52 years: Provided, That in the event that the person who holds a position of trust is an employee of  
53 a school, public or private, that instructs children in any of the grade levels preschool through  
54 twelfth grade and commits an offense described in this subsection, he or she, upon conviction  
55 thereof, shall be fined not less than \$5,000 nor more than \$25,000 and imprisoned in a  
56 correctional facility for not less than two nor more than six years. Notwithstanding any other  
57 provision of this code, a person convicted under this subsection is not eligible for any certificate  
58 or license valid in the public schools that may be issued by the State Superintendent of Schools  
59 and any such certificate or license held by the person is revoked notwithstanding any other  
60 provision of this code. A person convicted of a crime under this subsection is thereafter prohibited  
61 from being employed by any preschool facility, kindergarten, elementary school, middle school,  
62 high school or other educational, training, vocational, day care, group home, foster care program,

63 or rehabilitation facility licensed to operate or otherwise exist under the authority of this state.

64 (d) The provisions of this section shall not apply to a custodian or person in a position of  
65 trust whose age exceeds the age of the child by less than four years unless they are a school  
66 teacher or employee of any school, educational facility, daycare, group home or foster care  
67 system.

NOTE: The purpose of this bill is to prohibit persons convicted of sexual offenses against children with whom they hold positions of trust from holding certification or license valid in public schools; prohibiting persons convicted of sexual offenses against children with whom they hold positions of trust from being employed by any educational, vocational, training, day care, group home, foster care program, or rehabilitation facility in the state; and to increase penalties for persons who are school employees and convicted of sexual offenses against children with whom they hold positions of trust.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.