

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

House Bill 3028

BY DELEGATE HORNBUCKLE

[Introduced February 12, 2019; Referred
to the Committee on the Judiciary.]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
 2 designated §21-3E-1, §21-3E-2, §21-3E-3, §21-3E-4, and §21-3E-5, all relating to
 3 enacting a workplace violence prevention for health care and social service workers act;
 4 providing legislative findings, definitions, workplace violence prevention standard and
 5 requirements for such.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 3E. WORKPLACE VIOLENCE PREVENTION FOR HEALTH CARE AND
 SOCIAL SERVICE WORKERS.**

§21-3E-1. Title.

1 This article shall be known as the “Workplace Violence Prevention for Health Care and
 2 Social Service Workers Act.”

§21-3E-2. Findings.

1 (a) The health care and social service industries experience the highest rates of injuries
 2 caused by workplace violence. The Bureau of Labor Statistics reports that health care and social
 3 service workers suffered 69 percent of all workplace violence injuries caused by persons in 2016
 4 and are nearly five times as likely to suffer a workplace violence injury than workers overall.

5 (b) According to a survey of 3,500 American emergency physicians conducted by the
 6 American College of Emergency Physicians, 47 percent of emergency room doctors have been
 7 physically assaulted at work, and eight in 10 report that this violence is affecting patient care.

8 (c) Violence against workers in health care settings is most commonly due to assaults by
 9 patients or clients, or persons accompanying patients or clients.

10 (d) Workplace violence in health care and social service sectors is increasing greatly.

§21-3E-3. Definitions.

1 (1) Covered facility. -- The term “covered facility” includes the following:

2 (A) Any hospital, including any specialty hospital, in-patient or outpatient setting, or clinic

3 operating within a hospital license, or any setting that provides outpatient services.

4 (B) Any residential treatment facility, including any nursing home, skilled nursing facility,
5 hospice facility, and long-term care facility.

6 (C) Any nonresidential treatment or service setting.

7 (D) Any medical treatment or social service setting or clinic at a correctional or detention
8 facility.

9 (E) Any community care setting, including a community-based residential facility, group
10 home, and mental health clinic.

11 (F) Any psychiatric treatment facility.

12 (G) Any drug abuse or substance use disorder treatment center.

13 (H) Any independent freestanding emergency centers.

14 (2) Covered services. -- The term "covered service" includes the following services and
15 operations:

16 (A) Any services and operations provided in any field work setting, including home health
17 care, home- based hospice, and home-based social work.

18 (B) Any emergency services and transport, including such services provided by firefighters
19 and emergency responders.

20 (C) Any other services and operations the Commissioner of Labor determines should be
21 covered under the standards promulgated under section 101.

22 (3) Covered employer. --

23 (A) In general. -- The term "covered employer" includes a person (including a contractor,
24 subcontractor, a temporary service firm, or an employee leasing entity) that employs an individual
25 to work at a covered facility or to perform covered services.

26 (B) Exclusion. -- The term "covered employer" does not include an individual who privately
27 employs, in the individual's residence, a person to perform covered services for the individual or
28 a family member of the individual.

29 (1) Workplace violence. --

30 (A) In general. -- The term “workplace violence” means any act of violence or threat of
31 violence, without regard to intent, that occurs at a covered facility or while a covered employee
32 performs a covered service.

33 (B) Exclusions. -- The term “workplace violence” does not include lawful acts of self-
34 defense or defense of others.

35 (C) Inclusions. -- The term “workplace violence” includes:

36 (i) The threat or use of physical force against a covered employee that results in or has a
37 high likelihood of resulting in injury, psychological trauma, or stress, without regard to whether the
38 covered employee sustains an injury, psychological trauma, or stress; and

39 (ii) An incident involving the threat or use of a firearm or a dangerous weapon, including
40 the use of common objects as weapons, without regard to whether the employee sustains an
41 injury, psychological trauma, or stress.

42 (2) Type 1 violence. -- The term “type 1 violence” ;

43 (A) Means workplace violence directed at a covered employee at a covered facility or while
44 performing a covered service by an individual who has no legitimate business at the covered
45 facility or with respect to such covered service; and

46 (B) Includes violent acts by any individual who enters the covered facility or worksite where
47 a covered service is being performed with the intent to commit a crime.

48 (3) Type 2 violence. -- The term “type 2 violence” means workplace violence directed at a
49 covered employee by customers, clients, patients, students, inmates, or any individual for whom
50 a covered facility provides services or for whom the employee performs covered services.

51 (4) Type 3 violence. -- The term “type 3 violence” means workplace violence directed at a
52 covered employee by a present or former employee, supervisor, or manager.

53 (5) Type 4 violence. -- The term “type 4 violence” means workplace violence directed at a
54 covered employee by an individual who is not an employee, but has or is known to have had a

55 personal relationship with such employee.

56 (6) Threat of violence. -- The term “threat of violence” means a statement or conduct that
57 causes a person to fear for his or her safety because there is a reasonable possibility the person
58 might be physically injured, and that serves no legitimate purpose.

59 (7) Alarm. -- The term “alarm” means a mechanical, electrical, or electronic device that
60 does not rely upon an employee's vocalization in order to alert others.

61 (8) Dangerous weapon. -- The term “dangerous weapon” means an instrument capable of
62 inflicting death or serious bodily injury, regardless of whether such instrument was designed for
63 that purpose.

64 (9) Engineering controls. --

65 (A) In general. -- The term “engineering controls” means an aspect of the built space or a
66 device that removes a hazard from the workplace or creates a barrier between a covered
67 employee and the hazard.

68 (B) Inclusions. -- For purposes of reducing workplace violence hazards, the term
69 “engineering controls” includes electronic access controls to employee occupied areas, weapon
70 detectors (installed or handheld), enclosed workstations with shatter-resistant glass, deep service
71 counters, separate rooms or areas for high-risk patients, locks on doors, removing access to or
72 securing items that could be used as weapons, furniture affixed to the floor, opaque glass in
73 patient rooms (which protects privacy, but allows the health care provider to see where the patient
74 is before entering the room), closed-circuit television monitoring and video recording, sight-aids,
75 and personal alarm devices.

76 (10) Environmental risk factors. --

77 (A) In general. -- The term “environmental risk factors” means factors in the covered facility
78 or area in which a covered service is performed that may contribute to the likelihood or severity
79 of a workplace violence incident.

80 (B) Clarification. -- Environmental risk factors may be associated with the specific task

81 being performed or the work area, such as working in an isolated area, poor illumination or
82 blocked visibility, and lack of physical barriers between employees and persons at risk of
83 committing workplace violence.

84 (11) Patient-specific risk factors. -- The term “patient- specific risk factors” means factors
85 specific to a patient that may increase the likelihood or severity of a workplace violence incident,
86 including a patient's mental status, treatment and medication status, history of violence as known
87 to a covered employee at a covered facility or while performing a covered service, use of drugs
88 or alcohol as known to a covered employee at a covered facility or while performing a covered
89 service, and any other conditions or disease processes that may cause the patient to experience
90 confusion or disorientation, to be nonresponsive to instruction, or to behave unpredictably.

91 (12) Commissioner. -- The term “Commissioner” means the Commissioner of Labor.

92 (13) Work practice controls. --

93 (A) In general. -- The term “work practice controls” means procedures and rules that are
94 used to effectively reduce workplace violence hazards.

95 (B) Inclusions. -- The term “work practice controls” includes assigning and placing
96 sufficient numbers of staff to reduce patient-specific Type 2 workplace violence hazards, provision
97 of dedicated and available safety personnel such as security guards, employee training on
98 workplace violence prevention method and techniques to de-escalate and minimize violent
99 behavior, and employee training on procedures for response in the event of a workplace violence
100 incident and for post-incident response.

§21-3E-4. Workplace violence prevention standard.

1 Not later than one year after this law becomes effective, the Commissioner of Labor shall
2 promulgate a standard on workplace violence prevention:

3 (1) To require certain employers in the health care and social service sectors and certain
4 employers in sectors that conduct activities similar to the activities in the health care and social
5 service sectors, to develop and implement a comprehensive workplace violence prevention plan

6 to protect health care workers, social service workers and other personnel from work-place
7 violence; and

8 (2) To require that these plans, at a minimum, be based on the Guidelines for Preventing
9 workplace Violence for Healthcare and Social Service Workers published by the Occupational
10 Safety and Health Administration of the Department of Labor in 2015.

§21-3E-5. Requirements for workplace violence prevention standards.

1 Each standard described in section four of this article shall include, at a minimum, the
2 following requirements:

3 (1) Workplace violence prevention plan. -- Not later than six months after the date of
4 promulgation of the final standard, a covered employer shall develop, implement, and maintain
5 an effective written workplace violence prevention plan for covered employees at each covered
6 facility controlled by the employer and for covered employees performing a covered service on
7 behalf of such employer, which meet the following:

8 (A) Plan development. -- Each plan shall:

9 (i) Be developed and implemented with the meaningful participation of direct care
10 employees and, where applicable, employee representatives and collective bargaining
11 representatives, for all aspects of the plan;

12 (ii) Be tailored and specific to conditions and hazards for the covered facility or the covered
13 service, including patient-specific risk factors and risk factors specific to each work area or unit;

14 and

15 (iii) Be suitable for the size and complexity of operations at the covered facility or for the
16 covered service, and remain in effect at all times.

17 (B) Plan content. -- Each plan shall include procedures and methods for the following:

18 (i) Identification of the individual responsible for implementation of the plan.

19 (ii) With respect to each work area and unit at the covered facility or while covered
20 employees are performing the covered service, risk assessment and identification of workplace

21 violence risks and hazards to employees exposed to such risks and hazards (including
22 environmental risk factors and patient-specific risk factors), which shall be

23 (I) Informed by past violent incidents specific to such covered facility or such covered
24 service; and

25 (II) Conducted with, at a minimum --

26 (aa) Direct care employees;

27 (bb) Where applicable, the representatives of such employees; and

28 (cc) The employer.

29 (iii) Hazard prevention, engineering controls, and work practice controls to correct hazards
30 in a timely manner applying industrial hygiene principles of the hierarchy of controls, which;

31 (I) May include security and alarm systems, adequate exit routes, monitoring systems,
32 barrier protection, established areas for patients and clients, lighting, entry procedures, staffing
33 and working in teams, and systems to identify and flag clients with a history of violence; and

34 (II) Shall ensure that employers correct, in a timely manner, hazards identified in the
35 annual report described in paragraph (5).

36 (iv) Reporting, incident response, and post-incident investigation procedures, including
37 procedures--

38 (I) For employees to report workplace violence risks, hazards, and incidents;

39 (II) For employers to respond to reports of workplace violence;

40 (III) For employers to perform a post-incident investigation and debriefing of all reports of
41 workplace violence with the participation of employees and their representatives; and

42 (IV) To provide medical care or first aid to affected employees.

43 (v) Procedures for emergency response, including procedures for threats of mass
44 casualties and procedures for incidents involving a firearm or a dangerous weapon.

45 (vi) Procedures for communicating with and training of covered employees on workplace
46 violence hazards, threats, and work practice controls, the employer's plan, and procedures for

47 confronting, responding to, and reporting workplace violence threats, incidents, and concerns,
48 and employee rights.

49 (vii) Procedures for coordination of risk assessment efforts, Plan development, and
50 implementation of the Plan with other employers who have employees who work at the covered
51 facility or who are performing the covered service.

52 (viii) Procedures for conducting the annual evaluation under paragraph (6).

53 (C) Availability of plan. -- Each Plan shall be made available at all times to the covered
54 employees who are covered under such Plan.

55 (2) Violent incident investigation. --

56 (A) In general. -- As soon as practicable after a workplace violence incident, risk, or hazard
57 of which a covered employer has knowledge, the employer shall conduct an investigation of such
58 incident, risk, or hazard under which the employer shall --

59 (i) Review the circumstances of the incident, risk, or hazard, and whether any controls or
60 measures implemented pursuant to the Plan of the employer were effective; and

61 (ii) Solicit input from involved employees, their representatives, and supervisors, about the
62 cause of the incident, risk, or hazard, and whether further corrective measures (including system-
63 level factors) could have prevented the incident, risk, or hazard.

64 (B) Documentation. -- A covered employer shall document the findings, recommendations,
65 and corrective measures taken for each investigation conducted under this paragraph.

66 (3) Training and education. -- With respect to the covered employees covered under a
67 Plan of a covered employer, the employer shall provide training and education to such employees
68 who may be exposed to workplace violence hazards and risks, which meet the following
69 requirements:

70 (A) Annual training and education includes information on the plan, including identified
71 workplace violence hazards, work practice control measures, reporting procedures, record
72 keeping requirements, response procedures, and employee rights.

73 (B) Additional hazard recognition training for supervisors and managers to ensure they
74 can recognize high-risk situations and do not assign employees to situations that predictably
75 compromise their safety.

76 (C) Additional training for each such covered employee whose job circumstances has
77 changed, within a reasonable timeframe after such change.

78 (D) New employee training prior to assignment.

79 (E) All training provides such employees opportunities to ask questions, give feedback on
80 such training, and request additional instruction, clarification, or other follow up.

81 (F) All training is provided in-person and by an individual with knowledge of workplace
82 violence prevention and of the plan.

83 (G) All training is appropriate in content and vocabulary to the language, educational level,
84 and literacy of such covered employees.

85 (4) Recordkeeping and access to plan records.--

86 (A) In general.-- Each covered employer shall--

87 (i) Maintain at all times--

88 (I) Records related to each Plan of the employer, including workplace violence risk and
89 hazard assessments, and identification, evaluation, correction, and training procedures;

90 (II) A violent incident log described in subparagraph (B) for recording all workplace
91 violence incidents; and

92 (III) Records of all incident investigations as required under paragraph (2)(B); and

93 (ii) Make such records and logs available, upon request, to covered employees and their
94 representatives for examination and copying, and in a manner consistent with HIPAA privacy
95 regulations (defined in section 1180(b)(3) of the Social Security Act (42 U.S.C. 1320d-9(b)(3)))
96 and part 2 of title 42, Code of Federal Regulations.

97 (B) Violent incident log description.--Each violent incident log shall--

98 (i) Be maintained by a covered employer for each covered facility controlled by the

99 employer and for each covered service being performed by a covered employee on behalf of such
100 employer;

101 (ii) Be based on a template developed by the Commissioner not later than one year after
102 the date of enactment of this article;

103 (iii) Include, at a minimum, a description of--

104 (I) The violent incident (including environmental risk factors present at the time of the
105 incident);

106 (II) The date, time, and location of the incident, names and job titles of involved employees;

107 (III) Identification of the alleged individual who committed the violence, in a manner
108 consistent with HIPAA privacy regulations (defined in section 1180(b)(3) of the Social Security
109 Act (42 U.S.C. 1320d-9(b)(3))) and part 2 of title 42, Code of Federal Regulations;

110 (IV) The nature and extent of injuries to covered employees;

111 (V) The type of violent incident (such as type 1 violence, type 2 violence, type 3 violence,
112 or type 4 violence); and

113 (VI) How the incident was abated;

114 (iv) Not later than seven days after the employer learns of such incident, contain a record
115 of each violent incident, which is updated to ensure completeness of such record;

116 (v) Be maintained for not less than five years; and

117 (vi) In the case of a violent incident involving a privacy concern case, protect the identity
118 of employees.

119 (C) Annual summary. --

120 (i) Covered employers. -- Each covered employer shall prepare an annual summary of
121 each violent incident log for the preceding calendar year that shall;

122 (I) With respect to each covered facility, and each covered service, for which such a log
123 has been maintained, include the total number of violent incidents, the number of recordable
124 injuries related to such incidents, and the total number of hours worked by the covered employees

125 for such preceding year;

126 (II) Be completed on a form provided by the Commissioner;

127 (III) Be posted for three months beginning February 1 of each year

128 (IV) Be located in a conspicuous place or places where notices to employees are
129 customarily posted; and

130 (V) Not be altered, defaced, or covered by other material.

131 (ii) Commissioner. -- Not later than one year after the promulgation of the final standard
132 under section four, the Commissioner shall make available a platform for the electronic
133 submission of annual summaries required under this paragraph.

134 (5) Annual report. -- Not later than February 15th of each year, each covered employer
135 shall report to the Commissioner, the frequency, quantity, and severity of workplace violence, and
136 any incident response and post-incident investigation (including abatement measures for the
137 incidents) set forth in the annual summary of the violent incident log described in paragraph (4)(C).

138 (6) Annual evaluation. -- Each covered employer shall conduct an annual written
139 evaluation, conducted with the full, active participation of covered employees and employee
140 representatives, of:

141 (A) The implementation and effectiveness of the plan, including a review of the violent
142 incident log; and

143 (B) Compliance with training required by each standard described in section 101, and
144 specified in the Plan.

145 (7) Anti-retaliation. --

146 (A) Policy. -- Each covered employer shall adopt a policy prohibiting any person (including
147 an agent of the employer) from discriminating or retaliating against any employee for reporting,
148 or seeking assistance or intervention from, a workplace violence incident, threat, or concern to
149 the employer, law enforcement, local emergency services, or a government agency, or
150 participating in an incident investigation.

151 (B) Prohibition. -- No covered employer may discriminate or retaliate against any
152 employee for reporting, or seeking assistance or intervention from, a workplace violence incident,
153 threat, or concern to the employer, law-enforcement, local emergency services, or a government
154 agency, or for exercising any other rights under this paragraph.

155 (C) Enforcement. -- This paragraph shall be enforced in the same manner and to the same
156 extent as any standard promulgated under this chapter.

NOTE: The purpose of this bill is to enact the Prevention of Violence Against Health Care and Social Service Workers Act.

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