

E N R O L L E D

COMMITTEE SUBSTITUTE

for

H. B. 2939

(BY DELEGATE(S) B. WHITE)

[Passed March 14, 2015;
in effect ninety days from passage.]

AN ACT to amend and reenact §49-1-201 of the Code of West Virginia, 1931, as amended; and to amend and reenact §49-2-803 and §49-2-812 of said code, all relating to requirements for mandatory reporting of sexual offenses on school premises involving or between students; defining terms; adding conduct that must be reported to law enforcement; defining nature of conduct to be reported; creating criminal penalties for failure to report; increasing penalties for other reporting requirements; and requiring school administrators to provide written notice of reporting requirement to employees and to obtain and preserve signed acknowledgments thereof.

Be it enacted by the Legislature of West Virginia:

That §49-1-201 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §49-2-803 and §49-2-812 of said code be amended and reenacted, all to read as follows:

56 "Condition requiring emergency medical treatment" means
57 a condition which, if left untreated for a period of a few hours,
58 may result in permanent physical damage; that condition
59 includes, but is not limited to, profuse or arterial bleeding,
60 dislocation or fracture, unconsciousness and evidence of
61 ingestion of significant amounts of a poisonous substance.

62 "Imminent danger to the physical well-being of the child"
63 means an emergency situation in which the welfare or the life of
64 the child is threatened. These conditions may include an
65 emergency situation when there is reasonable cause to believe
66 that any child in the home is or has been sexually abused or
67 sexually exploited, or reasonable cause to believe that the
68 following conditions threaten the health, life, or safety of any
69 child in the home:

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

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

75 (C) Nutritional deprivation;

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

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

78 (F) Substantial emotional injury inflicted by a parent,
79 guardian or custodian;

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

82 (H) The parent, guardian or custodian's abuse of alcohol or
83 drugs or other controlled substance as defined in section one

84 hundred one, article one, chapter sixty-a of this code, has
85 impaired his or her parenting skills to a degree as to pose an
86 imminent risk to a child's health or safety; or

87 (I) Any other condition that threatens the health, life, or
88 safety of any child in the home.

89 "Neglected child" means a child:

90 (A) Whose physical or mental health is harmed or threatened
91 by a present refusal, failure or inability of the child's parent,
92 guardian or custodian to supply the child with necessary food,
93 clothing, shelter, supervision, medical care or education, when
94 that refusal, failure or inability is not due primarily to a lack of
95 financial means on the part of the parent, guardian or custodian;
96 or

97 (B) Who is presently without necessary food, clothing,
98 shelter, medical care, education or supervision because of the
99 disappearance or absence of the child's parent or custodian;

100 (C) "Neglected child" does not mean a child whose
101 education is conducted within the provisions of section one,
102 article eight, chapter eighteen of this code.

103 "Petitioner or co-petitioner" means the Department or any
104 reputable person who files a child abuse or neglect petition
105 pursuant to section six hundred one, article four, of this chapter.

106 "Permanency plan" means the part of the case plan which is
107 designed to achieve a permanent home for the child in the least
108 restrictive setting available.

109 "Respondent" means all parents, guardians, and custodians
110 identified in the child abuse and neglect petition who are not
111 petitioners or co-petitioners.

142 engage in sexually explicit conduct as that term is defined in
143 section one, article eight-c, chapter sixty-one of this code; or

144 (B) A parent, guardian or custodian persuades, induces,
145 entices or coerces a child to display his or her sex organs for the
146 sexual gratification of the parent, guardian, custodian or a third
147 person, or to display his or her sex organs under circumstances
148 in which the parent, guardian or custodian knows that the display
149 is likely to be observed by others who would be affronted or
150 alarmed.

151 "Sexual intercourse" means sexual intercourse as that term
152 is defined in section one, article eight-b, chapter sixty-one of this
153 code.

154 "Sexual intrusion" means sexual intrusion as that term is
155 defined in section one, article eight-b, chapter sixty-one of this
156 code.

157 "Serious physical abuse" means bodily injury which creates
158 a substantial risk of death, which causes serious or prolonged
159 disfigurement, prolonged impairment of health or prolonged loss
160 or impairment of the function of any bodily organ.

ARTICLE 2. STATE RESPONSIBILITIES FOR CHILDREN.

§49-2-803. Persons mandated to report suspected abuse and neglect; requirements.

1 (a) Any medical, dental or mental health professional,
2 Christian Science practitioner, religious healer, school teacher or
3 other school personnel, social service worker, child care or foster
4 care worker, emergency medical services personnel, peace
5 officer or law-enforcement official, humane officer, member of
6 the clergy, circuit court judge, family court judge, employee of
7 the Division of Juvenile Services, magistrate, youth camp
8 administrator or counselor, employee, coach or volunteer of an

43 undertakes measures to remove themselves or the affected
44 children from the perceived threat of additional harm and the
45 individual makes the report as soon as practicable after the threat
46 of harm has been reduced. The law-enforcement agency that
47 receives a report under this subsection shall report the
48 allegations to the Department of Health and Human Resources
49 and coordinate with any other law-enforcement agency, as
50 necessary to investigate the report.

51 (c) Any school teacher or other school personnel who
52 receives a disclosure from a witness, which a reasonable prudent
53 person would deem credible, or personally observes any sexual
54 contact, sexual intercourse or sexual intrusion, as those terms are
55 defined in article eight-b, chapter sixty-one, of a child on school
56 premises or on school buses or on transportation used in
57 furtherance of a school purpose shall immediately, but not more
58 than 24 hours, report the circumstances or cause a report to be
59 made to the State Police or other law-enforcement agency having
60 jurisdiction to investigate the report: *Provided*, That this
61 subsection will not impose any reporting duty upon school
62 teachers or other school personnel who observe, or receive a
63 disclosure of any consensual sexual contact, intercourse, or
64 intrusion occurring between students who would not otherwise
65 be subject to section three, five, seven or nine of article eight-8,
66 chapter sixty-one of this code: *Provided, however*, That any
67 teacher or other school personnel shall not be in violation of this
68 section if he or she makes known immediately, but not more
69 than 24 hours. to the principal, assistant principal or similar
70 person in charge, a disclosure from a witness, which a reasonable
71 prudent person would deem credible, or personal observation of
72 conduct described in this section: *Provided further*, That a
73 principal, assistant principal or similar person in charge made
74 aware of such disclosure or observation from a teacher or other
75 school personnel shall be responsible for immediately, but not
76 more than 24 hours, reporting such conduct to law enforcement.

6 acting reasonably from doing so, is guilty of a misdemeanor and,
7 upon conviction, shall be confined in jail not more than ninety
8 days or fined not more than \$5,000, or both fined and confined.

9 (b) Any person, official or institution required by this article
10 to report a case involving a child known or suspected to be
11 sexually assaulted or sexually abused, or student known or
12 suspected to have been a victim of any non-consensual sexual
13 contact, sexual intercourse or sexual intrusion on school
14 premises, who knowingly fails to do so or knowingly prevents
15 another person acting reasonably from doing so, is guilty of a
16 misdemeanor and, upon conviction thereof, shall be confined in
17 jail not more than six months or fined not more than \$10,000, or
18 both.