WEST VIRGINIA CODE CHAPTER 61 ARTICLE 8F

WV Legislature

§61-8F-1. Findings.

The Legislature finds that disabled persons and particularly disabled children are often more vulnerable and in greater need of protection than the nondisabled. Concomitant with greater vulnerability is the enhanced risk of injury and intimidation, particularly when the child is noncommunicative.

Based upon these facts, the Legislature has determined that it is appropriate that enhanced protections be put in place statutorily to provide a framework of protections to improve disabled children's education and, quality of life as well as ease the concerns of their loved-ones and caregivers.

WV Legislature

§61-8F-2 Definitions.

As used in this article:

(1) “Disabled child” means a child with any physical, intellectual, developmental, communication, or psychological disability or impairment. A disability includes , but is not limited to one that:

(A) Limits the child’s ability to recognize abuse, unlawful activity, or his or her rights to safety and protection, or that makes the child rely on others to recognize that he or she is being abused;

(B) Limits the child’s ability to recognize unlawful sexual abuse or misconduct;

(C) Causes the child to be dependent on others to assist with any activity of daily living or personal care;

(D) Limits the child’s ability to formulate or execute a response to abuse, to verbally or physically defend himself or herself, or to physically escape from an abusive environment; or

(E) Limits the child’s ability to disclose abuse.

(2) “Noncommunicative child” means a child who, due to physical or developmental disabilities, is unable to functionally articulate verbally, in writing, or through a recognized sign language,

(3) “Person in a position of trust in relation to a disabled child” means any adult who is acting in the place of a parent and charged with any of a parent’s rights, duties, or responsibilities concerning a disabled child or someone with supervisory responsibility for a disabled child’s welfare, or any person who by virtue of their occupation or position is charged with any duty or responsibility for the health, education, welfare, or supervision of a disabled child,

(4) “Repeatedly” means on two or more occasions,

(5) “Supervisory responsibility” means any situation where an adult has direct supervisory decision-making, oversight, instructive, academic, evaluative, or advisory responsibilities regarding the child. Supervisory responsibility may occur in a residence, in or out of a school setting, institutional setting, and in curricular, co-curricular, or extra-curricular settings.

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§61-8F-3. Maltreatment of a disabled child; penalties.

(a) Any person in a position of trust in relation to a disabled child, who has supervisory responsibility over a disabled child, and who repeatedly engages in conduct, verbal or otherwise toward the child in an insulting, demeaning, or threatening manner, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $500, nor more than $2,500, or confined in jail not more than one year, or both fined and confined.

(b) The conduct prohibited by this section includes, but is not limited to, behavior of any type intended to humiliate, intimidate, shame, degrade, or cause emotional distress.

(c) Each instance of the conduct prohibited by subsection (a) of this section shall constitute a separate and distinct offense whether directed at one disabled child or multiple disabled children.

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§61-8F-4 Battery and assault of a disabled child.

(a) Any person in a position of trust to a disabled child, with supervisory responsibility over the child who unlawfully and intentionally makes physical contact of an insulting and provoking nature to the person of the disabled child or unlawfully causes physical harm to the disabled child is guilty of a felony, and upon conviction thereof, shall be fined not more than $1,000 and imprisoned in a state correctional facility for not less than one nor more than five years, or both fined and imprisoned.

(b) Any person in a position of trust in relation to a disabled child, with supervisory responsibility over the child who unlawfully attempts to commit a violent injury to the person of the disabled child or unlawfully commits an act that places the disabled child in reasonable apprehension of immediately receiving a violent injury is guilty of a felony and upon conviction thereof shall be fined not more than $500 or imprisoned not less than one nor more than three years, or both fined and imprisoned.

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§61-8F-5 Failure to report; obstruction; retaliation; penalties.

(a) Any person in a position of trust in relation to a disabled child who is subject to the mandatory reporting requirements in §49-2-803 of this code who fails to make a required report regarding a disabled child is guilty of a misdemeanor, and upon conviction shall be confined in jail for not more than one year.

(b) Any person who willfully impedes or obstructs or attempts to impede or obstruct a person in a position of trust in regard to a disabled child from making a report required by §49-2-803 of this code regarding a disabled child is guilty of a felony, and upon conviction thereof be fined not more than $5,000 or imprisoned in a state correctional facility for not less than one nor more than three years, or both fined and imprisoned.

(c) Any person who discriminates or retaliates against a person in a position of trust in relation to a disabled child for making a report pursuant to § 49-2-803 of this code regarding a disabled child is guilty of a felony and, upon conviction, shall be fined not more than $5,000 or imprisoned in a state correctional facility for not less than one year nor more than three years or both fined and imprisoned or both fined and imprisoned.

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§61-8F-6. Specific directives to enhance the safety of disabled children.

(a) The West Virginia Department of Education in collaboration with the Secretary of Human Services shall:

(1) On or before January 1, 2023, develop, produce, and disseminate an eight-hour education program for people employed in or to be employed in the care, housing, and education of disabled children as well as their supervisory personnel and administrators. The program shall include, but not be limited to, the legal duties of persons so employed, the behavioral characteristics associated with different disabling conditions, symptoms of disabling conditions , appropriate interventions necessary to support a child in a particular setting, and the process of mandatory reporting of abuse. Successful completion of the program shall be mandatory for state, county, and municipal employees engaged in the care, housing, and education of disabled children as well as their supervisory personnel and administrators upon employment and every three years after; and

(2) On or before January 1, 2023, investigate the availability and implementation cost of a program for public schools and government operated programs for disabled children which allows parents, guardians, and custodians to remotely view classrooms and other areas where disabled children are taught, housed, or cared for and provide copies of the findings and proposals to the President of the Senate and the Speaker of the House of Delegates prior to the first day of the 2023 Regular Session of the Legislature.

(3) To the extent practicable the program shall consider and include input from family members and caregiving of disabled children.

(b) On or before January 1, 2023, the West Virginia Prosecuting Attorney's Institute in collaboration with the Law Enforcement Professional Standards subcommittee on the Governor’s Committee on Crime Delinquency and Correction shall develop a three-hour mandatory educational program for prosecuting attorneys and law enforcement officers that offers education:

(1) As to the provisions of this article; and

(2) In the investigation and prosecution of crimes against disabled children including mandatory reporting of all abuse.

(3) To the extent practicable the program shall consider and include input from family members and caregiving of disabled children.

(c) The State Board of Education shall create a database which identifies school employees who are under active investigation for misconduct towards children into which county boards of education shall report and review when considering employing a person with previous experience in the education system.

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§61-8F-7. Effective dates.

(a) This section and the provisions of §61-8F-1, §61-8F-2, and §61-8F-6 of this article shall be effective from passage.

(b) The provisions of §61-8F-3, §61-8F-4, and §61-8F-5 shall be effective July 1, 2022.

WV Legislature