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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1988



ENROLLED

COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 255

(By Senator CHAFFIN, ET AL)



PASSED MARCH 12, 1988

In Effect 90 days from Passage



ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 255

(SENATORS CHAFIN, BURDETTE, KARRAS, WARNER, BOLEY, MANCHIN,
BRACKENRICH, JACKSON AND FELTON, *original sponsors*)

[Passed March 12, 1988; in effect ninety days from passage.]

AN ACT to repeal section twenty-four, article eight, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one as amended; to amend article eight of said chapter by adding thereto a new section, designated section nine-a; to amend and reenact section three, article eight-c of said chapter; and to further amend said chapter by adding thereto a new article, designated article eight-d, relating to offenses against children generally; requiring the development of a curriculum and secondary schools relating to parenting skills; defining certain terms; providing that when any parent, guardian or custodian shall maliciously and intentionally cause the death of a child under his or her care, custody or control by his or her failure or refusal to supply such child with necessary food, clothing, shelter or medical care such parent, guardian or custodian shall be guilty of murder in the first degree; providing that when any parent, guardian or custodian shall cause the death under his or her care, custody or control by knowingly allowing any other person to maliciously and intentionally fail or refuse to supply such child with necessary food, clothing, shelter or

medical care, such other person and such parent, guardian or custodian shall each be guilty of murder in the first degree; providing that the penalty for such offenses defined as first degree murder shall be that which is prescribed for murder in the first degree under the provisions of article two, section two, chapter sixty-one of said code; defining felony offenses of child abuse resulting in injury and establishing the penalties therefor; defining felony offenses of child neglect resulting in injury and establishing the penalties therefor; providing an exception for person when necessary medical care conflicts with the tenets and practices of a recognized religious denomination or order; defining the felony offense of sexual abuse by a parent, guardian or custodian and establishing the penalties therefor; defining the misdemeanor offense of sexual abuse and establishing the penalty therefor; defining the misdemeanor offense of displaying sexual organs to a child and establishing the penalty therefor; defining the felony offense of sending, distributing, exhibiting, possessing, displaying or transporting material by a parent, guardian or custodian, depicting a child engaged in sexually explicit conduct and establishing the penalty therefor; defining the misdemeanor offense of presenting false information concerning offenses against children to attending medical personnel and providing the penalty therefor; and providing that husband and wife are competent witnesses in any proceeding involving offenses against children.

Be it enacted by the Legislature of West Virginia:

That section twenty-four, article eight, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that article eight of said chapter be amended by adding thereto a new section, designated section nine-a; that section three, article eight-c of said chapter be amended and reenacted; and that said chapter be further amended by adding thereto a new article, designated article eight-d, all to read as follows:

ARTICLE 8. CRIMES AGAINST CHASTITY, MORALITY AND DECENCY.

§61-8-9a. Child abuse; education; curriculum.

- 1 The Legislature finds the best way to avoid child abuse in
- 2 West Virginia is to educate our young people on the skills of

3 parenting; therefore, the Legislature directs the
4 commissioner of the department of health, the state
5 superintendent of schools and the commissioner of the
6 department of human services to develop a curriculum to be
7 taught in each of the secondary grades; such curriculum
8 shall include, but not be limited to, discipline, handling
9 stresses of raising children, and the health care needs of
10 children. Such curriculum shall start no later than the
11 1990-1991 school year.

**ARTICLE 8C. FILMING OF SEXUALLY EXPLICIT CONDUCT OF
MINORS.**

**§61-8C-3. Distribution and exhibiting of material depicting
minors engaged in sexually explicit conduct
prohibited; penalty.**

1 Any person who with knowledge, sends or causes to be
2 sent, or distributes, exhibits, possesses or displays or
3 transports any material visually portraying a minor
4 engaged in any sexually explicit conduct is guilty of a
5 felony, and, upon conviction thereof, shall be imprisoned in
6 the penitentiary, not more than two years, and fined not
7 more than two thousand dollars.

ARTICLE 8D. CHILD ABUSE.

§61-8D-1. Definitions:

1 In this article, unless a different meaning plainly is
2 required:
3 (1) "Abuse" means the infliction upon a minor of
4 physical injury by other than accidental means.
5 (2) "Child" means any person under eighteen years of
6 age not otherwise emancipated by law.
7 (3) "Controlled substance" means controlled substance
8 as that term is defined in subsection (d), section one
9 hundred one, article one, chapter sixty-a of this code.
10 (4) "Custodian" means a person over the age of fourteen
11 years who has or shares actual physical possession or care
12 and custody of a child on a full-time or temporary basis,
13 regardless of whether such person has been granted custody
14 of the child by any contract, agreement or legal proceeding.
15 "Custodian" shall also include, but not be limited to, the
16 spouse of a parent, guardian or custodian, or a person

17 cohabiting with a parent, guardian or custodian in the
18 relationship of husband and wife, where such spouse or
19 other person shares actual physical possession or care and
20 custody of a child with the parent, guardian or custodian.

21 (5) "Guardian" means a person who has care and
22 custody of a child as the result of any contract, agreement or
23 legal proceeding.

24 (6) "Neglect" means the unreasonable failure by a
25 parent, guardian, or any person voluntarily accepting a
26 supervisory role towards a minor child to exercise a
27 minimum degree of care to assure said minor child's
28 physical safety or health.

29 (7) "Parent" means the biological father or mother of a
30 child, or the adoptive mother or father of a child.

31 (8) "Sexual contact" means sexual contact as that term
32 is defined in section one, article eight-b, chapter sixty-one
33 of this code.

34 (9) "Sexual exploitation" means an act whereby:

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

40 (B) A parent, guardian, or custodian persuades,
41 induces, entices or coerces a child to display his or her sex
42 organs for the sexual gratification of the parent, guardian,
43 custodian, or a third person, or to display his or her sex
44 organs under circumstances in which the parent, guardian,
45 or custodian knows such display is likely to be observed by
46 others who would be affronted or alarmed.

47 (10) "Sexual intercourse" means sexual intercourse as
48 that term is defined in section one, article eight-b, chapter
49 sixty-one of this code.

50 (11) "Sexual intrusion" means sexual intrusion as that
51 term is defined in section one, article eight-b, chapter sixty-
52 one of this code.

**§61-8D-2. Murder of a child by a parent, guardian or custodian
or other person by refusal or failure to supply
necessities, or by delivery, administration or
ingestion of a controlled substance; penalties.**

1 (a) If any parent, guardian or custodian shall

2 maliciously and intentionally cause the death of a child
3 under his or her care, custody or control by his or her failure
4 or refusal to supply such child with necessary food,
5 clothing, shelter or medical care, then such parent,
6 guardian or custodian shall be guilty of murder in the first
7 degree.

8 (b) If any parent, guardian or custodian shall cause the
9 death of a child under his or her care, custody or control by
10 knowingly allowing any other person to maliciously and
11 intentionally fail or refuse to supply such child with
12 necessary food, clothing, shelter or medical care, then such
13 other person and such parent, guardian or custodian shall
14 each be guilty of murder in the first degree.

15 (c) The penalty for offenses defined by this section shall
16 be that which is prescribed for murder in the first degree
17 under the provisions of article two, section two of this
18 chapter.

19 (d) The provisions of this section shall not apply to any
20 parent, guardian or custodian who fails or refuses, or allows
21 another person to fail or refuse, to supply a child under the
22 care, custody or control of such parent, guardian or
23 custodian with necessary medical care, when such medical
24 care conflicts with the tenets and practices of a recognized
25 religious denomination or order of which such parent,
26 guardian or custodian is an adherent or member.

§61-8D-3. Child abuse resulting in injury; penalties.

1 (a) If any parent, guardian or custodian shall abuse a
2 child and by such abuse cause such child bodily injury as
3 such term is defined in section one, article eight-b of this
4 chapter, then such parent, guardian or custodian shall be
5 guilty of a felony, and upon conviction thereof shall be fined
6 not more than one thousand dollars or imprisoned in the
7 penitentiary not less than one nor more than five years, or in
8 the discretion of the court, be confined in the county jail for
9 not more than one year, or both such fine and imprisonment
10 or confinement.

11 (b) If any parent, guardian or custodian shall abuse a
12 child and by such abuse cause said child serious bodily
13 injury as such term is defined in section one, article eight-b
14 of this chapter, then such parent, guardian or custodian
15 shall be guilty of a felony, and upon conviction thereof shall

16 be fined not less than one thousand nor more than five
17 thousand dollars and imprisoned in the penitentiary not
18 less than two nor more than ten years, or both such fine and
19 imprisonment.

§61-8D-4. Child neglect resulting in injuries; penalties.

1 (a) If any parent, guardian or custodian shall neglect a
2 child and by such neglect cause said child bodily injury, as
3 such term is defined in section one, article eight-b of this
4 chapter, then such parent, guardian or custodian shall be
5 guilty of a felony, and upon conviction thereof, shall be
6 fined not more than one thousand dollars or imprisoned in
7 the penitentiary not less than one nor more than three years,
8 or in the discretion of the court, be confined in the county
9 jail for not more than one year, or both such fine and
10 confinement or imprisonment.

11 (b) If any parent, guardian or custodian shall neglect a
12 child and by such neglect cause said child serious bodily
13 injury, as such term is defined in section one, article eight-b
14 of this chapter, then such parent, guardian or custodian
15 shall be guilty of a felony, and upon conviction thereof,
16 shall be fined not more than three thousand dollars and
17 imprisoned in the penitentiary not less than one nor more
18 than ten years, or both such fine and imprisonment.

19 (c) The provisions of this section shall not apply if the
20 neglect by the parent, guardian or custodian is due
21 primarily to a lack of financial means on the part of such
22 parent, guardian or custodian.

23 (d) The provisions of this section shall not apply to any
24 parent, guardian or custodian who fails or refuses, or allows
25 another person to fail or refuse, to supply a child under the
26 care, custody or control of such parent, guardian or
27 custodian with necessary medical care, when such medical
28 care conflicts with the tenets and practices of a recognized
29 religious denomination or order of which such parent,
30 guardian or custodian is an adherent or member.

**§61-8D-5. Sexual abuse by a guardian or custodian; parent,
guardian or custodian 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

2 code, the Legislature hereby declares a separate and
3 distinct offense under this subsection, as follows: If any
4 parent, guardian or custodian of a child under his or her
5 care, custody or control, shall engage in or attempt to
6 engage in sexual exploitation of, or in sexual intercourse,
7 sexual intrusion or sexual contact with, a child under his or
8 her care, custody or control, notwithstanding the fact that
9 the child may have willingly participated in such conduct,
10 or the fact that the child may have consented to such
11 conduct or the fact that the child may have suffered no
12 apparent physical injury or mental or emotional injury as a
13 result of such conduct, then such guardian or custodian
14 shall be guilty of a felony, and, upon conviction thereof,
15 shall be imprisoned in the penitentiary not less than five nor
16 more than ten years, or fined not less than five hundred nor
17 more than five thousand dollars and imprisoned in the
18 penitentiary not less than five years nor more than ten
19 years.

20 (b) If any parent, guardian or custodian shall knowingly
21 procure another person to engage in or attempt to engage in
22 sexual exploitation of, or sexual intercourse, sexual
23 intrusion or sexual contact with, a child under the care,
24 custody or control of such parent, guardian or custodian
25 when such child is less than sixteen years of age,
26 notwithstanding the fact that the child may have willingly
27 participated in such conduct or the fact that the child may
28 have suffered no apparent physical injury or mental or
29 emotional injury as a result of such conduct, such parent,
30 guardian or custodian shall be guilty of a felony, and, upon
31 conviction thereof, shall be imprisoned in the penitentiary
32 not less than one year nor more than five years, or fined not
33 less than one thousand nor more than ten thousand dollars
34 and imprisoned in the penitentiary not less than one year
35 nor more than five years.

36 (c) If any parent, guardian or custodian shall knowingly
37 procure another person to engage in or attempt to engage in
38 sexual exploitation of, or sexual intercourse, sexual
39 intrusion or sexual contact with, a child under the care,
40 custody or control of such parent, guardian or custodian
41 when such child is sixteen years of age or older,
42 notwithstanding the fact that the child may have consented
43 to such conduct or the fact that the child may have suffered

44 no apparent physical injury or mental or emotional injury
45 as a result of such conduct, then such parent, guardian or
46 custodian shall be guilty of a misdemeanor, and, upon
47 conviction thereof, shall be confined in the county jail not
48 less than six months nor more than one year.

49 (d) The provisions of this section shall not apply to a
50 custodian whose age exceeds the age of the child by less
51 than four years.

**§61-8D-6. Sending, distributing, exhibiting, possessing,
displaying or transporting material by a parent,
guardian or custodian, depicting a child engaged
in sexually explicit conduct; penalty.**

1 (a) Any parent, guardian or custodian who, with
2 knowledge, sends or causes to be sent, or distributes,
3 exhibits, possesses, displays or transports, any material
4 visually portraying a child under his or her care, custody or
5 control engaged in any sexually explicit conduct, is guilty of
6 a felony, and, upon conviction thereof, shall be imprisoned
7 in the penitentiary not more than two years, and fined not
8 less than four hundred dollars nor more than four thousand
9 dollars.

**§61-8D-7. Presentation of false information regarding child's
injuries; penalty.**

1 Any person who presents false information concerning
2 acts or conduct which would constitute an offense under the
3 provisions of this article to attending medical personnel
4 shall be guilty of a misdemeanor, and, upon conviction
5 thereof, shall be fined not less than one hundred dollars nor
6 more than one thousand dollars, and shall be confined in the
7 county jail not more than one year.

§61-8D-8. Testimony of husband and wife.

1 Husband and wife are competent witnesses in any
2 proceeding under this article and cannot refuse to testify on
3 the grounds of their marital relationship or the privileged
4 nature of their communications.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Bruce O. Williams
.....
Chairman Senate Committee

Bernard V. Kelly
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Judd C. Mullis
.....
Clerk of the Senate

Donald D. Kepp
.....
Clerk of the House of Delegates

Don Tolson
.....
President of the Senate

W. J. [Signature]
.....
Speaker House of Delegates

The within *approved* this the *31st*
March day of 1988.

Huba Prange
.....
Governor



PRESENTED TO THE

GOVERNOR

Date 3/23/88

Time 11:31 am.

RECEIVED

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE