WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1988

ENROLLED
COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 255

(By Senator CHAFIN, ET AL.)

PASSED MARCH 12, 1988
In Effect 90 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 West Virginia is to educate our young people on the skills of
parenting; therefore, the Legislature directs the commissioner of the department of health, the state superintendent of schools and the commissioner of the department of human services to develop a curriculum to be taught in each of the secondary grades; such curriculum shall include, but not be limited to, discipline, handling stresses of raising children, and the health care needs of children. Such curriculum shall start no later than the 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.

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

ARTICLE 8D. CHILD ABUSE.

§61-8D-1. Definitions:

In this article, unless a different meaning plainly is required:

(1) "Abuse" means the infliction upon a minor of physical injury by other than accidental means.

(2) "Child" means any person under eighteen years of age not otherwise emancipated by law.

(3) "Controlled substance" means controlled substance as that term is defined in subsection (d), section one hundred one, article one, chapter sixty-a of this code.

(4) "Custodian" means a person over the age of fourteen years who has or shares actual physical possession or care and custody of a child on a full-time or temporary basis, regardless of whether such person has been granted custody of the child by any contract, agreement or legal proceeding. "Custodian" shall also include, but not be limited to, the spouse of a parent, guardian or custodian, or a person
cohabiting with a parent, guardian or custodian in the relationship of husband and wife, where such spouse or other person shares actual physical possession or care and custody of a child with the parent, guardian or custodian.

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

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

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

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

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

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

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

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

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

(a) If 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, then such parent,
guardian or custodian shall be guilty of murder in the first
degree.

(b) If any parent, guardian or custodian shall cause the
death of a child 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, then such
other person and such parent, guardian or custodian shall
each be guilty of murder in the first degree.

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

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


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

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

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

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

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

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

(a) In addition to any other offenses set forth in this
code, the Legislature hereby declares a separate and
distinct offense under this subsection, as follows: If any
parent, guardian or custodian of a child under his or her
care, custody or control, shall engage in or attempt to
engage in sexual exploitation of, or in sexual intercourse,
sexual intrusion or sexual contact with, a child under his or
her care, custody or control, notwithstanding the fact that
the child may have willingly participated in such conduct,
or the fact that the child may have consented to such
conduct or the fact that the child may have suffered no
apparent physical injury or mental or emotional injury as a
result of such conduct, then such guardian or custodian
shall be guilty of a felony, and, upon conviction thereof,
shall be imprisoned in the penitentiary not less than five nor
more than ten years, or fined not less than five hundred nor
more than five thousand dollars and imprisoned in the
penitentiary not less than five years nor more than ten
years.

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

(c) If any parent, guardian or custodian shall knowingly
procure another person to engage in or attempt to engage in
sexual exploitation of, or sexual intercourse, sexual
intrusion or sexual contact with, a child under the care,
custody or control of such parent, guardian or custodian
when such child is sixteen years of age or older,
notwithstanding the fact that the child may have consented
to such conduct or the fact that the child may have suffered
no apparent physical injury or mental or emotional injury as a result of such conduct, then such parent, guardian or custodian shall be guilty of a misdemeanor, and, upon conviction thereof, shall be confined in the county jail not less than six months nor more than one year.

(d) The provisions of this section shall not apply to a custodian whose age exceeds the age of the child by less 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.

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

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

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

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

Husband and wife are competent witnesses in any proceeding under this article and cannot refuse to testify on the grounds of their marital relationship or the privileged nature of their communications.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Bruce O. Wilson  
Chairman Senate Committee

Bernard V. Kelley  
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Todd A. Walker  
Clerk of the Senate

Donald J. Kepp  
Clerk of the House of Delegates

Don Tealmil  
President of the Senate

Rechard R. Johnson  
Speaker House of Delegates

The within ......................... this the ....... day of ... , 1988.

A C D R M J.  
Governor