


# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1990

— ● —

# ENROLLED

Com. Sub. for  
HOUSE BILL No. 4044

(By  Delegated M. Burke)

— ● —

Passed March 10, 1990

In Effect 90 Days from Passage

**ENROLLED**  
COMMITTEE SUBSTITUTE  
FOR  
**H. B. 4044**  
(By DELEGATE M. BURKE)

[Passed March 10, 1990; in effect ninety days from passage.]

AN ACT to amend article four, chapter forty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section sixteen; to amend and reenact section three, article one, chapter forty-nine of said code; and to amend and reenact section seven, article seven of said chapter, all relating to the prohibition of the sale or purchase of a child; creating penalties and exceptions; expanding the definition of "abused child"; and contributing to delinquency or neglect of child.

*Be it enacted by the Legislature of West Virginia:*

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

**ARTICLE 4. ADOPTION.**

**§48-4-16. Prohibition of purchase or sale of child; penalty; definitions; exceptions.**

1 (a) Any person or agency who knowingly offers, gives,  
2 or agrees to give to another person money, property,  
3 service, or other thing of value in consideration for the  
4 recipient's locating, providing, or procuring a minor  
5 child for any purpose which entails a transfer of the  
6 legal or physical custody of said child, including, but not  
7 limited to, adoption or placement, shall be guilty of a  
8 misdemeanor and subject to fine and imprisonment as  
9 provided herein.

10 (b) Any person who knowingly receives, accepts, or  
11 offers to accept money, property, service, or other thing  
12 of value to locate, provide, or procure a minor child for  
13 any purpose which entails a transfer of the legal or  
14 physical custody of said child, including, but not limited  
15 to, adoption or placement, shall be guilty of a misdemea-  
16 nor and subject to fine and imprisonment as provided  
17 herein.

18 (c) Any person who violates the provisions of this  
19 section shall be guilty of a misdemeanor, and, upon  
20 conviction thereof, shall be fined not less than one  
21 hundred dollars nor more than two thousand dollars, or  
22 may be imprisoned in the county jail for not more than  
23 twelve months, or both fined and imprisoned.

24 (d) A child whose parent, guardian, or custodian has  
25 sold or attempted to sell said child in violation of the  
26 provisions of this article may be deemed an abused child  
27 as defined by section three, article one, chapter forty-  
28 nine of this code. The court may place such a child in  
29 the custody of the department of human services or with  
30 such other responsible person as the best interests of the  
31 child dictate.

32 (e) This section does not prohibit the payment or  
33 receipt of the following:

34 (1) Fees paid for reasonable and customary services  
35 provided by the department of human services or any  
36 licensed or duly authorized adoption or child-placing  
37 agency.

38 (2) Reasonable and customary legal, medical, hospital,  
39 or other expenses incurred in connection with legal

40 adoption proceedings.

41 (3) Fees and expenses included in any agreement in  
42 which a woman agrees to become a surrogate mother.

43 (4) Any fees or charges authorized by law or approved  
44 by a court in a proceeding relating to the placement of  
45 a minor child for adoption.

**ARTICLE 1. PURPOSES; DEFINITIONS.**

**§49-1-3. Definitions relating to abuse and neglect.**

1 (a) "Abused child" means a child whose health or  
2 welfare is harmed or threatened by:

3 (1) A parent, guardian or custodian who knowingly or  
4 intentionally inflicts, attempts to inflict, or knowingly  
5 allows another person to inflict, physical injury, or  
6 substantial mental or emotional injury, upon the child  
7 or another child in the home; or

8 (2) Sexual abuse or sexual exploitation; or

9 (3) The sale or attempted sale of a child by a parent,  
10 guardian, or custodian in violation of section sixteen,  
11 article four, chapter forty-eight of this code.

12 In addition to its broader meaning, physical injury  
13 may include an injury to the child as a result of  
14 excessive corporal punishment.

15 (b) "Abusing parent" means a parent, guardian, or  
16 other custodian, regardless of his or her age, whose  
17 conduct, as alleged in the petition charging child abuse  
18 or neglect, has been adjudged by the court to constitute  
19 child abuse or neglect.

20 (c) "Child abuse and neglect" or "child abuse or  
21 neglect" means physical injury, substantial mental or  
22 emotional injury, sexual abuse, sexual exploitation, sale  
23 or attempted sale, or negligent treatment or maltreat-  
24 ment of a child by a parent, guardian, or custodian who  
25 is responsible for the child's welfare, under circumstan-  
26 ces which harm or threaten the health and welfare of  
27 the child.

28 (d) "Child abuse and neglect services" means social

29 services which are directed toward:

30 (1) Protecting and promoting the welfare of children  
31 who are abused or neglected;

32 (2) Identifying, preventing and remedying conditions  
33 which cause child abuse and neglect;

34 (3) Preventing the unnecessary removal of children  
35 from their families by identifying family problems and  
36 assisting families in resolving problems which could  
37 lead to a removal of children and a breakup of the  
38 family;

39 (4) In cases where children have been removed from  
40 their families, providing services to the children and the  
41 families so as to restore such children to their families;

42 (5) Placing children in suitable adoptive homes when  
43 restoring the children to their families is not possible or  
44 appropriate; and

45 (6) Assuring the adequate care of children away from  
46 their families when the children have been placed in the  
47 custody of the department or third parties.

48 (e) "Imminent danger to the physical well-being of the  
49 child" means an emergency situation in which the  
50 welfare or the life of the child is threatened. Such  
51 emergency situation exists when there is reasonable  
52 cause to believe that any child in the home is or has been  
53 sexually abused or sexually exploited, or reasonable  
54 cause to believe that the following conditions threaten  
55 the health or life of any child in the home:

56 (1) Nonaccidental trauma inflicted by a parent,  
57 guardian, custodian, sibling or a babysitter or other  
58 caretaker; or

59 (2) A combination of physical and other signs indicat-  
60 ing a pattern of abuse which may be medically diag-  
61 nosed as battered child syndrome; or

62 (3) Nutritional deprivation; or

63 (4) Abandonment by the parent, guardian or custo-  
64 dian; or

65 (5) Inadequate treatment of serious illness or disease;  
66 or

67 (6) Substantial emotional injury inflicted by a parent,  
68 guardian or custodian; or

69 (7) Sale or attempted sale of the child by the parent,  
70 guardian, or custodian.

71 (f) "Multidisciplinary team" means a group of profes-  
72 sionals and paraprofessionals representing a variety of  
73 disciplines who interact and coordinate their efforts to  
74 identify, diagnose and treat specific cases of child abuse  
75 and neglect. Multidisciplinary teams may include, but  
76 are not limited to, medical, child care, and law-  
77 enforcement personnel, social workers, psychologists,  
78 and psychiatrists. Their goal is to pool their respective  
79 skills in order to formulate accurate diagnoses and to  
80 provide comprehensive coordinated treatment with  
81 continuity and follow-up for both parents and children.  
82 "Community team" means a multidisciplinary group  
83 which addresses the general problem of child abuse and  
84 neglect in a given community, and may consist of  
85 several multidisciplinary teams with different functions.

86 (g) (1) "Neglected child" means a child:

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

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

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

102 (h) "Parenting skills" means a parent's competencies

103 in providing physical care, protection, supervision and  
104 psychological support appropriate to a child's age and  
105 state of development.

106 (i) "Sexual abuse" means:

107 (A) As to a child who is less than sixteen years of age,  
108 any of the following acts which a parent, guardian or  
109 custodian shall engage in, attempt to engage in, or  
110 knowingly procure another person to engage in, with  
111 such child, notwithstanding the fact that the child may  
112 have willingly participated in such conduct or the fact  
113 that the child may have suffered no apparent physical  
114 injury or mental or emotional injury as a result of such  
115 conduct:

116 (i) Sexual intercourse; or

117 (ii) Sexual intrusion; or

118 (iii) Sexual contact; or

119 (B) As to a child who is sixteen years of age or older,  
120 any of the following acts which a parent, guardian, or  
121 custodian shall engage in, attempt to engage in, or  
122 knowingly procure another person to engage in, with  
123 such child, notwithstanding the fact that the child may  
124 have consented to such conduct or the fact that the child  
125 may have suffered no apparent physical injury or  
126 mental or emotional injury as a result of such conduct:

127 (i) Sexual intercourse; or

128 (ii) Sexual intrusion; or

129 (iii) Sexual contact; or

130 (C) Any conduct whereby a parent, guardian or  
131 custodian displays his or her sex organs to a child, or  
132 procures another person to display his or her sex organs  
133 to a child, for the purpose of gratifying the sexual desire  
134 of the parent, guardian or custodian, of the person  
135 making such display, or of the child, or for the purpose  
136 of affronting or alarming the child.

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

140 (k) "Sexual exploitation" means an act whereby:

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

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

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

157 (m) "Sexual intrusion" means sexual intrusion as that  
158 term is defined in section one, article eight-b, chapter  
159 sixty-one of this code.

**§49-7-7. Contributing to delinquency or neglect of a child.**

1 (a) A person who by any act or omission contributes  
2 to, encourages or tends to cause the delinquency or  
3 neglect of any child, including, but not limited to, aiding  
4 or encourageing any such child to habitually or contin-  
5 ually refuse to respond, without just cause, to the lawful  
6 supervision of such child's parents, guardian or custo-  
7 dian or to be habitually absent from school without just  
8 cause, shall be guilty of a misdemeanor, and, upon  
9 conviction thereof, shall be fined not less than fifty nor  
10 more than five hundred dollars, or imprisoned in the  
11 county jail for a period not exceeding one year, or both  
12 fined and imprisoned.

13 (b) In addition to any penalty provided under this  
14 section and any restitution which may be ordered by the  
15 court under article eleven-a of chapter sixty-one, the  
16 court may order any person convicted under the  
17 provisions of this section to pay all or any portion of the  
18 cost of medical, psychological or psychiatric treatment



19 of the child resulting from the act or acts for which the  
20 person is convicted, whether or not the child is consi-  
21 dered to have sustained bodily injury.

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

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

*Frederick J. Perry*  
-----  
Chairman Senate Committee

*Bernard V. Kelly*  
-----  
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

*Harold B. Moore*  
-----  
Clerk of the Senate

*Donald J. Kopp*  
-----  
Clerk of the House of Delegates

*Keith Buntelle*  
-----  
President of the Senate

*Blaine L. Baker*  
-----  
Speaker of the House of Delegates

The within *is approved* this the *30<sup>th</sup>*  
day of *March*, 1990.

*Caston Caperton*  
-----  
Governor

PRESENTED TO THE  
GOVERNOR

Date 3/28/90

Time 2:10 PM

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SERVICES DIVISION