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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1999



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COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 678

(By Senator LOVE)



PASSED MARCH 12, 1999
In Effect NINETY DAYS FROM Passage

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SENATE OF WEST VIRGINIA
SECRETARY OF STATE

ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 678

(SENATOR LOVE, *original sponsor*)

[Passed March 12, 1999; in effect ninety days from passage.]

AN ACT to amend and reenact section three, article one, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to child welfare services; and redefining the term "legal guardianship" for purposes of abuse and neglect proceedings.

Be it enacted by the Legislature of West Virginia:

That section three, article one, chapter forty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

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 mental
6 or emotional injury, upon the child or another child in the
7 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 may
13 include an injury to the child as a result of excessive
14 corporal punishment.

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

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

27 (d) "Child abuse and neglect services" means social
28 services which are directed toward:

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

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

33 (3) Preventing the unnecessary removal of children from
34 their families by identifying family problems and assisting

35 families in resolving problems which could lead to a
36 removal of children and a breakup of the family;

37 (4) In cases where children have been removed from their
38 families, providing services to the children and the fami-
39 lies so as to reunify such children with their families;

40 (5) Placing children in suitable adoptive homes when
41 reunifying the children with their families is not possible
42 or appropriate; and

43 (6) Assuring the adequate care of children who have been
44 placed in the custody of the department or third parties.

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

53 (1) Nonaccidental trauma inflicted by a parent, guard-
54 ian, custodian, sibling or a babysitter or other caretaker;

55 (2) A combination of physical and other signs indicating
56 a pattern of abuse which may be medically diagnosed as
57 battered child syndrome;

58 (3) Nutritional deprivation;

59 (4) Abandonment by the parent, guardian or custodian;

60 (5) Inadequate treatment of serious illness or disease;

61 (6) Substantial emotional injury inflicted by a parent,
62 guardian or custodian; or

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

65 (f) "Legal guardianship" means the permanent relation-
66 ship between a child and caretaker, established by order of
67 the circuit court having jurisdiction over the child, pursu-
68 ant to the provisions of chapters forty-eight and forty-nine
69 of this code.

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

85 (h) (1) "Neglected child" means a child:

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

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

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

100 (i) "Parenting skills" means a parent's competencies in
101 providing physical care, protection, supervision and
102 psychological support appropriate to a child's age and
103 state of development.

104 (j) "Sexual abuse" means:

105 (A) As to a child who is less than sixteen years of age,
106 any of the following acts which a parent, guardian or
107 custodian shall engage in, attempt to engage in, or know-

108 ingly procure another person to engage in, with such child,
109 notwithstanding the fact that the child may have willingly
110 participated in such conduct or the fact that the child may
111 have suffered no apparent physical injury or mental or
112 emotional injury as a result of such conduct:

113 (i) Sexual intercourse;

114 (ii) Sexual intrusion;

115 (iii) Sexual contact;

116 (B) As to a child who is sixteen years of age or older, any
117 of the following acts which a parent, guardian or custo-
118 dian shall engage in, attempt to engage in, or knowingly
119 procure another person to engage in, with such child,
120 notwithstanding the fact that the child may have con-
121 sented to such conduct or the fact that the child may have
122 suffered no apparent physical injury or mental or emo-
123 tional injury as a result of such conduct:

124 (i) Sexual intercourse;

125 (ii) Sexual intrusion; or

126 (iii) Sexual contact;

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

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

137 (l) "Sexual exploitation" means an act whereby:

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

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

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

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

156 (o) "Parental rights" means any and all rights and duties
157 regarding a parent to a minor child, including, but not
158 limited to, custodial rights and visitational rights and
159 rights to participate in the decisions affecting a minor
160 child.

161 (p) "Placement" means any temporary or permanent
162 placement of a child who is in the custody of the state in
163 any foster home, group home or other facility or residence.

164 (q) "Serious physical abuse" means bodily injury which
165 creates a substantial risk of death, which causes serious or
166 prolonged disfigurement, prolonged impairment of health
167 or prolonged loss or impairment of the function of any
168 bodily organ.

169 (r) "Siblings" means children who have at least one
170 biological parent in common or who have been legally
171 adopted by the same parents or parent.

172 (s) "Time-limited reunification services" means individ-
173 ual, group, and family counseling, inpatient, residential or
174 outpatient substance abuse treatment services, mental
175 health services, assistance to address domestic violence,
176 services designed to provide temporary child care and
177 therapeutic services for families, including crisis nurseries
178 and transportation to or from any such services, provided
179 during fifteen of the most recent twenty-two months a
180 child has been in foster care, as determined by the earlier

181 date of the first judicial finding that the child is subjected
182 to abuse or neglect, or the date which is sixty days after
183 the child is removed from home.

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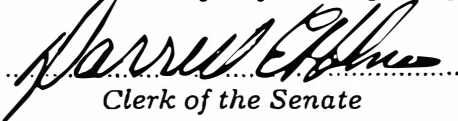
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

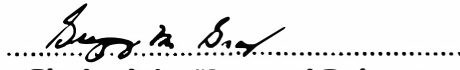

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Chairman Senate Committee

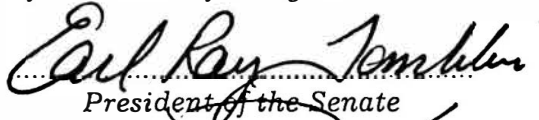

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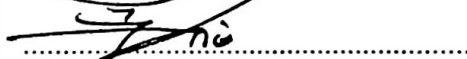
Originating in the Senate.


In effect ninety days from passage.


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Clerk of the Senate


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Clerk of the House of Delegates


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President of the Senate


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Speaker House of Delegates

The within approved this the 25th
Day of March, 1939

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Governor

PRESENTED TO THE

GOVERNOR

Date 3/23/99

Time 10:52am