

FILED

2005 MAY -3 A 8: 59

OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 2005



ENROLLED

House Bill No. 3098

(By Delegates Amores, Staton, Spencer, Schadler and Hamilton)



Passed April 9, 2005

In Effect Ninety Days from Passage

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E N R O L L E D

H. B. 3098

(BY DELEGATES AMORES, STATON, SPENCER,
SCHADLER AND HAMILTON)

[Passed April 9, 2005; in effect ninety days from passage]

AN ACT to amend and reenact §61-8D-1 and §61-8D-5 of the code of West Virginia, 1931, as amended, relating to sexual crimes committed against children; defining position of trust in relation to a child victim; expanding the existing felony offense of sexual exploitation or sexual abuse of a child under article eight-d of chapter sixty-one of the code to include offenses by persons who hold who a position of trust or authority in relation to a child; establishing related criminal penalties.

Be it enacted by the Legislature of West Virginia:

That §61-8D-1 and 61-8D-5 of the code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 8D. CHILD ABUSE.

§61-8D-1. Definitions.

1 In this article, unless a different meaning plainly is re-
2 quired:

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

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

7 (3) "Controlled substance" means controlled substance as
8 that term is defined in subsection (d), section one hundred one,
9 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 and
12 custody of a child on a full-time or temporary basis, regardless
13 of whether such person has been granted custody of the child by
14 any contract, agreement or legal proceeding. "Custodian" shall
15 also include, but not be limited to, the spouse of a parent,
16 guardian or custodian, or a person cohabiting with a parent,
17 guardian or custodian in the relationship of husband and wife,
18 where such spouse or other person shares actual physical
19 possession or care and custody of a child with the parent,
20 guardian or custodian.

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

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

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

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

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

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

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

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

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

54 (12) A "person in a position of trust in relation to a child"
55 refers to any person who is acting in the place of a parent and
56 charged with any of a parent's rights, duties or responsibilities
57 concerning a child or someone responsible for the general
58 supervision of a child's welfare, or any person who by virtue of
59 their occupation or position is charged with any duty or
60 responsibility for the health, education, welfare, or supervision
61 of the child.

**§61-8D-5. Sexual abuse by a parent, guardian custodian or per-
son in a position of trust to a child; parent, guard-
ian, custodian or person in a position of trust
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 code,
2 the Legislature hereby declares a separate and distinct offense
3 under this subsection, as follows: If any parent, guardian or
4 custodian of or other person in a position of trust in relation to
5 a child under his or her care, custody or control, shall engage in
6 or attempt to engage in sexual exploitation of, or in sexual
7 intercourse, sexual intrusion or sexual contact with, a child
8 under his or her care, custody or control, notwithstanding the
9 fact that the child may have willingly participated in such
10 conduct, or the fact that the child may have consented to such
11 conduct or the fact that the child may have suffered no apparent
12 physical injury or mental or emotional injury as a result of such
13 conduct, then such parent, guardian, custodian or person in a
14 position of trust shall be guilty of a felony and, upon conviction
15 thereof, shall be imprisoned in the penitentiary not less than ten
16 nor more than twenty years, or fined not less than five hundred
17 nor more than five thousand dollars and imprisoned in the
18 penitentiary not less than ten years nor more than twenty years.

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

36 (c) If any parent, guardian, custodian or other person in a
37 position of trust in relation to the child shall knowingly procure

38 another person to engage in or attempt to engage in sexual
39 exploitation of, or sexual intercourse, sexual intrusion or sexual
40 contact with, a child under the care, custody or control of such
41 parent, guardian, custodian or person in a position of trust when
42 such child is sixteen years of age or older, notwithstanding the
43 fact that the child may have consented to such conduct or the
44 fact that the child may have suffered no apparent physical
45 injury or mental or emotional injury as a result of such conduct,
46 then such parent, guardian, custodian or person in a position of
47 trust shall be guilty of a felony and, upon conviction thereof,
48 shall be imprisoned in the penitentiary not less than one year
49 nor more than five years.

50 (d) The provisions of this section shall not apply to a
51 custodian or person in a position of trust whose age exceeds the
52 age of the child by less than four years.

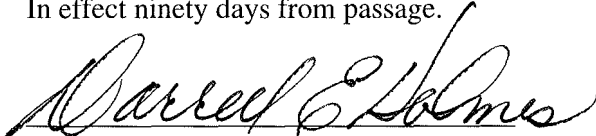
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

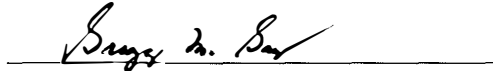

Chairman Senate Committee

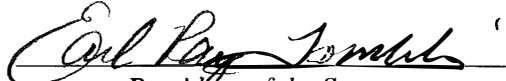

Chairman House Committee

Originating in the House.

In effect ninety days from passage.

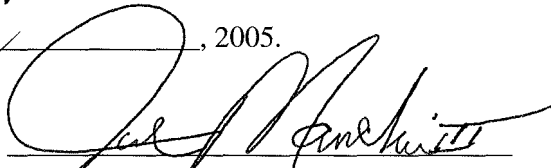

Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker of the House of Delegates

The within is approved this the 2nd
day of May, 2005.


Governor

PRESENTED TO THE
GOVERNOR

MAY 2 2005

Time 10:10 am