WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 2005

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ENROLLED

House Bill No. 3098
(By Delegates Amores, Staton, Spencer, Schadler and Hamilton)

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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-
(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, guardian or other person in a position of trust to a child, whether for financial gain or not, persuades, induces, entices or coerces the 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, custodian or other person in a position of trust in relation to a child persuades, induces, entices or coerces the child to display his or her sex organs for the sexual gratification of the parent, guardian, custodian, person in a position of trust or a third person, or to display his or her sex organs under circumstances in which the parent, guardian, custodian or other person in a position of trust 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.

(12) A “person in a position of trust in relation to a child” refers to any person who is acting in the place of a parent and charged with any of a parent’s rights, duties or responsibilities concerning a child or someone responsible for the general supervision of a child’s welfare, or any person who by virtue of their occupation or position is charged with any duty or responsibility for the health, education, welfare, or supervision of the child.

§61-8D-5. Sexual abuse by a parent, guardian custodian or person in a position of trust to a child; parent, guardian, 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.
(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 or other person in a position of trust in relation to 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 parent, guardian, custodian or person in a position of trust shall be guilty of a felony and, upon conviction thereof, shall be imprisoned in the penitentiary not less than ten nor more than twenty years, or fined not less than five hundred nor more than five thousand dollars and imprisoned in the penitentiary not less than ten years nor more than twenty years.

(b) If any parent, guardian, custodian or other person in a position of trust in relation to the child 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, custodian or person in a position of trust 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, custodian or person in a position of trust shall be guilty of a felony and, upon conviction thereof, shall be imprisoned in the penitentiary not less than five years nor more than fifteen years, or fined not less than one thousand nor more than ten thousand dollars and imprisoned in the penitentiary not less than five years nor more than fifteen years.

(c) If any parent, guardian, custodian or other person in a position of trust in relation to the child 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, custodian or person in a position of trust 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, custodian or person in a position of
trust 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.

(d) The provisions of this section shall not apply to a
custodian or person in a position of trust whose age exceeds the
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 House of Delegates

President of the Senate

The within is approved this the 2nd day of \(\text{Mary}\), 2005.

Governor
PRESENTED TO THE
GOVERNOR

MAY 2 2005

Time 10:10 AM