

# Mandatory Reporting Requirements: Children West Virginia

*Last Updated: December 2017*

Question	Answer
<p>Who is required to report?</p>	<ul style="list-style-type: none"> <li>• <b>General note:</b> West Virginia’s mandatory reporting law has different requirements depending on the type of abuse. Information is categorized on this page accordingly.</li> <li>• <b>Abuse or neglect:</b> <ul style="list-style-type: none"> <li>• Any medical, dental or mental health professional;</li> <li>• Christian Science practitioner or religious healer;</li> <li>• School teacher or other school personnel;</li> <li>• Social service worker;</li> <li>• Child care or foster care worker;</li> <li>• Emergency medical services personnel;</li> <li>• Peace officer or law-enforcement official or humane officer;</li> <li>• Member of the clergy;</li> <li>• Circuit court judge, family court judge, employee of the Division of Juvenile Services or magistrate;</li> <li>• Youth camp administrator or counselor;</li> <li>• Employee, coach or volunteer of an entity that provides organized children’s activities; and</li> <li>• Commercial film or photographic print processor.</li> </ul> </li> <li>• <b>Sexual abuse/sexual assault:</b> <ul style="list-style-type: none"> <li>• Any person over the age of 18 who receives a disclosure from a credible witness or observes any sexual abuse/assault of a child.</li> </ul> </li> </ul>
<p>When is a report required and where does it go?</p>	<p><b>When is a report required?</b></p> <ul style="list-style-type: none"> <li>• Reasonable cause to suspect that a child is neglected or abused or observation of a child being subjected to conditions that are likely to result in abuse or neglect.</li> <li>• Receipt of a disclosure from a credible witness or observation of any sexual abuse or sexual assault of a child.</li> </ul> <p><b>Where does it go?</b></p> <ul style="list-style-type: none"> <li>• <b>Abuse or neglect:</b> <ul style="list-style-type: none"> <li>• Department of Health and Human Resources Child Abuse and Neglect Hotline (1-800-352-6513) or the local Child Protective Services office in the county where the reporter lives (information can be found at: <a href="http://www.wvdhhr.org/bcf/county/">http://www.wvdhhr.org/bcf/county/</a>).</li> <li>• Serious physical abuse shall also be reported to the State Police and any law-enforcement agency having jurisdiction to investigate the complaint.</li> <li>• Any person subject to the mandatory reporting provisions who has reasonable cause to suspect</li> </ul> </li> </ul>

that a child has died due to child abuse or neglect shall report that fact to the appropriate medical examiner or coroner. The medical examiner or coroner shall cause an investigation to be made and report his findings to the police, the appropriate prosecuting attorney, the local child protective service agency and, if the institution making a report is a hospital, to the hospital.

• **Sexual assault/abuse:**

- For those required to report sexual contact, sexual intercourse, or sexual intrusion, the Department of Health and Human Resources, the State Police, or other law-enforcement agency having jurisdiction to investigate the complaint.
- For a required reporter over the age of 18, the Department of Health and Human Resources or the State Police or other law-enforcement agency having jurisdiction to investigate the report.
- Any school teacher or other school personnel who receives a disclosure from a witness, which a reasonable prudent person would deem credible, or personally observes any sexual contact, sexual intercourse or sexual intrusion, of a child on school premises or on school buses or on transportation used in furtherance of a school purpose shall immediately, but not more than 24 hours, report the circumstances or cause a report to be made to the State Police or other law-enforcement agency having jurisdiction to investigate the report:
  - *Provided*, that this subsection will not impose any reporting duty upon school teachers or other school personnel who observe, or receive a disclosure of any consensual sexual contact, intercourse, or intrusion occurring between students;
  - *Provided, however*, that any teacher or other school personnel shall not be in violation of this section if he or she makes known immediately, but not more than 24 hours, to the principal, assistant principal or similar person in charge, a disclosure from a witness, which a reasonable prudent person would deem credible, or personal observation of conduct described in this section;
  - *Provided further*, that a principal, assistant principal or similar person in charge made aware of such disclosure or observation from a teacher or other school personnel shall be responsible for immediately, but not more than 24 hours, reporting such conduct to law enforcement.
- A family court judge must also report the suspected abuse or neglect of a child involved in family court proceedings to the circuit court and to West Virginia’s Child Protective Services agency, and must include in his or her report the specific allegations or information that led to the determination of reasonable cause to suspect abuse or neglect.

What definitions are important to know?

- **“Abused child”** means a child whose health or welfare is harmed or threatened by:
  - (A) A parent, guardian or custodian who knowingly or intentionally inflicts, attempts to inflict or knowingly allows another person to inflict, physical injury or mental or emotional injury, upon the child or another child in the home. Physical injury may include injury to the child as a result of excessive corporal punishment;
  - (B) Sexual abuse or sexual exploitation;
  - (C) The sale or attempted sale of a child by a parent, guardian or custodian; or
  - (D) Domestic violence.
- **“Child”** means any person under 18 years of age.

- **“Neglected child”** means a child:
  - Whose physical or mental health is harmed or threatened by a present refusal, failure or inability of the child’s parent, guardian or custodian to supply the child with necessary food, clothing, shelter, supervision, medical care or education, when such refusal, failure or inability is not due primarily to a lack of financial means on the part of the parent, guardian or custodian; or
  - Who is presently without necessary food, clothing, shelter, medical care, education or supervision because of the disappearance or absence of the child’s parent or custodian.
  - “Neglected child” does not mean a child whose education is conducted within the provisions of the W. Va. Code (Sec. 1, Art. 8, Ch. 18).
- **“Serious physical abuse”** means bodily injury which creates a substantial risk of death, which causes serious or prolonged disfigurement, prolonged impairment of health or prolonged loss or impairment of the function of any bodily organ.
- **“Sexual abuse”** means:
  - as to a child who is less than sixteen years of age, any of the following acts which a parent, guardian or custodian shall engage in, attempt to engage in or knowingly procure another person to engage in, with such child, 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: (i) Sexual intercourse; (ii) Sexual intrusion; or (iii) Sexual contact;
  - as to a child who is sixteen years of age or older, any of the following acts which a parent, guardian or custodian shall engage in, attempt to engage in or knowingly procure another person to engage in, with such child, 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: (i) Sexual intercourse; (ii) Sexual intrusion; or (iii) Sexual contact; or
  - any conduct whereby a parent, guardian or custodian displays his or her sex organs to a child, or procures another person to display his or her sex organs to a child, for the purpose of gratifying the sexual desire of the parent, guardian or custodian, of the person making such display, or of the child, or for the purpose of affronting or alarming the child.
- **“Sexual assault in the first degree”** occurs when: (1) the person engages in sexual intercourse or sexual intrusion with another person and, in so doing: (i) inflicts serious bodily injury upon anyone; or (ii) employs a deadly weapon in the commission of the act; or (2) the person, being fourteen years old or more, engages in sexual intercourse or sexual intrusion with another person who is younger than twelve years old and is not married to that person.
- **“Sexual assault in the second degree”** occurs when (1) a person engages in sexual intercourse or sexual intrusion with another person without the person’s consent, and the lack of consent results from forcible compulsion; or (2) such person engages in sexual intercourse or sexual intrusion with another person who is physically helpless.
- **“Sexual assault in the third degree”** occurs when (1) a person engages in sexual intercourse or sexual intrusion with another person who is mentally defective or mentally incapacitated; or (2) a person, being sixteen years old or more, engages in sexual intercourse or sexual intrusion with another person who is

	<p>less than sixteen years old and who is at least four years younger than the defendant and is not married to the defendant.</p> <ul style="list-style-type: none"> <li>• <b>“Sexual contact”</b> means any intentional touching, either directly or through clothing, of the breasts, buttocks, anus or any part of the sex organs of another person, or intentional touching of any part of another person’s body by the actor’s sex organs, where the victim is not married to the actor and the touching is done for the purpose of gratifying the sexual desire of either party.</li> <li>• <b>“Sexual exploitation”</b> means an act whereby: <ul style="list-style-type: none"> <li>• A parent, custodian or guardian, whether for financial gain or not, persuades, induces, entices or coerces a child to engage in sexually explicit conduct including, whether actually performed or simulated, (1) Genital to genital intercourse; (2) Fellatio; (3) Cunnilingus; (4) Anal intercourse; (5) Oral to anal intercourse; (6) Bestiality; (7) Masturbation; (8) Sadoomasochistic abuse, including, but not limited to, flagellation, torture or bondage; (9) Excretory functions in a sexual context; or (10) Exhibition of the genitals, pubic or rectal areas of any person in a sexual context; or</li> <li>• 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.</li> </ul> </li> <li>• <b>“Sexual intercourse”</b> means any act between persons involving penetration, however slight, of the female sex organ by the male sex organ or involving contact between the sex organs of one person and the mouth or anus of another person.</li> <li>• <b>“Sexual intrusion”</b> means any act between persons involving penetration, however slight, of the female sex organ or of the anus of any person by an object for the purpose of degrading or humiliating the person so penetrated or for gratifying the sexual desire of either party.</li> </ul>
<p>What timing and procedural requirements apply to reports?</p>	<ul style="list-style-type: none"> <li>• Reports of child abuse or neglect must be made immediately by phone and followed up within 48 hours by a written report if requested.</li> <li>• Reports must be made immediately, and not more than 48 hours after receiving such a disclosure or observing the sexual abuse or sexual assault.</li> <li>• If the individual receiving the disclosure or observing the sexual abuse or sexual assault has a good faith belief that reporting the event to the police would expose either the reporter, the subject child, the reporter’s children or other children in the subject child’s household to an increased threat of serious bodily injury, the individual may delay making the report while he or she undertakes measures to remove themselves or the affected children from the perceived threat of additional harm and the individual makes the report as soon as practicable after the threat of harm has been reduced.</li> </ul>
<p>What information must a report include?</p>	<ul style="list-style-type: none"> <li>• Not specified by statute.</li> </ul>

<p>Anything else I should know?</p>	<ul style="list-style-type: none"> <li>• If a required reporter knowingly fails to report suspected or known child abuse or neglect or knowingly prevents another person acting reasonably from doing so, that person shall be guilty of a misdemeanor and, upon conviction, shall be confined in the county jail for not more than 90 days or fined not more than \$5,000, or both.</li> <li>• Any person, official or institution required by this article to report a case involving a child known or suspected to be sexually assaulted or sexually abused, or student known or suspected to have been a victim of any non-consensual sexual contact, sexual intercourse or sexual intrusion on school premises, who knowingly fails to do so or knowingly prevents another person acting reasonably from doing so, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail not more than 6 months or fined not more than \$10,000, or both.</li> <li>• The privileged quality of communications between husband and wife and between any professional person and his patient or his client, except that between attorney and client, is abrogated in situations involving suspected or known child abuse or neglect.</li> <li>• In addition to those persons obligated to report child abuse/neglect, any other person “may” make a report if such person has reasonable cause to suspect that a child has been abused or neglected in a home or institution or observes the child being subjected to conditions or circumstances that would reasonably result in abuse or neglect.</li> <li>• Any person, official or institution participating in good faith in any act permitted or required by this article are immune from any civil or criminal liability that otherwise might result by reason of those actions.</li> </ul>
<p>Statutory citation(s):</p>	<p>W. Va. Code §§ 49-1-201; 49-1-202; 49-2-803; 49-2-807; 49-2-809–49-2-812; 61-8b-1; 61-86-1. W. Va. R. of Prac. and Proc. for Family Court 48.</p>