

1 **ENGROSSED**

2 COMMITTEE SUBSTITUTE

3 for

4 **H. B. 4356**

5 (By Delegates Fleischauer, Brown,
6 Ireland, Lawrence, Manypenny, Marcum, Miley, Skaff,
7 Stowers, R. Phillips and Hall)

8 (Originating in the Committee on the Judiciary)

9 [February 3, 2012]

10

11 A BILL to amend and reenact §61-8D-4 of the Code of West Virginia,
12 1931, as amended, relating to creating a new offense for child
13 neglect by a parent, guardian or custodian which creates a
14 substantial risk of bodily injury and providing penalties upon
15 conviction.

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

17 That §61-8D-4 of the Code of West Virginia, 1931, as amended,
18 be amended and reenacted to read as follows:

19 **ARTICLE 8D. CHILD ABUSE.**

20 **§61-8D-4. Child neglect resulting in injury; child neglect**
21 **creating risk of injury; criminal penalties.**

22 (a) If ~~any~~ a parent, guardian or custodian ~~shall neglect~~
23 neglects a child and by such neglect ~~cause said~~ causes a child
24 bodily injury, as ~~such term is~~ defined in section one, article
25 eight-b of this chapter, then ~~such~~ the parent, guardian or
26 custodian ~~shall be~~ is guilty of a felony and, upon conviction

1 thereof, shall be fined not less than \$100 nor more than \$1,000
2 dollars or committed to the custody of the Division of Corrections
3 for not less than one nor more than three years, or in the
4 discretion of the court, be confined in ~~the county~~ jail for not
5 more than one year, or both such fine and confinement or
6 imprisonment.

7 (b) If ~~any~~ a parent, guardian or custodian ~~shall neglect~~
8 neglects a child and by such neglect cause ~~said~~ the child serious
9 bodily injury, as ~~such term is~~ defined in section one, article
10 eight-b of this chapter, then ~~such~~ the parent, guardian or
11 custodian ~~shall be~~ is guilty of a felony and, upon conviction
12 thereof, shall be fined not less than \$300 nor more than \$1,000
13 dollars or committed to the custody of the Division of Corrections
14 for not less than one nor more than ten years, or both ~~such fine~~
15 ~~and imprisonment~~ fined and imprisoned.

16 (c) If a parent, guardian or custodian grossly neglects a
17 child and by that gross neglect creates a substantial risk of
18 serious bodily injury, as defined in section one, article eight-b
19 of this chapter, or of death to the child, then the parent,
20 guardian or custodian is guilty of a felony and, upon conviction
21 thereof, shall be fined not more than \$3,000 dollars and confined
22 to the custody of the Division of Corrections for not less than one
23 nor more than five years.

24 (d) If a parent, guardian or custodian neglects a child and by
25 that neglect creates a substantial risk of bodily injury, as
26 defined in section one, article eight-b of this chapter, to the

1 child, then the parent, guardian or custodian, is guilty of a
2 misdemeanor and, upon conviction thereof, for a first offense,
3 shall be fined not less than \$500 nor more than \$1,000 or confined
4 in jail not less than thirty days nor more than six months or both
5 fined and confined. All persons convicted of a first offense under
6 this subsection shall also be required to complete a parenting plan
7 and parenting education class. For a second offense, the parent,
8 guardian or custodian is guilty of a misdemeanor and, upon
9 conviction thereof, shall be fined no more than \$1,000 and confined
10 in jail not less than thirty days nor not more than one year. For
11 a third or subsequent offense, the parent, guardian or custodian is
12 guilty of a felony and, upon conviction thereof, shall be fined not
13 more than \$2,000 and imprisoned in a state correctional facility
14 not less than one year nor more than three years.

15 (e) The provisions of this section shall not apply:

16 (1) if the neglect by the parent, guardian or custodian is
17 due primarily to a lack of financial means on the part of such
18 parent, guardian or custodian;

19 ~~(d) The provisions of this section shall not apply~~

20 (2) to any parent, guardian or custodian who fails or refuses,
21 or allows another person to fail or refuse, to supply a child under
22 the care, custody or control of such parent, guardian or custodian
23 with necessary medical care, when such medical care conflicts with
24 the tenets and practices of a recognized religious denomination or
25 order of which such parent, guardian or custodian is an adherent or
26 member.

1 ~~(e) Any person who grossly neglects a child and by the gross~~
2 ~~neglect creates a substantial risk of serious bodily injury or of~~
3 ~~death to the child is guilty of a felony and, upon conviction~~
4 ~~thereof, shall be fined not more than three thousand dollars and~~
5 ~~confined to the custody of the division of corrections for not less~~
6 ~~than one nor more than five years.~~