

H. B. 4244

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(By Delegates Kump, Rowan and Householder)
[Introduced January 20, 2012; referred to the
Committee on the Judiciary.]

10 A BILL to amend and reenact §61-2-29 and §61-2-29a of the Code of
11 West Virginia, 1931, as amended; and to amend and reenact
12 §61-8D-2, §61-8D-2a, §61-8D-4a and §61-8D-5 of said code, all
13 relating to eliminating eligibility for parole for the
14 offenses of abuse, neglect or death of an incapacitated adult,
15 murder of a child by a parent, guardian or custodian by
16 refusal to supply necessities, death of a child by a parent,
17 guardian or custodian by child abuse, child neglect resulting
18 in death, or sexual abuse of a child by a parent, guardian or
19 custodian.

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

21 That §61-2-29 and §61-2-29a of the Code of West Virginia,
22 1931, as amended, be amended and reenacted; and that §61-8D-2, §61-
23 8D-2a, §61-8D-4a and §61-8D-5 be amended and reenacted, all to
24 read as follows:

25 **ARTICLE 2. CRIMES AGAINST THE PERSON.**

26 **§61-2-29. Abuse or neglect of incapacitated adult; definitions;**

1 **penalties.**

2 (a) The following words, when used in this section and
3 sections twenty -nine-a and twenty-nine-b of this article, have the
4 meaning ascribed, unless the context clearly indicates otherwise:

5 (1) "Abuse" means the intentional infliction of bodily injury
6 on an incapacitated adult;

7 (2) "Bodily injury" means substantial physical pain, illness
8 or any impairment of physical condition;

9 (3) "Caregiver" means any person who has assumed the legal
10 responsibility or a contractual obligation for the care of an
11 incapacitated adult, or has voluntarily assumed responsibility for
12 the care of an incapacitated adult. The term includes a facility
13 operated by any public or private agency, organization or
14 institution which provides services to, and has assumed
15 responsibility for the care of an incapacitated adult.

16 (4) "Incapacitated adult" means any person eighteen years of
17 age or older who by reason of advanced age, physical, mental or
18 other infirmity is unable to carry on the daily activities of life
19 necessary to sustaining life and reasonable health;

20 (5) "Neglect" means the unreasonable failure by a caregiver to
21 provide the care necessary to assure the physical safety or health
22 of an incapacitated adult; and

23 (6) "Serious bodily injury" means bodily injury which creates
24 a substantial risk of death, which causes serious or prolonged
25 disfigurement, prolonged impairment of health or prolonged loss or
26 impairment of the function of any bodily organ.

1 (b) A caregiver who neglects an incapacitated adult or who
2 knowingly permits another person to neglect an incapacitated adult
3 is guilty of a misdemeanor and, upon conviction thereof, shall be
4 fined not less than \$100 nor more than \$500 or confined in jail for
5 not more than one year, or both fined and confined.

6 (c) A caregiver who abuses an incapacitated adult or who
7 knowingly permits another person to abuse an incapacitated adult is
8 guilty of a misdemeanor and, upon conviction thereof, shall be
9 fined not less than \$100 nor more than \$500 or confined in jail for
10 not less than ninety days nor more than one year, or both fined and
11 confined.

12 (d) A caregiver of an incapacitated adult who intentionally
13 and maliciously abuses or neglects an incapacitated adult and
14 causes the incapacitated adult bodily injury is guilty of a felony
15 and, upon conviction thereof, shall be fined not less than \$100 nor
16 more than \$1,000 and imprisoned in a state correctional facility
17 not less than two years nor more than ten years.

18 (e) A caregiver of an incapacitated adult who intentionally
19 and maliciously abuses or neglects an incapacitated adult and
20 causes the incapacitated adult serious bodily injury is guilty of
21 a felony and, upon conviction thereof, shall be fined not less than
22 \$1,000 nor more than \$5,000 and imprisoned in a state correctional
23 facility not less than three years nor more than fifteen years.

24 (f) Nothing in this section or in section twenty-nine-a of
25 this article shall be construed to mean an adult is abused or
26 neglected for the sole reason that his or her independent decision

1 is to rely upon treatment by spiritual means in accordance with the
2 tenets and practices of a recognized church or religious
3 denomination or organization in lieu of medical treatment.

4 (g) Nothing in this section or in section twenty-nine-a of
5 this article shall be construed to mean an incapacitated adult is
6 abused or neglected if deprivation of life-sustaining treatment or
7 other act has been provided by the West Virginia Health Care
8 Decisions Act, pursuant to article thirty, chapter sixteen of this
9 code.

10 (h) Notwithstanding any provision in this code to the
11 contrary, a person convicted of an offense under this section is
12 not eligible for parole.

13 **§61-2-29a. Death of an incapacitated adult by a caregiver.**

14 (a) A caregiver who intentionally and maliciously neglects an
15 incapacitated adult causing death is guilty of a felony and, upon
16 conviction thereof, shall be fined not more than \$5,000 and be
17 imprisoned in a state correctional facility for a definite term of
18 not less than five nor more than fifteen years.

19 (b) A caregiver of an incapacitated adult who causes the death
20 of an incapacitated adult by knowingly allowing any other person to
21 intentionally or maliciously neglect the incapacitated adult is
22 guilty of a felony and, upon conviction thereof, shall be fined not
23 more than \$5,000 and be imprisoned in a state correctional facility
24 for a definite term of not less than five nor more than fifteen
25 years.

26 (c) A caregiver of an incapacitated adult who intentionally

1 and maliciously abuses an incapacitated adult which causes the
2 death of the incapacitated adult is guilty of a felony and, upon
3 conviction thereof, shall be imprisoned in a state correctional
4 facility for a definite term of not less than five nor more than
5 forty years.

6 (d) A caregiver of an incapacitated adult who causes the death
7 of an incapacitated adult by knowingly allowing any other person to
8 intentionally and maliciously abuse an incapacitated adult is
9 guilty of a felony and, upon conviction thereof, shall be
10 imprisoned in a state correctional facility for a definite term of
11 not less than five nor more than forty years.

12 (e) The provisions of this section do not apply to any
13 caregiver or health care provider who, without malice, fails or
14 refuses, or allows another person to, without malice, fail or
15 refuse, to supply an incapacitated adult with necessary medical
16 care when the medical care conflicts with the tenets and practices
17 of a recognized religious denomination or order of which the
18 incapacitated adult is an adherent member.

19 (f) Notwithstanding any provision in this code to the
20 contrary, a person convicted of an offense under this section is
21 not eligible for parole.

22 **ARTICLE 8D. CHILD ABUSE.**

23 **§61-8D-2. Murder of a child by a parent, guardian or custodian or**
24 **other person by refusal or failure to supply**
25 **necessities, or by delivery, administration or**
26 **ingestion of a controlled substance; penalties.**

1 (a) If any parent, guardian or custodian shall maliciously and
2 intentionally cause the death of a child under his or her care,
3 custody or control by his or her failure or refusal to supply such
4 child with necessary food, clothing, shelter or medical care, then
5 such parent, guardian or custodian shall be guilty of murder in the
6 first degree.

7 (b) If any parent, guardian or custodian shall cause the death
8 of a child under his or her care, custody or control by knowingly
9 allowing any other person to maliciously and intentionally fail or
10 refuse to supply such child with necessary food, clothing, shelter
11 or medical care, then such other person and such parent, guardian
12 or custodian shall each be guilty of murder in the first degree.

13 (c) The penalty for offenses defined by this section shall be
14 that which is prescribed for murder in the first degree under the
15 provisions of section two, article two of this chapter.
16 Notwithstanding any provision in this code to the contrary, a
17 person convicted of an offense under this section is not eligible
18 for parole.

19 (d) The provisions of this section shall not apply to any
20 parent, guardian or custodian who fails or refuses, or allows
21 another person to fail or refuse, to supply a child under the care,
22 custody or control of such parent, guardian or custodian with
23 necessary medical care, when such medical care conflicts with the
24 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 **§61-8D-2a. Death of a child by a parent, guardian or custodian or**
2 **other person by child abuse; criminal penalties.**

3 (a) If any parent, guardian or custodian shall maliciously and
4 intentionally inflict upon a child under his or her care, custody
5 or control substantial physical pain, illness or any impairment of
6 physical condition by other than accidental means, thereby causing
7 the death of such child, then such parent, guardian or custodian
8 shall be guilty of a felony.

9 (b) If any parent, guardian or custodian shall knowingly allow
10 any other person to maliciously and intentionally inflict upon a
11 child under the care, custody or control of such parent, guardian
12 or custodian substantial physical pain, illness or any impairment
13 of physical condition by other than accidental means, which thereby
14 causes the death of such child, then such other person and such
15 parent, guardian or custodian shall each be guilty of a felony.

16 (c) Any person convicted of a felony described in subsection
17 (a) or (b) of this section shall be punished by a definite term of
18 imprisonment in ~~the penitentiary~~ a correctional facility which is
19 not less than ten nor more than forty years. ~~A person imprisoned~~
20 ~~pursuant to the provisions of this section is not eligible for~~
21 ~~parole prior to having served a minimum of ten years of his or her~~
22 ~~sentence or the minimum period required by the provisions of~~
23 ~~section thirteen, article twelve, chapter sixty-two of this code,~~
24 ~~whichever is greater.~~ Notwithstanding any provision in this code
25 to the contrary, a person convicted of an offense under this
26 section is not eligible for parole.

1 (d) The provisions of this section shall not apply to any
2 parent, guardian or custodian or other person who, without malice,
3 fails or refuses, or allows another person to, without malice, fail
4 or refuse, to supply a child under the care, custody or control of
5 such parent, guardian or custodian with necessary medical care,
6 when such medical care conflicts with the tenets and practices of
7 a recognized religious denomination or order of which such parent,
8 guardian or custodian is an adherent or member. The provisions of
9 this section shall not apply to any health care provider who fails
10 or refuses, or allows another person to fail or refuse, to supply
11 a child with necessary medical care when such medical care
12 conflicts with the tenets and practices of a recognized religious
13 denomination or order of which the parent, guardian or custodian of
14 the child is an adherent or member, or where such failure or
15 refusal is pursuant to a properly executed do not resuscitate form.
16 **§61-8D-4a. Child neglect resulting in death; criminal penalties.**

17 (a) If any parent, guardian or custodian shall neglect a child
18 under his or her care, custody or control and by such neglect cause
19 the death of said child, then such parent, guardian or custodian
20 shall be guilty of a felony and, upon conviction thereof, shall be
21 fined not less than \$1,000 nor more than \$5,000 or committed to the
22 custody of the Division of Corrections for not less than three nor
23 more than fifteen years, or both such fine and imprisonment.
24 Notwithstanding any provision in this code to the contrary, a
25 person convicted of an offense under this section is not eligible
26 for parole.

1 (b) No child who in lieu of medical treatment was under
 2 treatment solely by spiritual means through prayer in accordance
 3 with a recognized method of religious healing with a reasonable
 4 proven record of success shall, for that reason alone, be
 5 considered to have been neglected within the provisions of this
 6 section. A method of religious healing shall be presumed to be a
 7 recognized method of religious healing if fees and expenses
 8 incurred in connection with such treatment are permitted to be
 9 deducted from taxable income as "medical expenses" pursuant to
 10 regulations or rules promulgated by the United States Internal
 11 Revenue Service.

12 (c) A child whose parent, guardian or legal custodian has
 13 inhibited or interfered with the provision of medical treatment in
 14 accordance with a court order may be considered to have been
 15 neglected for the purposes of this section.

16 **§61-8D-5. Sexual abuse by a parent, guardian, custodian or person**
 17 **in a position of trust to a child; parent, guardian,**
 18 **custodian or person in a position of trust allowing**
 19 **sexual abuse to be inflicted upon a child; displaying**
 20 **of sex organs by a parent, guardian, or custodian;**
 21 **penalties.**

22 (a) In addition to any other offenses set forth in this code,
 23 the Legislature hereby declares a separate and distinct offense
 24 under this subsection, as follows: If any parent, guardian or
 25 custodian of or other person in a position of trust in relation to
 26 a child under his or her care, custody or control, shall engage in

1 or attempt to engage in sexual exploitation of, or in sexual
2 intercourse, sexual intrusion or sexual contact with, a child under
3 his or her care, custody or control, notwithstanding the fact that
4 the child may have willingly participated in such conduct, or the
5 fact that the child may have consented to such conduct or the fact
6 that the child may have suffered no apparent physical injury or
7 mental or emotional injury as a result of such conduct, then such
8 parent, guardian, custodian or person in a position of trust shall
9 be guilty of a felony and, upon conviction thereof, shall be
10 imprisoned in a correctional facility not less than ten nor more
11 than twenty years, or fined not less than \$500 nor more than \$5,000
12 and imprisoned in a correctional facility not less than ten years
13 nor more than twenty years.

14 (b) Any parent, guardian, custodian or other person in a
15 position of trust in relation to the child who knowingly procures,
16 authorizes, or induces another person to engage in or attempt to
17 engage in sexual exploitation of, or sexual intercourse, sexual
18 intrusion or sexual contact with, a child under the care, custody
19 or control of such parent, guardian, custodian or person in a
20 position of trust when such child is less than sixteen years of
21 age, notwithstanding the fact that the child may have willingly
22 participated in such conduct or the fact that the child may have
23 suffered no apparent physical injury or mental or emotional injury
24 as a result of such conduct, such parent, guardian, custodian or
25 person in a position of trust shall be guilty of a felony and, upon
26 conviction thereof, shall be imprisoned in a correctional facility

1 not less than five years nor more than fifteen years, or fined not
2 less than \$1,000 nor more than \$10,000 and imprisoned in a
3 correctional facility not less than five years nor more than
4 fifteen years.

5 (c) Any parent, guardian, custodian or other person in a
6 position of trust in relation to the child who knowingly procures,
7 authorizes, or induces another person to engage in or attempt to
8 engage in sexual exploitation of, or sexual intercourse, sexual
9 intrusion or sexual contact with, a child under the care, custody
10 or control of such parent, guardian, custodian or person in a
11 position of trust when such child is sixteen years of age or older,
12 notwithstanding the fact that the child may have consented to such
13 conduct or the fact that the child may have suffered no apparent
14 physical injury or mental or emotional injury as a result of such
15 conduct, then such parent, guardian, custodian or person in a
16 position of trust shall be guilty of a felony and, upon conviction
17 thereof, shall be imprisoned in a correctional facility not less
18 than one year nor more than five years.

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

22 (e) Notwithstanding any provision in this code to the
23 contrary, a person convicted of an offense under this section is
24 not eligible for parole.

NOTE: The purpose of this bill is to eliminate eligibility for parole for the offenses of abuse, neglect or death of an incapacitated adult, murder of a child by parent, guardian or custodian, death of a child by parent, guardian or custodian by child abuse, child neglect resulting in death, or sexual abuse of a child by parent, guardian or custodian.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.