

1 **H. B. 4354**

2
3 (By Delegates Savilla, Sobonya, C. Miller,
4 Sumner, Barker, Ellington, Perdue, Andes,
5 Hamilton and Gearheart)
6

7 [Introduced January 31, 2012; referred to the
8 Committee on the Judiciary then Finance.]
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10 A BILL to amend and reenact §61-8D-4 of the Code of West Virginia,
11 1931, as amended, relating to the sale of medication
12 prescribed for a child and sold or allowed to be sold by a
13 parent or guardian to a third party; penalties.

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

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

17 **ARTICLE 8D. CHILD ABUSE.**

18 **§61-8D-4. Child neglect resulting in injury; child neglect**
19 **creating risk of injury; criminal penalties.**

20 (a) If any parent, guardian or custodian ~~shall neglect~~
21 neglects a child and by ~~such the~~ neglect cause ~~said the~~ child
22 bodily injury, as ~~such the~~ term is defined in section one, article
23 eight-b of this chapter, then ~~such the~~ parent, guardian or
24 custodian ~~shall be~~ is guilty of a felony and, upon conviction
25 thereof, shall be fined not less than \$100 nor more than \$1000 or

1 ~~committed to the custody of the Division of Corrections for~~
2 imprisoned in a state correctional facility not less than one nor
3 more than three years or, in the discretion of the court, be
4 confined in ~~the county~~ jail for not more than one year, or both
5 ~~such fine and confinement or imprisonment.~~ fined and imprisoned or
6 fined and confined.

7 (b) If any parent, guardian or custodian ~~shall neglect~~
8 neglects a child and by ~~such the~~ neglect cause ~~said the~~ child
9 serious bodily injury, as ~~such the~~ term is defined in section one,
10 article 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 \$3000 or
13 ~~committed to the custody of the Division of Corrections for~~
14 imprisoned in a state correctional facility not less than one nor
15 more than ten years, or both ~~such fine and imprisonment.~~ fined and
16 imprisoned.

17 (c) The provisions of this section ~~shall do~~ not apply if the
18 neglect by the parent, guardian or custodian is due primarily to a
19 lack of financial means on the part of such parent, guardian or
20 custodian.

21 (d) (1) The provisions of this section ~~shall do~~ not apply to
22 ~~any a~~ a parent, guardian or custodian who fails or refuses, or allows
23 another person to fail or refuse, to supply a child under the care,
24 custody or control of ~~such the~~ parent, guardian or custodian with

1 necessary medical care when ~~such~~ the medical care conflicts with
2 the tenets and practices of a recognized religious denomination or
3 order of which ~~such~~ the parent, guardian or custodian is an
4 adherent or member.

5 (2) A parent, guardian or custodian who converts any
6 medication or controlled substance prescribed to a child by a
7 physician or other licensed medical professional for the purpose of
8 vending the medication to a third party or who allows another
9 person to convert any medication or controlled substance prescribed
10 to a child by a physician or other licensed medical professional
11 for the purpose of vending the medication to a third party, is
12 guilty of a felony and, upon conviction thereof, shall be fined not
13 more than \$2000 and imprisoned in a state correctional facility for
14 not less than two nor more than five years.

15 (e) Any person who grossly neglects a child and by the gross
16 neglect creates a substantial risk of serious bodily injury or of
17 death to the child is guilty of a felony and, upon conviction
18 thereof, shall be fined not more than \$3000 and ~~confined to the~~
19 ~~custody of the Division of Corrections~~ imprisoned in a state
20 correctional facility for not less than one nor more than five
21 years.

NOTE: The purpose of this bill is to create penalties for parents or guardians who sale or who allow to be sold any medication prescribed to a child.

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