

Senate Bill No. 73

(By Senators Edgell, Jenkins, Yost, Fitzsimmons and Beach)

[Introduced February 13, 2013; referred to the Committee on the
Judiciary.]

**FISCAL
NOTE**

A BILL to amend the Code of West Virginia, 1931, as amended, by
adding thereto a new section, designated §61-2-31, relating to
establishing criminal penalties for failure to report a
missing child by the child's custodian.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended
by adding thereto a new section, designated §61-2-31, to read as
follows:

ARTICLE 2. CRIMES AGAINST THE PERSON.

§61-2-31. Failure to report missing child by custodian.

(a) A custodian of a child who knowingly fails to report to a
law-enforcement agency the disappearance of a child twelve years or
older in his or her custody within twenty-four hours of the time he
or she has knowledge that the child is missing is guilty of a

1 misdemeanor and, upon conviction thereof, shall be fined not less
2 than \$100 nor more than \$500 or confined in jail for not more than
3 one year, or both fined and confined.

4 (b) A custodian of a child who knowingly fails to report to a
5 law-enforcement agency the disappearance of a child eleven years or
6 younger in his or her custody within twenty-four hours of the time
7 he or she has knowledge that the child is missing is guilty of a
8 felony and, upon conviction thereof, shall be fined not more than
9 \$3,000 and committed to the custody of the Division of Corrections
10 for not less than one nor more than five years.

11 (c) A custodian of a child who knowingly fails to report to a
12 law-enforcement agency the disappearance of a child in his or her
13 custody within twelve hours of the time he or she has knowledge of
14 the disappearance of the child and that the child's disappearance
15 creates a substantial risk of serious bodily injury or death to the
16 child is guilty of a felony and, upon conviction thereof, shall be
17 fined not more than \$3,000 and committed to the custody of the
18 Division of Corrections for not less than one nor more than three
19 years.

20 (d) A custodian of a child who knowingly fails to report to a
21 law-enforcement agency the disappearance of a child in his or her
22 custody within twenty-four hours of the time he or she has
23 knowledge that the child is missing, and the failure to report is

1 for the purpose of concealing a criminal act or other criminal
2 activity, is guilty of a felony and, upon conviction thereof, shall
3 be fined not less than \$1,000 nor more than \$5,000 and committed to
4 the custody of the Division of Corrections for not less than three
5 nor more than thirteen years.

6 (e) For purposes of this section, the meaning of the word
7 "custodian" is as defined pursuant to section one, article eight-d
8 of this chapter. No provision of this section is intended to
9 limit, modify or abrogate any duty of a caregiver otherwise
10 required pursuant to this code. It is the intention of the
11 Legislature in enacting this section that all criminal offenses and
12 penalties provided in this section are in addition to any other
13 offenses and penalties provided by law.

NOTE: The purpose of this bill is to criminalize the failure of a custodian to report to law-enforcement officials a missing child. The penalties vary based on age and circumstances with enhanced penalties for failure to report when the custodian knows the child's disappearance creates a risk of harm or death to the child, or when a custodian fails to report the missing child to conceal criminal conduct.

This section is new; therefore, strike-throughs and underscoring have been omitted.