

1 COMMITTEE SUBSTITUTE

2 FOR

3 **H. B. 4004**

4 (By Delegates L. Phillips, Rowan, Fleischauer,
5 Border, Lawrence, Guthrie, P. Smith, Marshall and Poore)

6
7 (Originating in the House Committee on Finance)

8 [February 21, 2014]

9
10 A BILL to amend and reenact §61-8D-3 of the Code of West Virginia,
11 1931, as amended, relating to criminal offenses for child
12 abuse by a parent, guardian or custodian; creating a
13 misdemeanor offense for child abuse by a parent, guardian or
14 custodian which creates a substantial threat of bodily injury;
15 establishing a misdemeanor penalty for a first offense;
16 providing that those convicted of the first offense may be
17 required to undergo counseling; increasing penalties for a
18 second conviction; making a conviction for a third or
19 subsequent offense a felony; establishing criminal penalties;
20 and providing that a parent, guardian or custodian convicted
21 of a misdemeanor is not required to register as a person
22 convicted of child abuse or neglect.

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

24 That §61-8D-3 of the Code of West Virginia, one thousand nine

1 hundred thirty-one, as amended, be amended and reenacted to read as
2 follows:

3 **ARTICLE 8D. CHILD ABUSE.**

4 **§61-8D-3. Child abuse resulting in injury; child abuse creating**
5 **risk of injury; criminal penalties.**

6 (a) If any parent, guardian or custodian shall abuse a child
7 and by such abuse cause such child bodily injury as such term is
8 defined in section one, article eight-b of this chapter, then such
9 parent, guardian or custodian shall be guilty of a felony and, upon
10 conviction thereof, shall be fined not less than \$100 nor more than
11 \$1,000 and committed to the custody of the Division of Corrections
12 for not less than one nor more than five years, or in the
13 discretion of the court, be confined in ~~the county or regional~~ jail
14 for not more than one year.

15 (b) If any parent, guardian or custodian shall abuse a child
16 and by such abuse cause said child serious bodily injury as such
17 term is defined in section one, article eight-b of this chapter,
18 then such parent, guardian or custodian shall be guilty of a felony
19 and, upon conviction thereof, shall be fined not less than \$1,000
20 nor more than \$5,000 and committed to the custody of the Division
21 of Corrections not less than two nor more than ten years.

22 (c) Any ~~person~~ parent, guardian or custodian who abuses a
23 child and by the abuse creates a substantial risk of death or
24 serious bodily injury, ~~or of death~~ as that term is defined in

1 section one, article eight-b of this chapter, to the child is
2 guilty of a felony and, upon conviction thereof, shall be fined not
3 more than \$3,000 and confined to the custody of the Division of
4 Corrections for not less than one nor more than five years.

5 (d) Any parent, guardian or custodian who abuses a child and
6 by the abuse creates a substantial risk of bodily injury, as that
7 term is defined in section one, article eight-b of this chapter, to
8 the child is guilty of a misdemeanor and, upon conviction thereof,
9 for a first offense, shall be fined not less than \$100 nor more
10 than \$1,000 or confined in jail not less than thirty days nor more
11 than six months, or both fined and confined. Any person convicted
12 of a first offense under this subsection may also be required to
13 complete parenting classes, substance abuse counseling, anger
14 management counseling, or other appropriate services, or any
15 combination thereof, as determined as necessary through a family
16 functioning assessment conducted by Department of Health and Human
17 Resources, Bureau for Children and Families. For a second offense
18 under this subsection, the parent, guardian or custodian is guilty
19 of a misdemeanor and, upon conviction thereof, shall be fined not
20 more than \$1,500 and confined in jail not less than thirty days nor
21 more than one year. Any person convicted of a third or subsequent
22 offense under this subsection is guilty of a felony and, upon
23 conviction thereof, shall be fined not more than \$2,000 and
24 imprisoned in a state correctional facility not less than one year

1 nor more than three years. Any person convicted of a misdemeanor
2 offense under this subsection is not required to register pursuant
3 to article thirteen, chapter fifteen of this code.

4 (e) Nothing in this article shall preclude a parent, guardian
5 or custodian from providing reasonable discipline to a child.