

# **WEST VIRGINIA LEGISLATURE**

**2017 REGULAR SESSION**

**SECOND ENGROSSMENT**

**Committee Substitute**

**for**

**House Bill 2648**

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[Originating in the Committee on Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,  
2 designated §60A-4-406a; and to amend and reenact §61-8D-1 and §61-8D-4 of said code,  
3 all relating to increased penalties for manufacturing or transportation of a controlled  
4 substance in the presence of a minor; providing for mandatory minimum period of  
5 incarceration for adult persons convicted of manufacturing, delivering, or possessing with  
6 the intent to manufacture or deliver a controlled substance, which is a Schedule I or II  
7 narcotic, in the presence of a minor; providing for mandatory minimum period of  
8 incarceration for adult persons convicted of manufacturing, delivering, or possessing with  
9 the intent to manufacture or deliver a controlled substance, which is a Schedule I, II or III  
10 non-narcotic, in the presence of a minor; providing for mandatory minimum period of  
11 incarceration for adult persons convicted of transporting a controlled substance into this  
12 state with the intent to deliver or manufacture a controlled substance, which is a Schedule  
13 I or II narcotic, while being in the presence of a minor at the time of the offense; providing  
14 for mandatory minimum period of incarceration for adult persons convicted of transporting  
15 a controlled substance into this state with the intent to deliver or manufacture a controlled  
16 substance, which is a Schedule I, II or III non-narcotic, while being in the presence of a  
17 minor at the time of the offense; requiring certain information and findings to be included  
18 in indictment or presentment; requiring certain facts to be determined by the court or jury;  
19 defining terms; creating a crime of neglect by a parent, guardian or custodian in which the  
20 parent, guardian or custodian is under the influence of a controlled substance and  
21 knowingly causes or permits a minor to be present in a location with the parent guardian  
22 or custodian, and no bodily injury occurs to the minor child; establishing criminal penalties;  
23 and authorizing the Court to require completion of certain classes, counseling, or other  
24 programs or services, including drug addiction treatment programs, as part of an imposed  
25 sentence or as an alternative sentence for persons convicted of certain misdemeanor  
26 offenses.

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

1           That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new  
2 section, designated §60A-4-406a; and that §61-8D-1 and §61-8D-4 of said code be amended and  
3 reenacted, all to read as follows:

**CHAPTER 60A. UNIFORM CONTROLLED SUBSTANCES ACT.**

**ARTICLE 4. OFFENSES AND PENALTIES.**

**§60A-4-406a. Manufacture, delivery, transportation into state and use of controlled  
substances in presence of minor**

4           (a) Notwithstanding any other provision of law to the contrary, a person, who is eighteen  
5 years old or older, is ineligible for parole for a period of three years if he or she is sentenced to  
6 the custody of the Commissioner of Corrections for service of a sentence of incarceration and is  
7 convicted of a felony violation under W.Va. Code §60A-4-401(a)(i), and who caused or permitted  
8 a person under the age of eighteen to be present at the time and location of the offense upon  
9 which the conviction is based.

10          (b) Notwithstanding any other provision of law to the contrary, a person, who is eighteen  
11 years old or older, is ineligible for parole for a period of two years if he or she is sentenced to the  
12 custody of the Commissioner of Corrections for service of a sentence of incarceration and is  
13 convicted of a felony violation under W.Va. Code §60A-4-401(a)(ii), and who caused or permitted  
14 a person under the age of eighteen to be present at the time and location of the offense upon  
15 which the conviction is based.

16          (c) Notwithstanding any other provision of law to the contrary, a person, who is eighteen  
17 years old or older, is ineligible for parole for a period of three years if he or she is sentenced to  
18 the custody of the Commissioner of Corrections for service of a sentence of incarceration and is  
19 convicted of a felony violation under W.Va. Code §60A-4-409(b)(1), and who caused or permitted  
20 a person under the age of eighteen to be present at the time and location of the offense upon

21 which the conviction is based.

22 (d) Notwithstanding any other provision of law to the contrary, a person, who is eighteen  
23 years old or older, is ineligible for parole for a period of two years if he or she is sentenced to the  
24 custody of the Commissioner of Corrections for service of a sentence of incarceration and is  
25 convicted of a felony violation under W.Va. Code §60A-4-409(b)(2), and who caused or permitted  
26 a person under the age of eighteen to be present at the time and location of the offense upon  
27 which the conviction is based.

28 (e) The existence of any fact which would make any person subject to the provisions of  
29 this section may not be considered unless the fact is clearly stated and included in the indictment  
30 or presentment by which the person is charged and is either:

31 (1) Found by the court upon a plea of guilty or nolo contendere;

32 (2) Found by the jury, if the matter be tried before a jury, upon submission to the jury of a  
33 special interrogatory for such purpose; or

34 (3) Found by the court, if the matter be tried by the court without a jury.

## **CHAPTER 61. CRIMES AND THEIR PUNISHMENT**

### **ARTICLE 8D. CHILD ABUSE**

#### **§61-8D-1. Definitions.**

35 In this article, unless a different meaning is plainly required:

36 (1) "Abuse" means the infliction upon a minor of physical injury by other than accidental  
37 means.

38 (2) "Child" means any person under eighteen years of age not otherwise emancipated by  
39 law.

40 (3) "Controlled substance" means controlled substance as that term is defined in  
41 subsection (d), section one hundred one, article one, chapter sixty-a of this code.

42 (4) "Custodian" means a person over the age of fourteen years who has or shares actual  
43 physical possession or care and custody of a child on a full-time or temporary basis, regardless  
44 of whether such person has been granted custody of the child by any contract, agreement or legal  
45 proceeding. "Custodian" shall also include, but not be limited to, the spouse of a parent, guardian  
46 or custodian, or a person cohabiting with a parent, guardian or custodian in the relationship of  
47 husband and wife, where such spouse or other person shares actual physical possession or care  
48 and custody of a child with the parent, guardian or custodian.

49 (5) "Guardian" means a person who has care and custody of a child as the result of any  
50 contract, agreement or legal proceeding.

51 (6) "Gross neglect" means reckless or intentional conduct, behavior or inaction by a  
52 parent, guardian or custodian that evidences a clear disregard for a minor child's health, safety or  
53 welfare.

54 (7) "Neglect" (i) means the unreasonable failure by a parent, guardian or custodian of a  
55 minor child to exercise a minimum degree of care to assure the minor child's physical safety or  
56 health; (ii) For purposes of this article, the following do not constitute "neglect" by a parent,  
57 guardian or custodian:

58 (A) Permitting a minor child to participate in athletic activities or other similar activities that  
59 if done properly are not inherently dangerous, regardless of whether that participation creates a  
60 risk of bodily injury;

61 (B) Exercising discretion in choosing a lawful method of educating a minor child; or

62 (C) Exercising discretion in making decisions regarding the nutrition and medical care  
63 provided to a minor child based upon religious conviction or reasonable personal belief; and

64 (iii) For purposes of this article, a parent, guardian or custodian of a minor child is deemed  
65 to have failed to exercise a minimum degree of care to assure the minor child's physical safety or  
66 health if such parent, guardian or custodian of a minor child is unlawfully under the influence of a

67 controlled substance and knowingly causes or permits a minor to be present in a location with the  
68 parent, guardian or custodian while under the influence.

69 (8) "Parent" means the biological father or mother of a child, or the adoptive mother or  
70 father of a child.

71 (9) "Sexual contact" means sexual contact as that term is defined in section one, article  
72 eight-b, chapter sixty-one of this code.

73 (10) "Sexual exploitation" means an act whereby:

74 (A) A parent, custodian, guardian or other person in a position of trust to a child, whether  
75 for financial gain or not, persuades, induces, entices or coerces the child to engage in sexually  
76 explicit conduct as that term is defined in section one, article eight-c, chapter sixty-one of this  
77 code; or

78 (B) A parent, guardian, custodian or other person in a position of trust in relation to a child  
79 persuades, induces, entices or coerces the child to display his or her sex organs for the sexual  
80 gratification of the parent, guardian, custodian, person in a position of trust or a third person, or  
81 to display his or her sex organs under circumstances in which the parent, guardian, custodian or  
82 other person in a position of trust knows such display is likely to be observed by others who would  
83 be affronted or alarmed.

84 (11) "Sexual intercourse" means sexual intercourse as that term is defined in section one,  
85 article eight-b, chapter sixty-one of this code.

86 (12) "Sexual intrusion" means sexual intrusion as that term is defined in section one, article  
87 eight-b, chapter sixty-one of this code.

88 (13) A "person in a position of trust in relation to a child" refers to any person who is acting  
89 in the place of a parent and charged with any of a parent's rights, duties or responsibilities  
90 concerning a child or someone responsible for the general supervision of a child's welfare, or any  
91 person who by virtue of their occupation or position is charged with any duty or responsibility for

92 the health, education, welfare, or supervision of the child.

93 (14) “Unlawfully under the influence of a controlled substance” means the consumption of  
94 a controlled substance in violation of chapter sixty-a of the code that has induced an effect on the  
95 user’s brain, muscles, nervous system, or other normal function of the body, to such a degree  
96 that it impairs the user’s ability to take action or conduct oneself in the manner that an ordinarily  
97 prudent and cautious person, using reasonable care, would conduct himself or herself.

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

1 (a) If a parent, guardian or custodian neglects a child and by such neglect causes the child  
2 bodily injury, as bodily injury is defined in section one, article eight-b of this chapter, then the  
3 parent, guardian or custodian is guilty of a felony and, upon conviction thereof, shall be fined not  
4 less than \$100 nor more than \$1,000 dollars or imprisoned in a state correctional facility for not  
5 less than one nor more than three years, or in the discretion of the court, be confined in jail for  
6 not more than one year, or both.

7 (b) If a parent, guardian or custodian neglects a child and by such neglect cause the child  
8 serious bodily injury, as serious bodily injury is defined in section one, article eight-b of this  
9 chapter, then the parent, guardian or custodian is guilty of a felony and, upon conviction thereof,  
10 shall be fined not less than \$300 nor more than \$3,000 dollars or imprisoned in a state correctional  
11 facility for not less than one nor more than ten years, or both.

12 (c) If a parent, guardian or custodian grossly neglects a child and by that gross neglect  
13 creates a substantial risk of death or serious bodily injury, as serious bodily injury is defined in  
14 section one, article eight-b of this chapter, of the child then the parent, guardian or custodian is  
15 guilty of a felony and, upon conviction thereof, shall be fined not less than \$1,000 nor more than  
16 \$3,000 dollars or imprisoned in a state correctional facility for not less than one nor more than five  
17 years, or both.

18           (d) If a parent, guardian or custodian neglects a child, as such term is defined in  
19 subdivision (iii), subsection (7), section one of this article, and no bodily injury occurs to the minor  
20 child as a result of the neglect, then the parent, guardian or custodian is guilty of a misdemeanor,  
21 and, upon conviction thereof, shall be fined not more than \$2,500 or confined in jail for not more  
22 than one year, or both fined and confined.

23           ~~(d)~~ (e)(1) If a parent, guardian or custodian who has not been previously convicted under  
24 this section, section three of this article or a law of another state or the federal government with  
25 the same essential elements neglects a child and by that neglect creates a substantial risk of  
26 bodily injury, as defined in section one, article eight-b of this chapter, to the child, then the parent,  
27 guardian or custodian, is guilty of a misdemeanor and, upon conviction thereof, for a first offense,  
28 shall be fined not less than \$100 nor more than \$1,000 or confined in jail not more than six months,  
29 or both fined and confined.

30           (2) For a second offense under this subsection or for a person with one prior conviction  
31 under this section, section three of this article or a law of another state or the federal government  
32 with the same essential elements, the parent, guardian or custodian is guilty of a misdemeanor  
33 and, upon conviction thereof, shall be fined not more than \$1,000 and confined in jail not less than  
34 thirty days nor more than one year, or both.

35           (3) For a third or subsequent offense under this subsection or for a person with two or  
36 more prior convictions under this section, section three of this article or a law of another state or  
37 the federal government with the same essential elements, the parent, guardian or custodian is  
38 guilty of a felony and, upon conviction thereof, shall be fined not more than \$2,000 and imprisoned  
39 in a state correctional facility not less than one year nor more than three years, or both fined and  
40 imprisoned.

41           ~~(e)~~ (f) The provisions of this section shall not apply if the neglect by the parent, guardian  
42 or custodian is due primarily to a lack of financial means on the part of such parent, guardian or

43 custodian.

44 (f) (g) Any person convicted of a misdemeanor offense under this section:

45 (1) The Court may require, as part of an imposed sentence, or as an alternative sentence  
46 to that specified in this section, that the person ~~May be required to~~ complete parenting classes,  
47 substance abuse counseling, drug addiction treatment program, anger management counseling,  
48 or other appropriate services, or any combination thereof, as determined by Department of Health  
49 and Human Resources, Bureau for Children and Families through its services assessment  
50 evaluation, which shall be submitted to the court of conviction upon written request;

51 (2) Shall not be required to register pursuant to the requirements of article thirteen, chapter  
52 fifteen of this code; and

53 (3) Shall not, solely by virtue of the conviction, have their custody, visitation or parental  
54 rights automatically restricted.

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