

# **WEST VIRGINIA LEGISLATURE**

## **2017 REGULAR SESSION**

**Introduced**

### **House Bill 2140**

BY DELEGATES FAST AND FRICH

[INTRODUCED FEBRUARY 8,2017; REFERRED

TO THE COMMITTEE ON THE JUDICIARY.]

1 A BILL to amend and reenact §61-8D-1 and §61-8D-4 of the Code of West Virginia, 1931, as  
 2 amended, all relating to modifying the definitions of child abuse and neglect to exclude  
 3 accidents.

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

1 That §61-8D-1 and §61-8D-4 of the Code of West Virginia, 1931, as amended, be  
 2 amended and reenacted, all to read as follows:

**ARTICLE 8D. CHILD ABUSE.**

**§61-8D-1. Definitions.**

1 As used in this article, accidental physical, mental or emotional injury to a child, arising  
 2 from a reasonable failure by a parent, guardian or custodian to recognize or foresee the threat  
 3 arising from circumstances leading to an incidental or unplanned event which has resulted in  
 4 injury to the child is not abuse or neglect. In this article, unless a different meaning is plainly  
 5 required:

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

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

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

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

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

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

24 (7) "Neglect" means the unreasonable failure by a parent, guardian or custodian of a minor  
25 child to exercise a minimum degree of care to assure the minor child's physical safety or health.  
26 For purposes of this article, the following do not constitute "neglect" by a parent, guardian or  
27 custodian:

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

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

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

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

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

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

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

43 (B) A parent, guardian, custodian or other person in a position of trust in relation to a child  
44 persuades, induces, entices or coerces the child to display his or her sex organs for the sexual

45 gratification of the parent, guardian, custodian, person in a position of trust or a third person, or  
46 to display his or her sex organs under circumstances in which the parent, guardian, custodian or  
47 other person in a position of trust knows such display is likely to be observed by others who would  
48 be affronted or alarmed.

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

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

53 (13) A "person in a position of trust in relation to a child" refers to any person who is acting  
54 in the place of a parent and charged with any of a parent's rights, duties or responsibilities  
55 concerning a child or someone responsible for the general supervision of a child's welfare, or any  
56 person who by virtue of their occupation or position is charged with any duty or responsibility for  
57 the health, education, welfare, or supervision of the child.

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

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

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

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

38 custodian.

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

40 (1) May be required to complete parenting classes, substance abuse counseling, anger  
41 management counseling, or other appropriate services, or any combination thereof, as  
42 determined by Department of Health and Human Resources, Bureau for Children and Families  
43 through its services assessment evaluation, which shall be submitted to the court of conviction  
44 upon written request;

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

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

1 (g) As used in this article, accidental physical, mental or emotional injury to a child, arising  
2 from a reasonable failure by a parent, guardian or custodian to recognize or foresee the threat  
3 arising from circumstances leading to an incidental or unplanned event which has resulted in  
4 injury to the child is not abuse or neglect.

NOTE: The purpose of this bill is to modify the definitions of child abuse and neglect to exclude accidental injury.

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