

# WEST VIRGINIA LEGISLATURE

## 2017 REGULAR SESSION

Introduced

### Senate Bill 288

FISCAL  
NOTE

BY SENATORS CARMICHAEL (MR. PRESIDENT) AND

STOLLINGS

[Introduced February 14, 2017; Referred  
to the Committee on the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,  
 2 designated §61-8D-1a; and to amend and reenact §61-8D-2a, §61-8D-3, §61-8D-3a, §61-  
 3 8D-4, §61-8D-4a and §61-8D-5 of said code, all relating to naming the law and doubling  
 4 the penalties for various child abuse 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 §61-8D-1a; and that §61-8D-2a, §61-8D-3, §61-8D-3a, §61-8D-4, §61-8D-4a  
 3 and §61-8D-5 of said code be amended and reenacted, all to read as follows:

**ARTICLE 8D. CHILD ABUSE.**

**§61-8D-1a. Emmaleigh’s law.**

1 The amendments made to this article during the 2017 legislative session shall be known  
 2 as “Emmaleigh”s Law”.

**§61-8D-2a. Death of a child by a parent, guardian or custodian or other person by child  
 abuse; criminal penalties.**

1 (a) If any parent, guardian or custodian ~~shall~~ maliciously and intentionally inflicts upon a  
 2 child under his or her care, custody or control substantial physical pain, illness or any impairment  
 3 of physical condition by other than accidental means, thereby causing the death of such child,  
 4 then such parent, guardian or custodian ~~shall be~~ is guilty of a felony.

5 (b) If any parent, guardian or custodian ~~shall~~ knowingly allows upon any other person to  
 6 maliciously and intentionally inflict upon a child under the care, custody or control of such parent,  
 7 guardian or custodian substantial physical pain, illness or any impairment of physical condition by  
 8 other than accidental means, which thereby causes the death of such child, then such other  
 9 person and such parent, guardian or custodian ~~shall~~ are each be guilty of a felony.

10 (c) Any person convicted of a felony described in subsection (a) or (b) of this section shall  
 11 be punished by a definite term of imprisonment in ~~the penitentiary~~ a correctional facility which is  
 12 not less than ~~ten~~ twenty nor more than ~~forty~~ eighty years. A person imprisoned pursuant to the

13 provisions of this section is not eligible for parole prior to having served a minimum of ~~ten~~ twenty  
 14 years of his or her sentence or the minimum period required by the provisions of section thirteen,  
 15 article twelve, chapter sixty-two of this code, whichever is greater.

16 (d) The provisions of this section ~~shall~~ do not apply to any parent, guardian or custodian  
 17 or other person who, without malice, fails or refuses, or allows another person to, without malice,  
 18 fail or refuse, to supply a child under the care, custody or control of such parent, guardian or  
 19 custodian with necessary medical care, when such medical care conflicts with the tenets and  
 20 practices of a recognized religious denomination or order of which such parent, guardian or  
 21 custodian is an adherent or member. The provisions of this section ~~shall~~ do not apply to any health  
 22 care provider who fails or refuses, or allows another person to fail or refuse, to supply a child with  
 23 necessary medical care when such medical care conflicts with the tenets and practices of a  
 24 recognized religious denomination or order of which the parent, guardian or custodian of the child  
 25 is an adherent or member, or where such failure or refusal is pursuant to a properly executed do  
 26 not resuscitate form.

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

1 (a) If any parent, guardian or custodian ~~shall~~ abuses a child and by such abuse causes  
 2 such child bodily injury as such term is defined in section one, article eight-b of this chapter, then  
 3 such parent, guardian or custodian ~~shall be~~ is guilty of a felony and, upon conviction thereof, shall  
 4 be fined not less than ~~\$100~~ \$200 nor more than ~~\$1,000~~ \$2,000 and imprisoned in a state  
 5 correctional facility for not less than ~~one~~ two nor more than ~~five~~ ten years, or in the discretion of  
 6 the court, be confined in jail for not more than ~~one~~ two years.

7 (b) If any parent, guardian or custodian ~~shall~~ abuse a child and by such abuse cause said  
 8 child serious bodily injury as such term is defined in section one, article eight-b of this chapter,  
 9 then such parent, guardian or custodian ~~shall be~~ is guilty of a felony and, upon conviction thereof,  
 10 shall be fined not less than ~~\$1,000~~ \$2,000 nor more than ~~\$5,000~~ \$10,000 and committed to the

11 custody of the Division of Corrections not less than ~~two~~ four nor more than ~~ten~~ twenty years.

12 (c) Any parent, guardian or custodian who abuses a child and by the abuse creates a  
13 substantial risk of death or serious bodily injury, as serious bodily injury is defined in section one,  
14 article eight-b of this chapter, to the child is guilty of a felony and, upon conviction thereof, shall  
15 be fined not more than ~~\$3,000~~ \$6,000 or imprisoned in a state correctional facility for not less than  
16 ~~one~~ two nor more than ~~five~~ ten years, or both fined and confined.

17 (d)(1) If a parent, guardian or custodian who has not previously been convicted under this  
18 section, section four of this article or a law of another state or the federal government with the  
19 same essential elements abuses a child and by the abuse creates a substantial risk of bodily  
20 injury, as bodily injury is defined in section one, article eight-b of this chapter, to the child is guilty  
21 of a ~~misdemeanor~~ felony and, upon conviction thereof, shall be fined not less than ~~\$100~~ \$200 nor  
22 more than ~~\$1,000~~ \$2,000 or ~~confined in jail~~ imprisoned in a state correctional facility not more  
23 than ~~six months~~ one year, or both fined and confined.

24 (2) For a second offense under this subsection or for a person with one prior conviction  
25 under this section, section four of this article or a law of another state or the federal government  
26 with the same essential elements, the parent, guardian or custodian is guilty of a ~~misdemeanor~~  
27 felony and, upon conviction thereof, shall be fined not more than ~~\$1,500~~ \$3,000 and confined in  
28 ~~jail~~ a state correctional facility not less than ~~thirty days~~ one year nor more than ~~one~~ two years, or  
29 both fined and confined.

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 four 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 ~~\$3,000~~ \$6,000 and  
34 imprisoned in a state correctional facility not less than ~~one~~ two years nor more than ~~three~~ six  
35 years, or both fined and confined.

36 (e) ~~Any person convicted of a misdemeanor offense under this section:~~

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

42 ~~(2) Shall not be required to register pursuant to article thirteen, chapter fifteen of this code;~~  
 43 and

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

46 (f) Nothing in this section shall precludes a parent, guardian or custodian from providing  
 47 reasonable discipline to a child.

**§61-8D-3a. Female genital mutilation; penalties; definitions.**

1 (a) Except as otherwise provided in subsection (b) of this section, any person who  
 2 circumcises, excises or infibulates, in whole or in part, the labia majora, labia minora or clitoris of  
 3 a female under the age of eighteen, or any parent, guardian or custodian of a female under the  
 4 age of eighteen who allows the circumcision, excision or infibulation, in whole or in part, of such  
 5 female's labia majora, labia minora or clitoris, ~~shall be~~ is guilty of a felony and, upon conviction  
 6 thereof, shall be imprisoned in a state correctional facility for not less than ~~two~~ four nor more than  
 7 ~~ten~~ twenty years and fined not less than ~~\$1,000~~ \$2,000 nor more than ~~\$5,000~~ \$10,000.

8 (b) A surgical procedure is not a violation of this section if the procedure:

9 (1) Is necessary to preserve the health of the child on whom it is performed and is  
 10 performed by a licensed medical professional authorized to practice medicine in this state; or

11 (2) The procedure is performed on a child who is in labor or has just given birth and is  
 12 performed for legitimate medical purposes connected with that labor or birth by a licensed medical  
 13 professional authorized to practice medicine in this state.

14 (c) A person's belief that the conduct described in subsection (a) of this section: (i) Is

15 required as a matter of custom, ritual or standard practice; or (ii) was consented to by the female  
 16 on which the circumcision, excision or infibulation was performed ~~shall~~ does not constitute a  
 17 defense to criminal prosecution under subsection (a) of this section.

**§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~~ \$200 nor more than ~~\$1,000~~ \$2,000 dollars or imprisoned in a state correctional  
 5 facility for not less than ~~one~~ two nor more than ~~three~~ six years. ~~or in the discretion of the court, be~~  
 6 ~~confined in jail for not more than one year, or both~~ fined and confined.

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~~ \$600 nor more than ~~\$3,000~~ \$6,000 dollars or imprisoned in a  
 11 state correctional facility for not less than ~~one~~ two nor more than ~~ten~~ twenty years, or both fined  
 12 and confined.

13 (c) If a parent, guardian or custodian grossly neglects a child and by that gross neglect  
 14 creates a substantial risk of death or serious bodily injury, as serious bodily injury is defined in  
 15 section one, article eight-b of this chapter, of the child then the parent, guardian or custodian is  
 16 guilty of a felony and, upon conviction thereof, shall be fined not less than ~~\$1,000~~ \$2,000 nor more  
 17 than ~~\$3,000~~ \$6,000 dollars or imprisoned in a state correctional facility for not less than ~~one~~ two  
 18 nor more than ~~five~~ ten years, or both fined and confined.

19 (d)(1) If a parent, guardian or custodian who has not been previously convicted under this  
 20 section, section three of this article or a law of another state or the federal government with the  
 21 same essential elements neglects a child and by that neglect creates a substantial risk of bodily

22 injury, as defined in section one, article eight-b of this chapter, to the child, then the parent,  
23 guardian or custodian, is guilty of a ~~misdemeanor~~ felony and, upon conviction thereof, for a first  
24 offense, shall be fined not less than ~~\$100~~ \$200 nor more than ~~\$1,000~~ \$2,000 or confined in ~~jail~~ a  
25 state correctional facility not more than ~~six months~~ one year or both fined and confined.

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

32 (3) For a third or subsequent offense under this subsection or for a person with two or  
33 more prior convictions under this section, section three of this article or a law of another state or  
34 the federal government with the same essential elements, the parent, guardian or custodian is  
35 guilty of a felony and, upon conviction thereof, shall be fined not more than ~~\$2,000~~ \$4,000 and  
36 imprisoned in a state correctional facility not less than ~~one~~ two years nor more than ~~three~~ six  
37 years, or both fined and imprisoned.

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

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

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

47 ~~(2) Shall not be required to register pursuant to the requirements of article thirteen, chapter~~

48 ~~fifteen of this code; and~~

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

**§61-8D-4a. Child neglect resulting in death; criminal penalties.**

1 (a) If any parent, guardian or custodian shall neglect a child under his or her care, custody  
 2 or control and by such neglect cause the death of said child, then such parent, guardian or  
 3 custodian shall be is guilty of a felony and, upon conviction thereof, shall be fined not less than  
 4 ~~\$1,000~~ \$2,000 nor more than ~~\$5,000~~ \$10,000 or committed to the custody of the Division of  
 5 Corrections for not less than ~~three~~ six nor more than ~~fifteen~~ thirty years, or both ~~such~~ fined and  
 6 ~~imprisonment~~ imprisoned.

7 (b) No child who in lieu of medical treatment was under treatment solely by spiritual means  
 8 through prayer in accordance with a recognized method of religious healing with a reasonable  
 9 proven record of success shall, for that reason alone, be considered to have been neglected  
 10 within the provisions of this section. A method of religious healing shall be presumed to be a  
 11 recognized method of religious healing if fees and expenses incurred in connection with such  
 12 treatment are permitted to be deducted from taxable income as "medical expenses" pursuant to  
 13 regulations or rules promulgated by the United States Internal Revenue Service.

14 (c) A child whose parent, guardian or legal custodian has inhibited or interfered with the  
 15 provision of medical treatment in accordance with a court order may be considered to have been  
 16 neglected for the purposes of this section.

**§61-8D-5. Sexual abuse by a parent, guardian, custodian or person in a position of trust to  
 a child; parent, guardian, custodian or person in a position of trust allowing sexual  
 abuse to be inflicted upon a child; displaying of sex organs by a parent, guardian,  
 or custodian; penalties.**

1 (a) In addition to any other offenses set forth in this code, the Legislature hereby declares  
 2 a separate and distinct offense under this subsection, as follows: If any parent, guardian or



3 custodian of or other person in a position of trust in relation to a child under his or her care, custody  
4 or control, shall engage in or attempt to engage in sexual exploitation of, or in sexual intercourse,  
5 sexual intrusion or sexual contact with, a child under his or her care, custody or control,  
6 notwithstanding the fact that the child may have willingly participated in such conduct, or the fact  
7 that the child may have consented to such conduct or the fact that the child may have suffered no  
8 apparent physical injury or mental or emotional injury as a result of such conduct, then such  
9 parent, guardian, custodian or person in a position of trust ~~shall be~~ is guilty of a felony and, upon  
10 conviction thereof, shall be imprisoned in a correctional facility not less than ~~ten~~ twenty nor more  
11 than ~~twenty~~ forty years, or fined not less than ~~\$500~~ \$1,000 nor more than ~~\$5,000~~ \$10,000 and  
12 imprisoned in a correctional facility not less than ~~ten~~ twenty years nor more than ~~twenty~~ forty  
13 years.

14 (b) Any parent, guardian, custodian or other person in a position of trust in relation to the  
15 child who knowingly procures, authorizes, or induces another person to engage in or attempt to  
16 engage in sexual exploitation of, or sexual intercourse, sexual intrusion or sexual contact with, a  
17 child under the care, custody or control of such parent, guardian, custodian or person in a position  
18 of trust when such child is less than sixteen years of age, notwithstanding the fact that the child  
19 may have willingly participated in such conduct or the fact that the child may have suffered no  
20 apparent physical injury or mental or emotional injury as a result of such conduct, such parent,  
21 guardian, custodian or person in a position of trust ~~shall be~~ is guilty of a felony and, upon  
22 conviction thereof, shall be imprisoned in a correctional facility not less than ~~five~~ ten years nor  
23 more than ~~fifteen~~ thirty years, or fined not less than ~~\$1,000~~ \$2,000 nor more than ~~\$10,000~~ \$20,000  
24 and imprisoned in a correctional facility not less than ~~five~~ ten years nor more than ~~fifteen~~ thirty  
25 years.

26 (c) Any parent, guardian, custodian or other person in a position of trust in relation to the  
27 child who knowingly procures, authorizes, or induces another person to engage in or attempt to  
28 engage in sexual exploitation of, or sexual intercourse, sexual intrusion or sexual contact with, a

29 child under the care, custody or control of such parent, guardian, custodian or person in a position  
30 of trust when such child is sixteen years of age or older, notwithstanding the fact that the child  
31 may have consented to such conduct or the fact that the child may have suffered no apparent  
32 physical injury or mental or emotional injury as a result of such conduct, then such parent,  
33 guardian, custodian or person in a position of trust ~~shall be~~ is guilty of a felony and, upon  
34 conviction thereof, shall be imprisoned in a correctional facility not less than ~~one~~ two years nor  
35 more than ~~five~~ ten years.

36 (d) The provisions of this section ~~shall~~ do not apply to a custodian or person in a position  
37 of trust whose age exceeds the age of the child by less than four years.

NOTE: The purpose of this bill is to double the penalties for child abuse offenses and name the amendments.

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