

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

ENGROSSED

Committee Substitute

for

House Bill 2933

BY DELEGATES SHOTT AND LOVEJOY

[Introduced February 8, 2019; Referred to the

Committee on the Judiciary.]

1 A BILL to amend and reenact §61-8D-3 of the Code of West Virginia, 1931, as amended, relating
2 to modifying the criminal penalties imposed on a parent, guardian or custodian for child
3 abuse resulting in injury and child abuse or neglect creating risk of injury.

Be it enacted by the Legislature of West Virginia:

ARTICLE 8D. CHILD ABUSE.

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

1 (a) If ~~any~~ a parent, guardian or custodian ~~shall abuse~~ abuses a child and by ~~such~~ the
2 abuse ~~cause such~~ causes the child bodily injury as ~~such~~ the term is defined in §61-8B-1 of this
3 code, then ~~such~~ the parent, guardian or custodian ~~shall be~~ is guilty of a felony and, upon conviction
4 thereof, shall be fined not less than \$100 nor more than \$1,000 and imprisoned in a state
5 correctional facility for not less than ~~one~~ two nor more than ~~five~~ 10 years, or in the discretion of
6 the court, be confined in jail for not more than one year.

7 (b) If ~~any~~ a parent, guardian or custodian ~~shall abuse~~ abuses a child and by ~~such~~ the
8 abuse ~~cause said~~ causes the child serious bodily injury as ~~such~~ the term is defined in §61-8B-1
9 of this code, then ~~such~~ the parent, guardian or custodian ~~shall be~~ is guilty of a felony and, upon
10 conviction thereof, shall be fined not less than \$1,000 nor more than \$5,000 and committed to the
11 custody of the Division of Corrections and Rehabilitation not less than ~~two~~ five nor more than ~~ten~~
12 15 years.

13 (c) ~~Any~~ A parent, guardian or custodian who abuses a child and by the abuse creates a
14 substantial risk of death or serious bodily injury, as serious bodily injury is defined in §61-8B-1 of
15 this code, to the child is guilty of a felony and, upon conviction thereof, shall be fined not more
16 than \$3,000 or imprisoned in a state correctional facility for not less than ~~one~~ two nor more than
17 ~~five~~ ten years, or both.

18 (d)(1) ~~If a parent, guardian or custodian who has not previously been convicted under this~~
19 ~~section, section four of this article or a law of another state or the federal government with the~~

20 ~~same essential elements abuses a child and by the abuse creates a substantial risk of bodily~~
21 ~~injury, as bodily injury is defined in section one, article eight-b of this chapter, to the child is guilty~~
22 ~~of a misdemeanor and, upon conviction thereof, shall be fined not less than \$100 nor more than~~
23 ~~\$1,000 or confined in jail not more than six months, or both.~~

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 ~~and, upon conviction thereof, shall be fined not more than \$1,500 and confined in jail not less than~~
28 ~~thirty days nor more than one year, or both.~~

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

34 (d) A person convicted of any offense under this section with any prior conviction under
35 this section, §61-8D-4 of this code or a law of another state or the federal government with the
36 same essential elements is subject to the following increased penalties:

37 (1) A person with one prior conviction shall be fined not more than \$3,000 or imprisoned
38 in a state correctional facility for not less than three nor more than 15 years, or both. *Provided,*
39 *however,* That a person convicted of a crime under subsection (b) is subject to the higher penalty
40 therein.

41 (2) A person with two or more prior convictions is guilty of a felony and, upon conviction
42 thereof, shall be fined not more than \$3,000 and imprisoned in a state correctional facility not less
43 than five years nor more than 15 years, or both.

44 ~~(e)~~ (d) Any person convicted of a ~~misdemeanor~~ an offense under this section:

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

50 (2) ~~Shall not be~~ is not required to register pursuant to §15-13-1 *et seq.* of this code; and

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

53 ~~(f) (e) Nothing in~~ This section ~~shall~~ does not preclude a parent, guardian or custodian from
54 providing reasonable discipline to a 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 or imprisoned in a state correctional facility for not less than
5 one nor more than three years, or in the discretion of the court, be confined in jail for not more
6 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 or imprisoned in a state correctional facility
11 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. shall be fined not less than \$100 nor more than \$1,000 or confined in jail not more~~
18 ~~than two years, or both.~~

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 and, upon conviction thereof, for a first offense,~~
24 ~~shall be fined not less than \$100 nor more than \$1,000 or confined in jail not more than six months,~~
25 ~~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 ~~and, upon conviction thereof, shall be fined not more than \$1,000 and confined in jail not less than~~
30 ~~thirty days nor more than one year, or both.~~

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

37 ~~(d) A person convicted of any offense under this section with any prior conviction is subject~~
38 ~~to the following increased penalties. A prior conviction includes any offense under this section,~~
39 ~~§61-8D-3 of this code or a law of another state or the federal government with the same essential~~
40 ~~elements:~~

41 (1) A person with one prior conviction shall be fined not more than \$3,000 or imprisoned
42 in a state correctional facility for not less than three nor more than 15 years, or both.

43 (2) A person with two or more prior convictions is guilty of a felony and, upon conviction
44 thereof, shall be fined not more than \$3,000 and imprisoned in a state correctional facility not less
45 than five years nor more than 15 years, or both.

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

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

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

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

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

NOTE: The purpose of this bill is to modify the criminal penalties imposed on a parent, guardian or custodian for child abuse resulting in injury and child abuse or neglect creating risk of 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.