

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

House Bill 2933

BY DELEGATE 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 or neglect 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 neglects or abuses a child and by the neglect
 14 or abuse creates a substantial risk of death or serious bodily injury, as serious bodily injury is
 15 defined in §61-8B-1 of this code, to the child is guilty of a felony and, upon conviction thereof,
 16 ~~shall be fined not more than \$3,000 or imprisoned in a state correctional facility for not less than~~
 17 ~~one nor more than five 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 is subject to the following penalties:

35 (1) Upon conviction for a first offense of:

36 (A) Neglect with risk of death or serious bodily injury, the parent, guardian or custodian
37 shall be fined not less than \$100 nor more than \$1,000 or confined in jail not more than six months,
38 or both; and

39 (B) Abuse with risk of serious bodily injury, the parent, guardian or custodian shall be fined
40 not more than \$3,000 or imprisoned in a state correctional facility for not less than two nor more
41 than 10 years, or both.

42 (2)(A) Upon conviction for a second offense of:

43 (i) Neglect with risk of death or serious bodily injury, the parent, guardian or custodian
44 shall be fined not less than \$500 nor more than \$3,000 or confined in jail not more than one year,
45 or both; and

46 (ii) Abuse with risk of serious bodily injury the person shall be fined not more than \$3,000
47 or imprisoned in a state correctional facility for not less than three nor more than 15 years, or both.

48 (B) A second offense under this subdivision includes having one prior conviction under
49 this section, §61-8D-4 of this code or a law of another state or the federal government with the
50 same essential elements.

51 (3) For a third or subsequent offense under this subsection or for a person with two or
52 more prior convictions under this section, §61-8D-4 of this code or a law of another state or the
53 federal government with the same essential elements, the parent, guardian or custodian is guilty
54 of a felony and, upon conviction thereof, shall be fined not more than \$3,000 and imprisoned in a
55 state correctional facility not less than five years nor more than 15 years, or both.

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

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

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

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

65 ~~(f)~~ (e) ~~Nothing in This section shall~~ does not preclude a parent, guardian or custodian from
66 providing reasonable discipline to a child.

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.