

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Committee Substitute

for

House Bill 4600

BY DELEGATES MAZZOCCHI, ELLINGTON, KIMBLE,
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LONGANACRE, HOLSTEIN, AND CAPITO

[Introduced February 09, 2022; referred to the
Committee on the Judiciary]

1 A BILL to amend and reenact §61-8D-5a of the Code of West Virginia, 1931, as amended; and to
2 amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
3 designated §61-8D-11 of said code, all relating to abuse of disabled children; creating
4 penalties for a person who abuses a disabled child; creating penalties for a person who
5 abuses a disabled child causing bodily injury; creating penalties for a person who abuses
6 a disabled child causing serious bodily injury; creating penalties for a person who abuses
7 a disabled child causing death; defining terms used in the section; and creating a penalty
8 for a person in a position of trust in relation to a disabled child who fails to report abuse as
9 a mandatory reporter.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6. CHILD ABUSE.

§61-8D-5a. Verbal abuse of noncommunicative Abuse of a disabled child; definitions; penalties.

1 *The amendments made to this section during the 2020 Regular Session of the Legislature*
2 *shall be known as "Adri's, Owen's, and Emma's Law".*

3 ~~(a) Any person, 18 years of age or older, who has supervisory responsibility over a~~
4 ~~noncommunicative minor in a position of trust in relation to a child who is disabled, or caregiver~~
5 ~~of a disabled child, who repeatedly engages in verbal conduct toward the abuse of a disabled~~
6 ~~child in an insulting, demeaning or threatening manner, is guilty of a misdemeanor and, upon~~
7 ~~conviction thereof, shall be fined not less than \$100 nor more than \$1,000 or confined in~~
8 ~~jail not more than six months one year, or both fined and confined. For a second or subsequent~~
9 ~~offense under this subsection, or where the conduct involves more than one disabled child, the~~
10 ~~person shall be guilty of a felony, and, upon conviction thereof, shall be fined not less than \$500~~
11 ~~nor more than \$2,500 and imprisoned in a state correctional facility for not less than one nor more~~
12 ~~than three years, or both fined and imprisoned.~~

13 (b) Abuse of a Disabled Child Causing Bodily Injury – If the abuse of a disabled child
14 referred to in subsection (a) results in bodily injury to the disabled child, as that term is defined in
15 §61-8B-1 of this code, the person is guilty of a felony and, upon conviction thereof, shall be fined
16 not less than \$500 nor more than \$2,500, and confined in a correctional facility not less than two
17 years nor more than ten years, or both fined and imprisoned.

18 (c) Abuse of a Disabled Child Causing Serious Bodily Injury – If the abuse of a disabled
19 child referred to in subsection (a) results in serious bodily injury to a disabled child, as that term
20 is defined in §61-8B-1 of this code, the person is guilty of a felony and, upon conviction thereof,
21 shall be fined not less than \$1,000 nor more than \$5,000, and confined in a correctional facility
22 not less than three years nor more than fifteen years, or both fined and imprisoned.

23 (d) Abuse of a Disabled Child Causing Death – If the abuse of a disabled child in
24 subsection (a) is the proximate cause of the death of the disabled child, the person is guilty of a
25 felony and, upon conviction thereof, shall be confined in a state correctional facility for not less
26 than 10 nor more than 40 years.

27 (e) For purposes of subsections (b) through (d) of this section, it shall not be a required
28 element of such offenses that the abuse of a disabled child occurred repeatedly.

29 (f) Each violation of the provisions of this section shall constitute a separate and distinct
30 offense, and each violation of the provisions of this section shall constitute a separate and distinct
31 offense in addition to, and shall not be construed to be a lesser included offense of, any other
32 offenses set forth in this code.

33 (b)(g) As used in section (a) of this section:

34 (1) “Abuse of a disabled child” means conduct or the use of words, sounds, or other forms
35 of communication, including but not limited to language, gestures, actions, or behaviors, that are
36 intended or calculated to:

37 (A) humiliate or intimidate or cause fear, embarrassment, shame, degradation, or severe
38 emotional distress to the child entrusted to the care of the caregiver;

39 (B) create fear of retribution if the child reports any abuse;

40 (C) create fear of being moved from the child's residence or current school placement as
41 a solution to the abuse;

42 (D) cause severe emotional distress for the purpose of regulating behavior in the child or
43 creating an environment of compliance;

44 (E) create an environment of compliance or to regulate behavior by being directed toward
45 another child with a disability in the same or similar setting;

46 (F) cause severe emotional distress by withholding equipment or assistance required for
47 activities of daily living or personal care or leading the child to believe that such equipment or
48 assistance will be withheld in order to regulate behavior in the child or create an environment of
49 compliance; or

50 (G) inflict or threaten to inflict physical pain or injury.

51 (2) "Caregiver" means any person, 18 years of age or older, in any situation where the
52 person has direct supervisory responsibility over a disabled child;

53 (1)(3) "Noncommunicative Disabled child" means a child who, due to physical or
54 developmental disabilities is unable to communicate verbally, in writing, or through a recognized
55 sign language a child with any physical, intellectual, developmental, communication, or
56 psychological disability or impairment that meets at least one of the following:

57 (A) The disability limits the child's ability to recognize abuse, unlawful activity, and/or the
58 child's rights to safety and protection, or that makes the child rely on others to recognize that the
59 child is being abused;

60 (B) The disability limits the child's ability to recognize unlawful sexual abuse or misconduct
61 in the event the criminal activity involves sexual abuse or misconduct;

62 (C) The disability causes the child to be dependent on others to assist with any activity of
63 daily living and/or personal care;

64 (D) The disability limits the child's ability to formulate or execute a response to abuse, to
65 verbally or physically defend against a perpetrator of abuse, or to physically escape from an
66 abusive environment; or

67 (E) The disability limits the child's ability to disclose abuse, leads to frustration for the child
68 or for a person who takes reports of abuse when a person who takes reports of abuse cannot
69 understand the child, or makes the child rely on others to take appropriate action to report abuse.

70 (2)(4) "Repeatedly" means on two or more occasions;

71 (3)(5) "Supervisory responsibility" means any situation where an adult has direct
72 supervisory decision-making, oversight, instructive, academic, evaluative, or advisory
73 responsibilities regarding the child. Supervisory responsibility can occur in a residence, in or out
74 of a school setting, institutional setting, and in curricular, co-curricular, or extra-curricular settings.

§61-8D-11. Failure to report; penalties.

1 Any person in position of trust in relation to a child subject to the mandatory reporting
2 provisions of §49-2-803 who knowingly fails to make any report required therein, or any person
3 who knowingly prevents another person from making such a report, involving a disabled child as
4 defined in §61-8D-5a of this code, is guilty of a felony and shall be imprisoned in a state
5 correctional facility not less than one nor more than five years or fined not exceeding \$500, or
6 both fined and imprisoned.

NOTE: The purpose of this bill is to create penalties for a person who abuses a disabled child; to create penalties for a person who abuses a disabled child causing bodily injury; to create penalties for a person who abuses a disabled child causing serious bodily injury; to create penalties for a person who abuses a disabled child causing death; to define terms used in the section; and to create a penalty for a person in a position of trust in relation to a disabled child who fails to report abuse as a mandatory reporter.

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