

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

House Bill 5206

By Delegate C. Pritt

[Introduced January 26, 2024; Referred to the
Committee on Senior, Children, and Family Issues
then Health and Human Resources]

1 A BILL to amend and reenact §61-8D-3 of the Code of West Virginia, 1931, as amended, relating
 2 to child abuse; and providing that the decision of a parent, guardian or custodian not to
 3 have a child vaccinated is not child abuse.

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; exceptions;
 criminal penalties.**

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

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 §61-8B-1 of this code, then such parent,
 9 guardian or custodian shall be guilty of a felony and, upon conviction thereof, shall be fined not
 10 less than \$1,000 nor more than \$5,000 and committed to the custody of the Division of Corrections
 11 not less than two nor more than 10 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 §61-8B-1 of
 14 this code, to the child is guilty of a felony and, upon conviction thereof, shall be fined not more than
 15 \$3,000 or imprisoned in a state correctional facility for not less than one nor more than five years,
 16 or both fined and confined.

17 (d)(1) If a parent, guardian or custodian who has not previously been convicted under this
 18 section, §61-8D-4 of this code or a law of another state or the federal government with the same
 19 essential elements abuses a child and by the abuse creates a substantial risk of bodily injury, as

20 bodily injury is defined in §61-8B-1 of this code, to the child is guilty of a misdemeanor and, upon
21 conviction thereof, shall be fined not less than \$100 nor more than \$1,000 or confined in jail not
22 more than six months, or both fined and confined.

23 (2) For a second offense under this subsection or for a person with one prior conviction
24 under this section, §61-8D-4 of this code or a law of another state or the federal government with
25 the same essential elements, the parent, guardian or custodian is guilty of a misdemeanor and,
26 upon conviction thereof, shall be fined not more than \$1,500 and confined in jail not less than thirty
27 days nor more than one year, or both fined and confined.

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

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

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

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

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

43 (f) Nothing in this section ~~shall~~ may preclude a parent, guardian or custodian from
44 providing reasonable discipline to a child.

45 (g) Notwithstanding any provision of this code to the contrary, the decision of a parent,

- 46 guardian, or custodian not to have a child vaccinated is not child abuse and the penalty provisions
47 of this section are not applicable.

NOTE: The purpose of this bill is to provide that the decision of a parent, guardian or custodian not to have a child vaccinated is not child abuse.

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