

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 71**

4 (By Senators Kessler (Acting President), Browning, Wills, Barnes,  
5 Unger, Jenkins, Palumbo, Laird, Klempa and Miller)

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7 [Originating in the Committee on the Judiciary;  
8 reported January 25, 2011.]  
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12 A BILL to amend and reenact §61-8D-4 of the Code of West Virginia,  
13 1931, as amended, relating to creating the misdemeanor offense  
14 for child neglect by a parent, guardian or custodian which  
15 creates a substantial risk of bodily injury; penalties; and  
16 exceptions.

17 *Be it enacted by the Legislature of West Virginia:*

18 That §61-8D-4 of the Code of West Virginia, 1931, as amended,  
19 be amended and reenacted to read as follows:

20 **ARTICLE 8D. CHILD ABUSE.**

21 **§61-8D-4. Child neglect resulting in injury; child neglect**  
22 **creating risk of injury; criminal penalties.**

23 (a) Any parent, guardian or custodian who neglects a child and  
24 by such neglect causes a child bodily injury, as such term is  
25 defined in section one, article eight-b of this chapter, then such

1 parent, guardian or custodian is guilty of a felony and, upon  
2 conviction thereof, shall be fined not less than \$100 nor more than  
3 \$1,000 or committed to the custody of the Division of Corrections  
4 for not less than one nor more than three years or, in the  
5 discretion of the court, be confined in jail for not more than one  
6 year or both such fine and confinement or imprisonment.

7 (b) Any parent, guardian or custodian who neglects a child and  
8 by such neglect causes a child serious bodily injury, as such term  
9 is defined in section one, article eight-b of this chapter, then  
10 such parent, guardian or custodian is guilty of a felony and, upon  
11 conviction thereof, shall be fined not less that \$300 nor more than  
12 \$3,000 or committed to the custody of the Division of Corrections  
13 for not less than one nor more than ten years or both fined and  
14 imprisoned.

15 (c) Any parent, guardian or custodian who grossly neglects a  
16 child and by the gross neglect creates a substantial risk of  
17 serious bodily injury or of death to the child is guilty of a  
18 felony and, upon conviction thereof, shall be fined not more than  
19 \$3,000 and confined to the custody of the Division of Corrections  
20 for not less than one nor more than five years.

21 (d) Any parent, guardian or custodian who neglects a child and  
22 by the neglect creates a substantial risk of bodily injury, as  
23 defined in section one, article eight-b of this chapter, to the  
24 child is guilty of a misdemeanor and, upon conviction thereof,  
25 shall be fined not more than \$1,000 or shall be confined in jail  
26 for not more than one year or both fined and confined.

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

4           (f) The provisions of this section do not apply to any parent,  
5 guardian or custodian who fails or refuses, or allows another  
6 person to fail or refuse, to supply a child under the care, custody  
7 or control of such parent, guardian or custodian with necessary  
8 medical care when such medical care conflicts with the tenets and  
9 practices of a recognized religious denomination or order of which  
10 such parent, guardian or custodian is an adherent or member.

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(NOTE: The purpose of this bill is to add a misdemeanor for  
child neglect creating a substantial risk of bodily injury.

This section has been completely rewritten; therefore strike-  
throughs and underscoring have been omitted.)