

Senate Bill No. 71

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

[Introduced January 13, 2011; referred to the Committee on the
Judiciary.]

A BILL to amend and reenact §61-8D-4 of the Code of West Virginia,
1931, as amended, relating to making it a misdemeanor for
child neglect which creates a substantial risk of bodily
injury.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 8D. CHILD ABUSE.

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

(a) If any parent, guardian or custodian ~~shall neglect~~
neglects a child and by such neglect causes ~~said~~ a child bodily
injury, as such term is defined in section one, article eight-b of
this chapter, then such parent, guardian or custodian ~~shall be~~ is

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

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

16 (c) The provisions of this section ~~shall~~ do not apply if the
17 neglect by the parent, guardian or custodian is due primarily to a
18 lack of financial means on the part of such parent, guardian or
19 custodian.

20 (d) The provisions of this section ~~shall~~ do not apply to any
21 parent, guardian or custodian who fails or refuses, or allows
22 another person to fail or refuse, to supply a child under the care,
23 custody or control of such parent, guardian or custodian with
24 necessary medical care when such medical care conflicts with the
25 tenets and practices of a recognized religious denomination or

1 order of which such parent, guardian or custodian is an adherent or
2 member.

3 (e) Any person who grossly neglects a child and by the gross
4 neglect creates a substantial risk of serious bodily injury or of
5 death to the child is guilty of a felony and, upon conviction
6 thereof, shall be fined not more than \$3,000 and confined to the
7 custody of the Division of Corrections for not less than one nor
8 more than five years.

9 (f) Any person who neglects a child and by the neglect creates
10 a substantial risk of bodily injury, as defined in section one,
11 article eight-b of this chapter, to the child is guilty of a
12 misdemeanor and, upon conviction thereof, shall be fined not more
13 than \$1,000 or shall be confined in jail for not more than one year
14 or both fined and confined.

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

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