

1 COMMITTEE SUBSTITUTE

2 for

3 **H. B. 4356**

4 (By Delegates Fleischauer, Brown,
5 Ireland, Lawrence, Manypenny, Marcum, Miley, Skaff,
6 Stowers, R. Phillips and Hall)

7 (Originating in the Committee on the Judiciary)

8 [February 3, 2012]

9
10 A BILL to amend and reenact §61-8D-4 of the Code of West Virginia,
11 1931, as amended, relating to creating the misdemeanor offense
12 for child neglect by a parent, guardian or custodian which
13 creates a substantial risk of bodily injury; penalties; and
14 exceptions.

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

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

18 **ARTICLE 8D. CHILD ABUSE.**

19 **§61-8D-4. Child neglect resulting in injury; child neglect**
20 **creating risk of injury; criminal penalties.**

21 (a) If ~~any~~ a parent, guardian or custodian ~~shall neglect~~
22 neglects a child and by such neglect ~~cause said~~ causes a child
23 bodily injury, as ~~such term is~~ defined in section one, article
24 eight-b of this chapter, then ~~such~~ the parent, guardian or
25 custodian ~~shall be~~ is guilty of a felony and, upon conviction
26 thereof, shall be fined not less than \$100 nor more than \$1,000

1 dollars or committed to the custody of the Division of Corrections
2 for not less than one nor more than three years, or in the
3 discretion of the court, be confined in ~~the county~~ jail for not
4 more than one year, or both such fine and confinement or
5 imprisonment.

6 (b) If ~~any~~ a parent, guardian or custodian ~~shall neglect~~
7 neglects a child and by such neglect cause ~~said~~ the child serious
8 bodily injury, as ~~such term is~~ defined in section one, article
9 eight-b of this chapter, then ~~such~~ the parent, guardian or
10 custodian ~~shall be~~ is guilty of a felony and, upon conviction
11 thereof, shall be fined not less than \$300 nor more than \$1,000
12 dollars or committed to the custody of the Division of Corrections
13 for not less than one nor more than ten years, or both ~~such fine~~
14 ~~and imprisonment~~ fined and imprisoned.

15 (c) If a parent, guardian or custodian grossly neglects a
16 child and by that gross neglect creates a substantial risk of
17 serious bodily injury, as defined in section one, article eight-b
18 of this chapter, or of death to the child is guilty of a felony
19 and, upon conviction thereof, shall be fined not more than \$3,000
20 dollars and confined to the custody of the Division of Corrections
21 for not less than one nor more than five years.

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

1 for not more than one year or both fined and confined.

2 (e) The provisions of this section shall not apply:

3 (1) if the neglect by the parent, guardian or custodian is
4 due primarily to a lack of financial means on the part of such
5 parent, guardian or custodian.

6 ~~(d) The provisions of this section shall not apply~~

7 (2) to any parent, guardian or custodian who fails or refuses,
8 or allows another person to fail or refuse, to supply a child under
9 the care, custody or control of such parent, guardian or custodian
10 with necessary medical care, when such medical care conflicts with
11 the tenets and practices of a recognized religious denomination or
12 order of which such parent, guardian or custodian is an adherent or
13 member.

14 ~~(e) Any person who grossly neglects a child and by the gross~~
15 ~~neglect creates a substantial risk of serious bodily injury or of~~
16 ~~death to the child is guilty of a felony and, upon conviction~~
17 ~~thereof, shall be fined not more than three thousand dollars and~~
18 ~~confined to the custody of the division of corrections for not less~~
19 ~~than one nor more than five years.~~