

1 COMMITTEE SUBSTITUTE

2 FOR

3 **H. B. 4005**

4 (By Delegates L. Phillips, Rowan, Fleischauer,
5 Border, Lawrence, Guthrie, P. Smith, Marshall and Poore)

6 (Originating in the House Committee on Finance)

7
8 [February 21, 2014]

9
10 A BILL to amend and reenact §61-8D-1, §61-8D-4 and §61-8D-9 of the
11 Code of West Virginia, 1931, as amended, relating to offenses
12 of child neglect by a parent, guardian or custodian; defining
13 terms; making it a felony for a parent, guardian or custodian
14 to grossly neglect a child which creates substantial risk of
15 bodily injury; creating a misdemeanor offense for child
16 neglect by a parent, guardian or custodian which creates a
17 substantial risk of bodily injury; establishing misdemeanor
18 penalties for first or second offenses; making third or
19 subsequent offenses of child neglect that creates a
20 substantial risk of bodily injury a felony; establishing
21 criminal penalties; providing that a parent, guardian or
22 custodian convicted of a misdemeanor is not required to
23 register as a person convicted of child abuse or neglect.

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

1 That §61-8D-1, §61-8D-4 and §61-8D-9 of the Code of West
2 Virginia, 1931, as amended, be amended and reenacted to read as
3 follows:

4 **ARTICLE 8D. CHILD ABUSE.**

5 **§61-8D-1. Definitions.**

6 In this article, unless a different meaning plainly is
7 required:

8 (1) "Abuse" means the infliction upon a minor of physical
9 injury by other than accidental means.

10 (2) "Child" means any person under eighteen years of age not
11 otherwise emancipated by law.

12 (3) "Controlled substance" means controlled substance as that
13 term is defined in subsection (d), section one hundred one, article
14 one, chapter sixty-a of this code.

15 (4) "Custodian" means a person over the age of fourteen years
16 who has or shares actual physical possession or care and custody of
17 a child on a full-time or temporary basis, regardless of whether
18 such person has been granted custody of the child by any contract,
19 agreement or legal proceeding. "Custodian" shall also include, but
20 not be limited to, the spouse of a parent, guardian or custodian,
21 or a person cohabiting with a parent, guardian or custodian in the
22 relationship of husband and wife, where such spouse or other person
23 shares actual physical possession or care and custody of a child
24 with the parent, guardian or custodian.

1 (5) "Guardian" means a person who has care and custody of a
2 child as the result of any contract, agreement or legal proceeding.

3 (6) "Gross neglect" means reckless or intentional conduct,
4 behavior or inaction by a parent, guardian or custodian that
5 evidences a clear disregard for a minor child's health, safety or
6 welfare.

7 ~~(6)~~(7) "Neglect" means the ~~unreasonable,~~ reckless or
8 intentional failure by a parent, guardian or ~~any person voluntarily~~
9 ~~accepting a supervisory role towards~~ custodian of a minor child to
10 exercise a minimum degree of care to assure ~~said~~ the minor child's
11 physical safety or health. For purposes of this article, the
12 following do not constitute "neglect" by a parent, guardian or
13 custodian:

14 (A) Permitting a minor child to participate in lawful
15 activities that if done properly or under proper supervision are
16 not inherently dangerous, regardless of whether that participation
17 creates a risk of bodily injury;

18 (B) Exercising discretion in choosing a lawful method of
19 educating a minor child; or

20 (C) Exercising discretion in making decisions regarding the
21 nutrition and medical care provided to a minor child based upon
22 religious conviction or reasoned personal belief.

23 ~~(7)~~(8) "Parent" means the biological father or mother of a
24 child, or the adoptive mother or father of a child.

1 ~~(8)~~(9) "Sexual contact" means sexual contact as that term is
2 defined in section one, article eight-b, chapter sixty-one of this
3 code.

4 ~~(9)~~(10) "Sexual exploitation" means an act whereby:

5 (A) A parent, custodian, guardian or other person in a
6 position of trust to a child, whether for financial gain or not,
7 persuades, induces, entices or coerces the child to engage in
8 sexually explicit conduct as that term is defined in section one,
9 article eight-c, chapter sixty-one of this code; or

10 (B) A parent, guardian, custodian or other person in a
11 position of trust in relation to a child persuades, induces,
12 entices or coerces the child to display his or her sex organs for
13 the sexual gratification of the parent, guardian, custodian, person
14 in a position of trust or a third person, or to display his or her
15 sex organs under circumstances in which the parent, guardian,
16 custodian or other person in a position of trust knows such display
17 is likely to be observed by others who would be affronted or
18 alarmed.

19 ~~(10)~~(11) "Sexual intercourse" means sexual intercourse as that
20 term is defined in section one, article eight-b, chapter sixty-one
21 of this code.

22 ~~(11)~~(12) "Sexual intrusion" means sexual intrusion as that
23 term is defined in section one, article eight-b, chapter sixty-one
24 of this code.

1 ~~(12)~~(13) A "person in a position of trust in relation to a
2 child" refers to any person who is acting in the place of a parent
3 and charged with any of a parent's rights, duties or
4 responsibilities concerning a child or someone responsible for the
5 general supervision of a child's welfare, or any person who by
6 virtue of their occupation or position is charged with any duty or
7 responsibility for the health, education, welfare, or supervision
8 of the child.

9 **§61-8D-4. Child neglect resulting in injury; child neglect**
10 **creating risk of injury; criminal penalties.**

11 (a) If ~~any~~ a parent, guardian or custodian ~~shall neglect~~
12 neglects a child and by such neglect ~~cause said~~ causes a child
13 bodily injury, as ~~such term is~~ defined in section one, article
14 eight-b of this chapter, then ~~such~~ the parent, guardian or
15 custodian ~~shall be~~ is guilty of a felony and, upon conviction
16 thereof, shall be fined not less than \$100 nor more than \$1,000
17 dollars or ~~committed to the custody of the Division of Corrections~~
18 imprisoned in a state correctional facility for not less than one
19 nor more than three years, or in the discretion of the court, be
20 confined in ~~the county~~ jail for not more than one year, or both
21 ~~such fine and confinement or imprisonment.~~ fined and confined or
22 imprisoned.

23 (b) If ~~any~~ a parent, guardian or custodian ~~shall neglect~~
24 neglects a child and by such neglect ~~cause said~~ the child serious

1 bodily injury, as ~~such term is~~ defined in section one, article
2 eight-b of this chapter, then ~~such~~ the parent, guardian or
3 custodian ~~shall be~~ is guilty of a felony and, upon conviction
4 thereof, shall be fined not less than \$300 nor more than \$3,000
5 dollars or ~~committed to the custody of the Division of Corrections~~
6 imprisoned in a state correctional facility for not less than one
7 nor more than ten years, or both ~~such fine and imprisonment~~ fined
8 and imprisoned.

9 (c) If a parent, guardian or custodian grossly neglects a
10 child and by that gross neglect creates a substantial risk of
11 serious bodily injury, as defined in section one, article eight-b
12 of this chapter, or of death to the child, then the parent,
13 guardian or custodian is guilty of a felony and, upon conviction
14 thereof, shall be fined not less than \$1,000 nor more than \$3,000
15 dollars or imprisoned in a state correctional facility for not less
16 than one nor more than five years, or both fined and confined.

17 (d) If a parent, guardian or custodian neglects a child and by
18 that neglect creates a substantial risk of bodily injury, as
19 defined in section one, article eight-b of this chapter, to the
20 child, then the parent, guardian or custodian, is guilty of a
21 misdemeanor and, upon conviction thereof, for a first offense,
22 shall be fined not less than \$100 nor more than \$1,000 or confined
23 in jail not less than thirty days nor more than six months or both
24 fined and confined. Any person convicted of a first offense under

1 this subsection may also be required to complete parenting classes,
2 substance abuse counseling, anger management counseling, or other
3 appropriate services, or any combination thereof, as determined as
4 necessary through a family functioning assessment conducted by
5 Department of Health and Human Resources, Bureau for Children and
6 Families. For a second offense, the parent, guardian or custodian
7 is guilty of a misdemeanor and, upon conviction thereof, shall be
8 fined not more than \$1,000 and confined in jail not less than
9 thirty days nor more than one year. For a third or subsequent
10 offense, the parent, guardian or custodian is guilty of a felony
11 and, upon conviction thereof, shall be fined not more than \$2,000
12 or imprisoned in a state correctional facility not less than one
13 year nor more than three years, or both fined and confined.

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

18 (f) Any person convicted of a misdemeanor offense under this
19 section shall not, by virtue of such conviction:

20 (1) Be declared to be an abusive parent pursuant to the
21 provisions of section nine of this article;

22 (2) Be required to register pursuant to the requirements of
23 article thirteen, chapter fifteen of this code; or

24 (3) Have their custody, visitation or parental rights

1 automatically restricted.

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

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

16 **§61-8D-9. Convictions for offenses against children.**

17 In any case where a person is convicted of ~~an~~ a felony offense
18 described in this article against a child and the person has
19 custodial, visitation or other parental rights to the child who is
20 the victim of the offense or any child who resides in the same
21 household as the victim, the court shall, at the time of
22 sentencing, find that the person is an abusing parent within the
23 meaning of article six, chapter forty-nine of this code as to the
24 child victim, and may find that the person is an abusing parent as

1 to any child who resides in the same household as the victim, and
2 shall take such further action in accord with the provisions of
3 said article.