

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

SECOND ENGROSSMENT

Committee Substitute

for

House Bill 2648

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[Originating in the Committee on Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
2 designated §60A-4-406a; and to amend and reenact §61-8D-1 and §61-8D-4 of said code,
3 all relating to increased penalties for manufacturing or transportation of a controlled
4 substance in the presence of a minor; providing for mandatory minimum period of
5 incarceration for adult persons convicted of manufacturing, delivering, or possessing with
6 the intent to manufacture or deliver a controlled substance, which is a Schedule I or II
7 narcotic, in the presence of a minor; providing for mandatory minimum period of
8 incarceration for adult persons convicted of manufacturing, delivering, or possessing with
9 the intent to manufacture or deliver a controlled substance, which is a Schedule I, II or III
10 non-narcotic, in the presence of a minor; providing for mandatory minimum period of
11 incarceration for adult persons convicted of transporting a controlled substance into this
12 state with the intent to deliver or manufacture a controlled substance, which is a Schedule
13 I or II narcotic, while being in the presence of a minor at the time of the offense; providing
14 for mandatory minimum period of incarceration for adult persons convicted of transporting
15 a controlled substance into this state with the intent to deliver or manufacture a controlled
16 substance, which is a Schedule I, II or III non-narcotic, while being in the presence of a
17 minor at the time of the offense; requiring certain information and findings to be included
18 in indictment or presentment; requiring certain facts to be determined by the court or jury;
19 defining terms; creating a crime of neglect by a parent, guardian or custodian in which the
20 parent, guardian or custodian is under the influence of a controlled substance and
21 knowingly causes or permits a minor to be present in a location with the parent guardian
22 or custodian, and no bodily injury occurs to the minor child; establishing criminal penalties;
23 and authorizing the Court to require completion of certain classes, counseling, or other
24 programs or services, including drug addiction treatment programs, as part of an imposed
25 sentence or as an alternative sentence for persons convicted of certain misdemeanor
26 offenses.

Be it enacted by the Legislature of West Virginia:

1 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new
2 section, designated §60A-4-406a; and that §61-8D-1 and §61-8D-4 of said code be amended and
3 reenacted, all to read as follows:

CHAPTER 60A. UNIFORM CONTROLLED SUBSTANCES ACT.

ARTICLE 4. OFFENSES AND PENALTIES.

§60A-4-406a. Manufacture, delivery, transportation into state and use of controlled substances in presence of minor

4 (a) Notwithstanding any other provision of law to the contrary, a person, who is eighteen
5 years old or older, is ineligible for parole for a period of three years if he or she is sentenced to
6 the custody of the Commissioner of Corrections for service of a sentence of incarceration and is
7 convicted of a felony violation under W.Va. Code §60A-4-401(a)(i), and who caused or permitted
8 a person under the age of eighteen to be present at the time and location of the offense upon
9 which the conviction is based.

10 (b) Notwithstanding any other provision of law to the contrary, a person, who is eighteen
11 years old or older, is ineligible for parole for a period of two years if he or she is sentenced to the
12 custody of the Commissioner of Corrections for service of a sentence of incarceration and is
13 convicted of a felony violation under W.Va. Code §60A-4-401(a)(ii), and who caused or permitted
14 a person under the age of eighteen to be present at the time and location of the offense upon
15 which the conviction is based.

16 (c) Notwithstanding any other provision of law to the contrary, a person, who is eighteen
17 years old or older, is ineligible for parole for a period of three years if he or she is sentenced to
18 the custody of the Commissioner of Corrections for service of a sentence of incarceration and is
19 convicted of a felony violation under W.Va. Code §60A-4-409(b)(1), and who caused or permitted
20 a person under the age of eighteen to be present at the time and location of the offense upon

21 which the conviction is based.

22 (d) Notwithstanding any other provision of law to the contrary, a person, who is eighteen
23 years old or older, is ineligible for parole for a period of two years if he or she is sentenced to the
24 custody of the Commissioner of Corrections for service of a sentence of incarceration and is
25 convicted of a felony violation under W.Va. Code §60A-4-409(b)(2), and who caused or permitted
26 a person under the age of eighteen to be present at the time and location of the offense upon
27 which the conviction is based.

28 (e) The existence of any fact which would make any person subject to the provisions of
29 this section may not be considered unless the fact is clearly stated and included in the indictment
30 or presentment by which the person is charged and is either:

31 (1) Found by the court upon a plea of guilty or nolo contendere;

32 (2) Found by the jury, if the matter be tried before a jury, upon submission to the jury of a
33 special interrogatory for such purpose; or

34 (3) Found by the court, if the matter be tried by the court without a jury.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT

ARTICLE 8D. CHILD ABUSE

§61-8D-1. Definitions.

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

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

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

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

42 (4) "Custodian" means a person over the age of fourteen years who has or shares actual
43 physical possession or care and custody of a child on a full-time or temporary basis, regardless
44 of whether such person has been granted custody of the child by any contract, agreement or legal
45 proceeding. "Custodian" shall also include, but not be limited to, the spouse of a parent, guardian
46 or custodian, or a person cohabiting with a parent, guardian or custodian in the relationship of
47 husband and wife, where such spouse or other person shares actual physical possession or care
48 and custody of a child with the parent, guardian or custodian.

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

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

54 (7) "Neglect" (i) means the unreasonable failure by a parent, guardian or custodian of a
55 minor child to exercise a minimum degree of care to assure the minor child's physical safety or
56 health; (ii) For purposes of this article, the following do not constitute "neglect" by a parent,
57 guardian or custodian:

58 (A) Permitting a minor child to participate in athletic activities or other similar activities that
59 if done properly are not inherently dangerous, regardless of whether that participation creates a
60 risk of bodily injury;

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

62 (C) Exercising discretion in making decisions regarding the nutrition and medical care
63 provided to a minor child based upon religious conviction or reasonable personal belief; and

64 (iii) For purposes of this article, a parent, guardian or custodian of a minor child is deemed
65 to have failed to exercise a minimum degree of care to assure the minor child's physical safety or
66 health if such parent, guardian or custodian of a minor child is unlawfully under the influence of a

67 controlled substance and knowingly causes or permits a minor to be present in a location with the
68 parent, guardian or custodian while under the influence.

69 (8) "Parent" means the biological father or mother of a child, or the adoptive mother or
70 father of a child.

71 (9) "Sexual contact" means sexual contact as that term is defined in section one, article
72 eight-b, chapter sixty-one of this code.

73 (10) "Sexual exploitation" means an act whereby:

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

78 (B) A parent, guardian, custodian or other person in a position of trust in relation to a child
79 persuades, induces, entices or coerces the child to display his or her sex organs for the sexual
80 gratification of the parent, guardian, custodian, person in a position of trust or a third person, or
81 to display his or her sex organs under circumstances in which the parent, guardian, custodian or
82 other person in a position of trust knows such display is likely to be observed by others who would
83 be affronted or alarmed.

84 (11) "Sexual intercourse" means sexual intercourse as that term is defined in section one,
85 article eight-b, chapter sixty-one of this code.

86 (12) "Sexual intrusion" means sexual intrusion as that term is defined in section one, article
87 eight-b, chapter sixty-one of this code.

88 (13) A "person in a position of trust in relation to a child" refers to any person who is acting
89 in the place of a parent and charged with any of a parent's rights, duties or responsibilities
90 concerning a child or someone responsible for the general supervision of a child's welfare, or any
91 person who by virtue of their occupation or position is charged with any duty or responsibility for

92 the health, education, welfare, or supervision of the child.

93 (14) “Unlawfully under the influence of a controlled substance” means the consumption of
94 a controlled substance in violation of chapter sixty-a of the code that has induced an effect on the
95 user’s brain, muscles, nervous system, or other normal function of the body, to such a degree
96 that it impairs the user’s ability to take action or conduct oneself in the manner that an ordinarily
97 prudent and cautious person, using reasonable care, would conduct himself or herself.

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

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

7 (b) If a parent, guardian or custodian neglects a child and by such neglect cause the child
8 serious bodily injury, as serious bodily injury is defined in section one, article eight-b of this
9 chapter, then the parent, guardian or custodian is guilty of a felony and, upon conviction thereof,
10 shall be fined not less than \$300 nor more than \$3,000 dollars or imprisoned in a state correctional
11 facility for not less than one nor more than ten years, or both.

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

18 (d) If a parent, guardian or custodian neglects a child, as such term is defined in
19 subdivision (iii), subsection (7), section one of this article, and no bodily injury occurs to the minor
20 child as a result of the neglect, then the parent, guardian or custodian is guilty of a misdemeanor,
21 and, upon conviction thereof, shall be fined not more than \$2,500 or confined in jail for not more
22 than one year, or both fined and confined.

23 ~~(d)~~ (e)(1) If a parent, guardian or custodian who has not been previously convicted under
24 this section, section three of this article or a law of another state or the federal government with
25 the same essential elements neglects a child and by that neglect creates a substantial risk of
26 bodily injury, as defined in section one, article eight-b of this chapter, to the child, then the parent,
27 guardian or custodian, is guilty of a misdemeanor and, upon conviction thereof, for a first offense,
28 shall be fined not less than \$100 nor more than \$1,000 or confined in jail not more than six months,
29 or both fined and confined.

30 (2) For a second offense under this subsection or for a person with one prior conviction
31 under this section, section three of this article or a law of another state or the federal government
32 with the same essential elements, the parent, guardian or custodian is guilty of a misdemeanor
33 and, upon conviction thereof, shall be fined not more than \$1,000 and confined in jail not less than
34 thirty days nor more than one year, or both.

35 (3) For a third or subsequent offense under this subsection or for a person with two or
36 more prior convictions under this section, section three of this article or a law of another state or
37 the federal government with the same essential elements, the parent, guardian or custodian is
38 guilty of a felony and, upon conviction thereof, shall be fined not more than \$2,000 and imprisoned
39 in a state correctional facility not less than one year nor more than three years, or both fined and
40 imprisoned.

41 ~~(e)~~ (f) The provisions of this section shall not apply if the neglect by the parent, guardian
42 or custodian is due primarily to a lack of financial means on the part of such parent, guardian or

43 custodian.

44 (f) (g) Any person convicted of a misdemeanor offense under this section:

45 (1) The Court may require, as part of an imposed sentence, or as an alternative sentence
46 to that specified in this section, that the person ~~May be required to~~ complete parenting classes,
47 substance abuse counseling, drug addiction treatment program, anger management counseling,
48 or other appropriate services, or any combination thereof, as determined by Department of Health
49 and Human Resources, Bureau for Children and Families through its services assessment
50 evaluation, which shall be submitted to the court of conviction upon written request;

51 (2) Shall not be required to register pursuant to the requirements of article thirteen, chapter
52 fifteen of this code; and

53 (3) Shall not, solely by virtue of the conviction, have their custody, visitation or parental
54 rights automatically restricted.

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